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Tuesday
April 24, 1984

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Environmental Protection Agency

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

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees; Workplace Solicitation and Collection of Political Contributions Prohibited

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to clarify existing prohibitions on the solicitation, payment, collection, and receipt of political contributions in the Federal workplace and through Federal payroll deductions. The prohibition of this type of political activity in the Federal workplace eliminates opportunities for coercion or favoritism for partisan political purposes by supervisors, co-workers, and others necessarily involved in payment administration.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, (202) 632-7600.

SUPPLEMENTARY INFORMATION: On December 28, 1982, the Office of Personnel Management (OPM) published for comment in the Federal Register (47 FR 57724) proposed amendments to 5 CFR Part 733 (Political Activity of Federal Employees), prohibiting the solicitation, payment, collection, and receipt of political contributions in the Federal workplace. The comment period closed on February 28, 1983.

The comments that OPM received during this period included the following suggestions: (1) Specifically providing in the regulations that political action committees are excluded from the Combined Federal Campaign; (2) clarifying the proposed definition of "Federal workplace" to specifically exclude Legislative Branch offices; (3) amending OPM's allotment regulations (5 CFR Part 550, Subpart C) to prohibit employee allotments for political contributions; and (4) defining the terms "employer" and "employing" in the regulations to include the immediate employing agency head, agency principals, and supervisors of contributing employees.

With respect to the first suggestion, OPM notes that the Combined Federal Campaign is governed by existing regulations (5 CFR Part 950) that specifically exclude political action committees from participation in the Campaign (5 CFR 950.101(a)(2)). With respect to the second suggestion, OPM notes that its political activity regulations apply only to Executive Branch employees. These regulations do not apply to the Legislative Branch. OPM notes with respect to the third suggestion that these regulations prohibit the activity involved in processing Federal employee allotments for political contributions; therefore, it is not necessary to amend the allotment regulations to include the suggested prohibition. Finally, OPM agrees that its regulations should contain specific definitions of the terms "employer" and "employing authority." OPM notes that the suggested definition includes those persons who customarily would be viewed as the employers or employing authorities of contributing Federal employees. Accordingly, OPM has added this definition to the final version of the amendments to 5 CFR Part 733.

Objections to the proposed regulations encompassed general concerns as well as more specific objections based on provisions of the Hatch Act (5 U.S.C. 7324-7327), the criminal code provisions concerning political contributions (18 U.S.C. 600-607), and related provisions of the Federal Election Campaign Act (2 U.S.C. 431-455).

Those submitting more general objections stated that payroll deductions for political action committees are allowed in the private sector, that the proposed regulations are part of a "union busting" plan, and that existing statutes and regulations provide sufficient protection against any abuses that might result from using the Federal payroll system as a vehicle for collecting political contributions. OPM notes with respect to the first objection that the Supreme Court has upheld special restraints on the political activity of Federal employees in the Executive Branch. With respect to the second objection, OPM rejects that characterization of the regulations. OPM seeks to provide regulatory guidance to Federal employees and the public of the meaning and significance of the laws related only to the political activity of Federal employees.

Some who made more specific objections doubted OPM's authority to issue regulations that interpret the Hatch Act's provisions. They stated that OPM's proposed regulations expanded the scope of the Hatch Act's prohibitions beyond the statutory limits that only include those activities described by the Civil Service Commission prior to July 19, 1940. In this connection, it was noted that according to previous Civil Service Commission determinations, collection and distribution of political contributions does not necessarily constitute a violation of the Hatch Act. Another objection stated that there was no rational basis for OPM's belief that processing political contributions through payroll deductions would create the appearance of improper influence on employees to make such contributions. It was also suggested that OPM's regulations would not apply to non-partisan political funds.

In response to these objections OPM believes that it does have the authority to regulate the partisan political activity of Federal employees. Moreover, these regulations do not exceed the boundaries set forth in the Hatch Act. They merely clarify an existing OPM regulation (5 CFR 733.122(b)(3)). OPM notes that some decisions of the former Civil Service Commission have held that, under certain highly unusual and fact-bound circumstances, Federal employee collection and distribution of political contributions were not violations of the Hatch Act. The overhelming majority of the former Civil Service Commission's decisions, however, have held that these activities are violations of the Hatch Act.

OPM notes further that there is a rational basis for its belief that processing political contributions through payroll deductions could result

in possible abuses. It is evident from the decisions of the former Civil Service Commission that pressure to make political contributions still occurs, notwithstanding the existing statutory prohibitions stated in 5 U.S.C. 7321–7324. Use of the Federal payroll system as a vehicle for collecting political contributions, as well as the convenience of making these contributions through payroll deductions, would increase the opportunities for coercion of employees.

Introducing the political contribution process into Government would make it possible for supervisors, administrative officers, and others in a position to affect careers or working conditions to discover the identity of political contributors and other information concerning their contributions. Because allotments or payroll deduction authorizations pass through many hands during processing, there exists the risk of either intentional or inadvertent disclosure of sensitive data. Although such a disclosure could be cause for discipline, tracing the disclosure to its source in the processing chain would not be possible in every case. The authority to discipline thus would not be a complete deterrent and where exercised would not forestall potential misuse of the information already disclosed.

Even if the integrity of payroll data is not compromised, individual employees could be directly approached by colleagues or superiors seeking to identify contributors. Even if not so intended, this could create among employees a perception of pressure to contribute to a particular political action fund.

Finally, OPM notes that the non-partisan character of a political action fund may change as the result of a contribution to or endorsement of a partisan party candidate.

OPM also received specific objections concerning the criminal code provisions on political contributions (18 U.S.C. 600–607) and related provisions of the Federal Election Campaign Act (2 U.S.C. 431–455). Those objections stated that OPM does not have the authority to interpret criminal code provisions, and that OPM's interpretation of these provisions is erroneous. More specifically, they stated that receiving and processing allotment forms for political contributions does not involve Federal employees in "receiving" contributions within the meaning of the criminal statutes. They stated further that the meaning of "contributions" in the criminal provision is based on the definition stated in the Federal Election Campaign Act. According to their interpretation, "contribution" does not include donations made through allotment authorization forms. In this connection, they argued that under the Federal Election Campaign Act, the terms "contribution" and "political fund" are used only in connection with elective campaigns for Federal office. Finally, they objected to the proposed regulations on the ground that the Federal Election Campaign Act (2 U.S.C. 441b(b)(5)) authorizes the use of payroll deduction plans for voluntary political contributions to the political funds of labor organizations, notwithstanding any law to the contrary.

OPM notes that it did not issue its proposed regulations for the purpose of interpreting or attempting to enforce the criminal provisions on solicitation, collection, and receipt of political contributions. OPM issued its proposed regulations to clarify existing prohibitions in 5 U.S.C. 7321–7324 and in 5 CFR 733.122(b)(3). Accordingly, OPM referred to the criminal provisions solely for guidance in constructing its proposed regulations, and does not view these provisions as a source of authority for regulating the partisan political activities of Federal employees. In this connection, OPM notes that the meaning of "contribution" in the existing prohibitions of Title 5, United States Code, and Title 5, Code of Federal Regulations, is not tied to the definition or circumstances stated in the Federal Election Campaign Act. Thus, OPM's regulations apply to State and local elections, as well as Federal elections. OPM notes further, with respect to the final objection based on 2 U.S.C. 441b(b)(5), that Section 441b, read in its entirety, plainly applies to transactions occurring in the private sector rather than to those involving Federal employee collections of political contributions. Moreover, 2 U.S.C. 441b(b)(5) does not automatically make the payroll deduction mechanism available to labor unions.

In addition to these suggestions and objections, OPM also received general expressions of opinion concerning its proposed regulations. For example, one person concurred with OPM's proposed regulations, but expressed the belief that Federal employees who are not in a superior-subordinate relationship should be allowed to collect or receive contributions among themselves. Another stated that the collection of political contributions should not be subsidized by the taxpayers, and that political action funds should pay their own way.

Finally, OPM has amended the authority citation for its proposed regulations to include 5 U.S.C. 7321, 7322, and 7323. Because these authorities were pre-existing and relate to the political activity of Federal employees, this amendment is not substantive in nature.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects the political activities of Federal employees.

List of Subjects In 5 CFR Part 733

Political activity of Federal employees.

United States Office of Personnel Management.

Donald J. Devine,

Director.

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for Part 733 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264, unless otherwise noted.

2. Section 733.101 is amended by adding paragraphs (g), (h), (i) and (j) to read as follows:

§ 733.101 Definitions.

* * * * *

(g) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(h) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(i) "Federal workplace" means any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(j) "Employer" or "employing authority" means the immediate employing agency head, agency principals, or an employee's supervisor.

3. Section 733.122(b) is amended by revising subparagraphs (12) and (13) and adding subparagraphs (14), (15), and (16) to read as follows:

§ 733.122 Political management and political campaigning; prohibitions.

* * * * *

(b) * * *

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the Federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient.

[FR Doc. 84-10946 Filed 4-23-84; 8:45 am]

BILLING CODE 6325-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 35]

Delegation of Authority To Conduct Program Activities in Field Offices—Certificate of Competency Approval Authority

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved a proposal from the Office of Procurement and Technical Assistance increasing regional office authority to approve applications for Certificates of Competency from not exceeding $500,000 to not exceeding $2,000,000. This change will improve and speed program delivery by decreasing the application caseload currently being sent to the Central Office for approval, release Central Office managers for program supervision, and place authority at the regional office point of responsibility.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Information Resources Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416 Telephone No. (202) 653-6538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking, public participation and a Regulatory Flexibility review 5 U.S.C. 501 et seq., are not required and this amendment is adopted without resort to those procedures. This amendment does not contain recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 35, and is not a major rule for purposes of Executive Order 12291. For the reasons set forth in the preamble and pursuant to authority in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3-2 is amended, following the index terms, as set forth below:

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

In section § 101.3-2 Part VI, Section A, paragraph 1 is revised to read as follows:

§ 101.3-2 Delgations of authority to conduct program activities in field offices.

* * * * *

1. With the exception of re-referred cases, to approve applications for Certificate of Competency up to but not exceeding $2,000,000 bid value received from small business concerns located within the geographical jurisdiction: a. Regional Administrator, b. Deputy Regional Administrator, c. Assistant Regional Administrator/P&TA.

* * * * *

Date: April 17, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-10979 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 125

[Rev. 1, Amdt. 1]

Eligibility Requirements for Certificate of Competency Applicants

AGENCY: Small Business Administration.

ACTION: Final rule

SUMMARY: This rule increases the Regional Offices authority to issue Certificates of Competency (COC). Currently, Regional Administrators can issue COC for contracts valued at $500,000 or less, this change raises the authority to $2,000,000. This increase is prudent in order to bring the approved authority up-to-date with current pricing and place the authority at the point of contact best suited to assist small business.

EFFECTIVE DATE: April 24; 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Office of Industrial Assistance, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Telephone No. (202) 653-6582.

SUPPLEMENTARY INFORMATION: Inasmuch as the amendment set forth below affects internal procedures only, notice of proposed rulemaking, public participation and a Regulatory Flexibility review 5 U.S.C. 501 et seq., are not required and this amendment is adopted without resort to those procedures. This amendment does not contain recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 35, and is not a major rule for purposes of Executive Order 12291.

List of Subjects in 13 CFR Part 125

Government procurement, Small businesses, Technical Assistance.

PART 125—[AMENDED]

For the reasons set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 125 13 CFR 125.5(f) is revised as follows:

§ 125.5 Certificate of competency program.

* * * * *

(f) If the Regional Administrator's decision is negative, the COC is denied and both the firm and procuring agency are notified. If the Regional Administrator's decision is affirmative and the procurement is less than $2,000,000, the Regional Administrator issues a Certificate. Contracting officers will be informed in advance of issuing. For procurements in excess of $2,000,000, if the Regional Administrator recommends issuance of the Certificate, the Associate Administrator for Procurement and Technical Assistance, SBA Central Office, causes a review to be made and either issues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the responsibility of the firm as to the elements of responsibility referred (the COC) is sent to the

procuring activity and the applicant informed of such issuance by the regional office.

* * * * *

Dated: April 17, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-10980 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 84-ACE-01]

Designation of Transition Area—Norton, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700 foot transition area at Norton, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Norton, Kansas, Municipal Airport, utilizing the Norton Nondirectional Radio Beacon NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Dale L Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Norton, Kansas, Municipal Airport, utilizing the Norton NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Norton, Kansas, at or above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On pages 5763 and 5764 of the **Federal Register** dated February 15, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Norton, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT July 5, 1984, by designating the following transition area:

Norton, Kansas

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Norton Municipal Airport (latitude 39°50'48" N. longitude 99°53'45" W.) and within 4.5 miles each side of the 348° bearing from the Norton Nondirectional Beacon (NDB) (latitude 39°51'18" N., longtitude 99°53'23" W.) extending from the 5.5 mile radius to 8 miles north of the airport and within 4.5 miles each side of the 186° bearing from the Norton NDB extending from the 5.5 mile radius to 8 miles south of the airport.

(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); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

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

Issued in Kansas City, Missouri, on April 13, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-10914 Filed 4-23-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 84-ASO-7]

Amendment to Restricted Areas R-6001A and R-6001B, Fort Jackson, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule amends Restricted Areas R-6001A and R-6001B, Fort Jackson, SC, to include in the record air to surface inert and practice ordnance delivery activities in addition to the current use of the area for artillery firing. This action is an editorial change and does not increase the restricted area's size or time of use.

DATES: Effective date—July 5, 1984. Comments must be received on or before June 8, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-ASO-7, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Boyd V. Archer, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

This action amends Restricted Areas R-6001A and R-6001B, by including in the record the addition of air to surface inert and practice ordnance delivery activities in addition to the current use of the areas for artillery firing. The need for the addition of ordnance delivery

activities is a result of significant increases in the U.S. Air Force's operational readiness training requirements that cannot be accommodated in existing areas. This action is an editorial change and does not increase the restricted area's size or time of use, and thus, was not preceded by notice and public procedure. Comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the rule that might suggest the need to modify the rule. Send comments on environmental and land use aspects to: Environmental Planning Division, Headquarters TAC/DEEV, Langley AFB, VA 23665, Attention: Major Richard Poli, Telephone (804) 764-4430.

The Rule

The purpose of this amendment to § 73.60 of Part 73.60 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to amend Restricted Areas R-6001A and R-6001B, Fort Jackson, SC, to enter in the record the addition of air to surface inert and practice ordnance delivery to the current use of the area, by the U.S. Army, for artillery firing. As already noted, the need for the addition of aircraft activities within the restricted areas is a result of significant increases in the U.S. Air Force's operational readiness training requirements. Section 73.60 of Part 73 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6 dated January 3, 1984.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend Restricted Areas R-6001A and R-6001B, Fort Jackson, SC, to enter in the record the addition of air to surface inert and practice ordnance delivery to the current use of the areas, by the U.S. Army, for artillery firing. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective on the next charting date.

List of Subjects in Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.60 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, effective 0901 GMT, July 5, 1984, as follows:

R-6001A Fort Jackson, SC [Amended]

By adding the words:

Aircraft activity is limited to the following terms and conditions:

1. Aircraft activities may not be conducted on weekends.

2. Weather conditions required for aircraft activities are 5 miles visibility and with prevailing clouds or obscuring phenomena no greater than five-tenths coverage of the sky and bases no lower than 3,000 feet above the surface.

3. Air to surface ordnance limited to the MK-106 (spotting) practice bomb delivery.

4. Aircraft activities are limited to two hours daily.

R-6001B Fort Jackson, SC [Amended]

By adding the words:

Aircraft activity is limited to the following terms and conditions:

1. Aircraft activities may not be conducted on weekends.

2. Aircraft activities may only be conducted from 3,200 feet MSL to 13,000 feet AGL.

3. Weather conditions required for aircraft activities are 5 miles visibility and with prevailing clouds or obscuring phenomena no greater than five-tenths coverage of the sky and bases no lower than 3,000 feet above the surface.

4. Air to surface ordnance limited to the MK-106 (spotting) practice bomb delivery.

5. Aircraft activities are limited to two hours daily.

(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)); and 14 CFR 11.69)

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 Washington, D.C., on April 17, 1984.

B. Keith Potts,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-10916 Filed 4-23-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 375, 381

[Docket Nos. RM82-25-000, RM82-25-001, RM82-25-002; Order No. 360-A]

Fees Applicable to Producer Matters Under the Natural Gas Act

Issued: April 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and clarifying the final rule.

SUMMARY: On February 6, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM82-25-000, Order No. 360, 49 FR 5,074 (Feb. 10, 1984), establishing fees for producer matters under the Natural Gas Act. The Commission received two timely petitions for rehearing of the final rule in this docket.

For the reasons detailed in its order, the Commission denies rehearing of the final rule and provides clarification that only one fee will be charged for a producer certificate and the related rate schedule.

EFFECTIVE DATE: This order will become effective April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Karen S. Hurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 6, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing fees for producer matters under the Natural Gas Act. The Commission received petitions for rehearing from Phillips Petroleum Company and Phillips Oil Company jointly (Phillips) (RM82-25-001) [1] and

[1] In the alternative, Phillips seeks clarification of the final rule as to specific questions raised in its petition.

Pennzoil Company (Pennzoil) (RM82-25-002). For the reasons stated below and those set forth in the final rule, this order denies these petitions. In addition, this order clarifies one issue raised by Phillips.

Phillips requests rehearing on five issues: (1) Whether producers receive special benefits from Commission review of filings required under the Natural Gas Act; (2) whether the prescribed fees are arbitrary and excessive; (3) whether the Commission should only charge one fee for a successor certificate filed with a rate schedule supplement (Phillips also seeks clarification on this point); (4) whether producers should be able to recover their fee costs; and (5) whether the rule's waiver provision should be based on the effect the fee has on the specific application or filing and not the effect it has on the applicant's overall financial situation.

Pennzoil requests rehearing on three issues: (1) Whether the fees established exceed the Commission's authority under the Independent Offices Appropriation Act (IOAA); [2] (2) whether the cost basis underlying the final rule is adequately explained; and (3) whether the procedure for direct billing contains adequate standards and safeguards.

On March 28, 1984 Commission issued an order granting rehearing solely for the purpose of further consideration.

II. Disposition of Petitions for Rehearing

A. Authority Under the IOAA

In the final rule in this docket, the Commission established fees for the services and benefits it provides to producers under the Natural Gas Act. The fees were promulgated under the authority of the Independent Offices Appropriation Act (IOAA).

1. *"Services and Things of Value".* The IOAA states, in pertinent part, that:

> It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible.[3]

Phillips and Pennzoil both contend that the fees established are not authorized by the IOAA. They argue that the fees represent charges for benefits which accrue to the public and not producers.

The Commission believes that the issue of whether there are benefits to producers has been thoroughly discussed in the final rule [4] and that producer applicants do receive an overall benefit from the Commission's services which does not accrue to the public. The Commission agrees, as it so stated in the final rule, that the public does benefit from the regulation of natural gas. This "downstream" benefit does not, however, vitiate the Commission's right to charge fees. The Commission's services benefit producers directly by providing them with the only means to reap benefits from gas production that other members of society do not share. This is similar to other agencies' licensing systems, which have been found by the courts to be subject to IOAA fee authorization. *See, e.g., Electronics Industries Ass'n.* v. *FCC,* 554 F.2d 1109 (D.C. Cir. 1976). What producers receive, therefore, is valuable and beneficial. The benefit to producers is separate from, more immediate, and greater than the general benefit society reaps from gas regulation.

Furthermore, the Commission excludes from its fee calculations those costs that represent public benefits. For example, one of the three support cost categories, "inquiries and internal communications," is completely excluded. Many other budget costs are excluded because they only pertain to special areas of Commission work. Thus, the Commission does recognize that certain costs that it incurs represent public benefits and those costs are excluded. For these reasons and the reasons set forth in the final rule, the Commission denies rehearing on this issue.

2. *Basis of Cost Recovery.* Phillips contends that the Commission's fees are arbitrary and excessive, specifically with respect to successor certificate filings and related rate schedule supplements. Phillips seeks clarification on whether the Commission will charge only one fee for a successor certificate coupled with the applicable rate schedule supplements or whether the Commission will charge both a certificate fee and a rate schedule fee. Finally, Phillips contends that the Commission should provide for producers to recover the cost of their fees; otherwise, it claims, the Commission is effectively reducing the maximum lawful price producers are permitted to charge under the Natural Gas Policy Act (NGPA). Pennzoil argues that the cost basis for the fees is insufficiently detailed.

The Commission disagrees with the assertion that its fees are arbitrary. The final rule sets forth in detail the Commission's fee methodology [5] including an explanation of the direct and indirect costs that make up the fees as well as the Commission's Management Information System (MIS) which tracks Commission employee workload on the basis of project categories. Furthermore, the final rule provides the formula used for deriving the fees. These calculations are further explained in data sheets that are in the Commission's public rulemaking file.

As for the argument that the fees are excessive, the Commission's fees are a direct result of reported time spent reviewing filed applications and rate schedules. While some applications may seem "simple" to an applicant, they nevertheless require staff analysis and processing. The "average" fee that is established is the next best thing to having a direct billing system for every filing that comes into the Commission. This universal direct billing arrangement is not administratively practical for this Commission at this time. Furthermore, most filings take approximately the same amount of time and therefore can be averaged in determining a reasonable fee. Those extraordinary filings that involve time and resources well beyond the more routine or average will be directly billed as explained in the final rule.

The Commission does not believe that it is unlawfully reducing the maximum lawful prices established under the NGPA. The maximum lawful prices are price levels which producers cannot exceed without specific permission. However, producers incur a number of operating costs which they cannot recover. These fees which Congress authorized are simply one of those costs. Thus, in response to Phillips' argument on recovery of fees, we find that there is no reason to include such a provision in the final rule.

For the reasons stated above, and the reasons set forth in the final rule, the Commission denies rehearing on these issues.

As for the clarification sought on the treatment of successor certificates and related rate schedule supplements under the final rule, the Commission intends to charge only one $1,600 certificate fee because that fee covers related rate schedule filings as well. Rate schedule supplements filed in conjunction with a producer certificate filing do not require a separate fee payment. This would include not only successor certificates,

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[2] 31 U.S.C. 9701 (1982) (amending 31 U.S.C. 483a (1976 and Supp. V 1981).

[3] 31 U.S.C. 9701 (1982). The prior language at 31 U.S.C. 483(a) stated: "Any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value . . . performed . . . by any Federal Agency . . . to or for any person . . . shall be self-sustaining to the full extend possible . . ."

[4] 49 FR 5,074, 5,076.

[5] 49 FR 5,074, 5,077, 5,078.

but also applications for new service and amendments to existing certificates and the accompanying rate schedules. This approach of charging one fee will be followed in these cases because under the Commission's MIS, producer certificates and the related rate schedules are processed and tracked together as one filing.

B. Waiver Provision

The final rule provides that if an applicant is suffering from a period of severe economic hardship and can present evidence that it is either financially unable to pay the fee or will be in a state of financial distress or emergency if it pays, the Commission will grant a full or partial waiver of the fee. Phillips contends that the Commission's standard is inappropriate. Phillips says the Commission should base waivers on the economics of each filing, as opposed to the overall financial health of the applicant. In other words, if the added cost of the fee would make the transaction uneconomic, then the Commission should waive the fee.

The Commission is not persuaded to grant rehearing on this point for two reasons. First, the Commission's fees are based on the time it spends processing the types of applications and filings covered in the rule. That process involves an evaluation of whether the transaction or authorization at stake meets the appropriate legal and technical criteria. If an applicant chooses to use Commission services to receive permission to undertake a particular activity, that applicant must itself decide beforehand whether or not the financial aspects of the activity are favorable. The Commission will not make this type of activity-by-activity evaluation on fee matters for these applicants. Second, the administrative burden of doing what Phillips suggests is much too great. The Commission could not, practically speaking, make these determinations of relative costs or economics for every filing accompanied by a waiver request. We believe that the waiver provision as now set forth in the rule provides sufficient and reasonable relief to applicants who are suffering severe economic hardship.

C. Direct Billing Procedure

The Commission's final rule contains a procedure whereby an applicant, whose filing is not average and requires an extraordinary amount of Commission time, can be billed directly for all of the direct and indirect costs associated with that filing. (Of course, as with routine filings, those costs that provide public benefits would be excluded under direct billings as well.) Pennzoil contends that this provision is inadequate and that the Commission failed to address Pennzoil's comments in the final rule.

The Commission believes it has responded to all significant comments, including Pennzoil's, in its final rule. The Commission explains in the rule that it will decide how to handle intervenor costs on a case-by-case basis since hearings are rare in these producer areas, and thus the issue is not likely to arise. This is not an "open" issue as Pennzoil suggests. Rather the decision is to treat each direct billing case on its own merits, taking into account the particular equities and circumstances involved, instead of deciding this issue on a generic basis for all cases.

In consideration of the foregoing, the Commission denies rehearing of the final rule in this docket.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10995 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Parts 154 and 381

[Docket Nos. RM83-2-000, RM83-2-001, RM83-2-002, RM83-2-003; Order No. 361-A]

Fees Applicable to Natural Gas Pipeline Rate Matters

Issued: April 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: On February 6, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM83-2-000, Order No. 361, 49 FR 5,083 (Feb. 10, 1984), establishing fees for natural gas pipeline rate matters. The Commission received three timely petitions for rehearing of the final rule in this docket. For the reasons detailed in its order, the Commission denies rehearing of the final rule.

EFFECTIVE DATE: This order will become effective April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Karen S. Hurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 6, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing fees for pipeline rate matters under the Natural Gas Act (NGA) and related authorities. The Commission received three petitions for rehearing from United Gas Pipe Line (United) (RM83-2-001), Interstate Natural Gas Association of America (INGAA) (RM83-2-002), and Transcontinental Gas Pipe Line Corporation (Transco) (RM83-2-003).[1]

United petitions for a rehearing on one issue: whether the Commission has authority under the IOAA to charge the fees established in its final rule. INGAA petitions on three issues: (1) whether pipelines receive a special benefit that thereby entitles the Commission to charge a fee; (2) whether the direct billing provision is lawful; and (3) whether the cost information provided in the final rule is sufficient as a basis for the fees. Transco asserts the same three issues raised by INGAA.

II. Disposition of Petitions for Rehearing

A. Authority Under the IOAA

In the final rule in this docket, the Commission established fees for the services and benefits it provides to pipelines. The fees were promulgated under the authority of the Independent Offices Appropriation Act (IOAA).[2]

1. *"Services and Things of Value". The IOAA states in pertinent part that:*

> It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible.[3]

Each of the three petitioners contends that there is no benefit to pipelines to substantiate the fees in the final rule. United argues that an earlier Supreme Court case already has addressed FERC's ability to charge fees.[4] Furthermore, it argues that an order of the FPC specifically stated that the Commission would not charge fees because the regulations under the NGA benefit the public.[5]

The Commission believes that it has adequately and thoroughly addressed these arguments in the final rule. Nevertheless, we wish to emphasize several points. First, the earlier positions taken by the former Federal Power

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[1] Transcontinental Gas Pipe Line Corp. (Transco) also adopts INGAA's petition.

[2] 31 U.S.C. 9701 (1982), (amending 31 U.S.C. 483a (1976 and Supp. V 1981).

[3] 31 U.S.C. 9701. The language of former 483(a) was as follows: Any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license permit, certificate, registration or similar thing of value . . . performed . . . by any Federal agency . . . to or for any person . . . shall be self-sustaining to the full extent possible . . .

[4] FPC v. New England Power Co., 415 U.S. 345 (1974).

[5] *See*, Notice of Proposed Rulemaking to Order No. 317, at 30 FR 12077 (September 22, 1965).

Commission (FPC) do not bind this successor Commission from taking a different approach to fees.[6] This is, in our opinion, settled law.

Second, the recognition that our regulatory activities were and are beneficial to consumers does not vitiate this Commission's power to charge fees for the services it provides to pipelines. We believe that both pipeline companies and consumers are beneficiaries, but of a different nature and in different degrees. In an ultimate sense, the natural gas market is regulated for the public's (or consumer's) benefit. But that indirect and general benefit is separate from and less immediate than the benefit that accrues directly to pipelines who use Commission services. The D.C. Circuit affirmed this distinction for one of our sister regulatory agencies in *Electronics Industries Ass'n.* v. *FCC*, 554 F.2d 1109, 1115, (D.C. Cir. 1976). In that case, petitioners also argued that fees should not be assessed for tariff filings or equipment testing and approval on the grounds that the public, not the regulated entity, was the only beneficiary.

The court answered that even though both activities (tariff filings and testing) were required by statute, the FCC was entitled to charge for services which assisted a person in complying with his or her statutory duties. Such agency services, the court said, confer an *independent private benefit* since they provide the means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. The court concluded that although the statute was enacted in order to protect the public against excessive or unreasonably discriminating or preferential charges, that result is only an incidental benefit from the service which is actually rendered by the agency, *i.e.*, providing the means for carriers to comply with the statute.

Since we find no relevant distinction between the FCC and the FERC on this point, we believe that the IOAA clearly authorizes us to charge for the direct and indirect costs incurred in performing the services that enable pipeline carriers to operate and obtain their revenues.

The Commission also disagrees with the argument put forth by petitioners that the Supreme Court has already decided the issue of whether this Commission may charge fees under the IOAA. The Court in *FPC* v. *New England Power Co.* explained the issue that was before it:

> * * * The Federal Power Commission established filing fees under the Natural Gas Act and under the Federal Power Act. These filing fees have not been challenged. What was challenged were annual assessments under both Acts levied in an effort of the agency to recoup some of the remaining costs under the two Acts* * *[7]

Thus, what the Court was considering was the assessment of annual charges under the NGA and the FPA, not filing fees under the IOAA. The annual charges were struck down because the Commission attempted to charge "whole industries" as opposed to specific individuals or companies which benefitted from Commission services. The individualized approach suggested by the Court in *FPC* v. *New England Power Co.* is what the Commission has done in this final fees rule.

For the above reasons and those set forth in the final rule, the Commission denies rehearing on this issue.

2. *Basis of Cost Recovery.* INGAA and Transco argue that the Commission has failed to provide sufficient information to support the costs that are claimed as the basis for its fees. Furthermore, they claim the fees established are excessive.

The Commission disagrees with these assertions. The final rule sets forth in detail the Commission's fee structure.[8] That discussion explains the direct and indirect costs that make up the fees as well as the Commission's Management Information System (MIS) which tracks Commission workload on the basis of project categories. Furthermore, the final rule provides the formula used for deriving the fees. These calculations are detailed further in data sheets which are in the Commission's public rulemaking file.

As for the argument that the fees are excessive, the Commission's fees are a direct result of reported time spent reviewing filed applications and rate schedules. While some filings may seem "simple" to an applicant, they nevertheless require staff analysis and processing. The "average" fee that is established is the next best thing to having a direct billing system for every filing that comes into the Commission. This universal direct billing arrangement is not administratively practical for this Commission at this time. Furthermore, staff believes that most filings take approximately the same amount of time and therefore can be averaged in determining a reasonable fee. Those truly extraordinary filings that depart dramatically from the time and resource requirements for more routine or average filings will be directly billed as explained in the final rule.

Furthermore, the Commission excludes from its calculation those costs that represent benefits to the public. For example, one of the three support cost categories, "inquiries and internal communications", is completely excluded, as are many other budget items which only pertain to special areas of Commission work. Thus, the Commission does recognize that certain costs that it incurs represent public benefits and those costs are excluded.

B. Direct Billing

The Commission's final rule contains a procedure whereby an applicant, whose filing is not average but rather requires an extraordinary amount of Commission time, can be billed directly for all of the direct and indirect costs associated with that filing. (Of course, those costs benefitting the public which the Commission excludes from average fees would also be excluded under direct billing.) INGAA and Transco argue that the direct billing provision is too vague.

These arguments by petitioners were considered in the final rule and we stand by the discussion set forth in that rule.[9] However, the petitioners do raise one new argument with regard to charging intervenors for a portion of a direct billing.

The Commission does not expect to use direct billings frequently in the pipeline rates area (except for the category of research, development and demonstration expenditures). The Commission does, however, state in the rule that should there be a filing that precipitates a direct billing, the Commission would consider charging, out of fairness to the parties, a portion of that fee to intervenors who receive private benefits. Because the Commission does not expect the issue of charging intervenors to arise frequently, the Commission believes it unnecessary to try to devise a generic formula of apportionment at this time, as requested by the petitioner. We will decide that question, should the need arise, on a case-by-case basis depending on the equities and circumstances involved.

In consideration of the foregoing, the Commission denies rehearing of the final rule in this docket.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10996 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

[6] *Id.* at 348.

[7] 415 U.S. at 346.

[8] 49 FR 5083, 5087, 5088.

[9] 49 FR 5083, 5090.

18 CFR Parts 270 and 271

[Docket Nos. RM80-21 Through RM80-21-008; Order No. 108-B]

Natural Gas Policy Act of 1978; Sellers of Gas; State Severance Taxes

Issued: April 20, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting in part and denying in part rehearing.

SUMMARY: This order on rehearing affirms Order No. 108-A with one exception. Accordingly, Order No. 108-B affirms the opportunity for a seller of section 105 or 106(b) gas to collect an amount necessary to recover State severance taxes under NGPA section 110(a)(1), if contractually authorized, in addition to the otherwise applicable maximum lawful price. While the Commission also affirms the decision against retroactively effective contract amendments, the Commission reverses the prohibition against retroactive collections where the payment of State severance taxes is contractually authorized. The order, therefore, permits the recovery of contractually authorized State severance taxes between December 1, 1978 and November 16, 1983 without regard to whether the producer collected the taxes, demanded payment, or whether the producer or purchaser put taxes into escrow or special reserve account.

EFFECTIVE DATE: This order shall be effective May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Albert J. Francese, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-5768.

SUPPLEMENTARY INFORMATION: By this order, the Commission is granting in part and denying in part rehearing of Order No. 108-A. This order affirms the decision in Order No. 108-A that a seller of section 105 or 106(b) gas may continue to collect an allowance for State severance taxes, if contractually authorized, in addition to the applicable maximum lawful price. This order also affirms the prohibition against retroactively effective contract amendments to collect State severance taxes. This order, however, reverses the prohibition of Order No. 108-A against retroactive collections of State severance taxes and permits the collection of State severance taxes relating to deliveries of intrastate gas from December 1, 1978 if collection was contractually authorized at the time of the delivery. This order lets the parties determine whether the contract authorized collection at the time of delivery, consistent with Order No. 108-A.

I. Background

On October 12, 1983, the Commission issued Order No. 108-A, [1] which eliminated the presumption of Order No. 108 [2] that the applicable ceiling price under section 105 or 106(b) incorporates adequate compensation for State severance taxes and that, therefore, no additional allowance under section 110(a)(1) for such taxes is "necessary." Order No. 108-A, therfore, permitted such taxes to be collected, but only prospectively. Order No. 108-A precluded retroactive collections of State severance taxes for deliveries made before November 17, 1983, even though contractually authorized, while ratifying past collections which were contractually authorized. That order also prohibited retroactive contract amendments to collect State severance taxes.

The Commission received seven applications from local gas distribution companies and sellers of intrastate gas for rehearing of Order No. 198-A.[3] The allegations raised in the applications are discussed in Part II.

II. Discussion

A. Removal of the Presumption of Full Recovery of State Severance Taxes

In Order No. 108-A, the Commission decided not to implement the presumption of full recovery of State severance taxes, permitted prospectively an allowance for contractually authorized State severance taxes under section 110(a)(1, and maintained the stautus quo as to such tax collections for the period before November 17, 1983. Producer-applicants support the decision not to implement the presumption. Local gas distribution companies, on the other hand, disagree with removing the presumption of full recovery of State severance taxes on the ground that the presumption derives from sections 105, 106,(b), and 110(a)(1) of the NGPA and not from discretionary policy considerations and that removal of the presumption results in a double recovery of taxes. They add that even if the decision in Order No. 108-A is derived from policy considerations Commission's rationale does not justify the decision. They argue that pricing differences are inherent in the NGPA and that there is no reason to implement a policy of pricing parity.

This Commission disagrees with the local distribution company applicants for the reasons stated in Order No. 108-A. In Order No. 108-A, we decided not to implement the presumption of full recovery of State severance taxes because of Congress' intent in enacting the NGPA[4] and our view that section 110(a)(1) does not require the Commission to implement section 110(a)(1) differently for section 105 or 106(b) sellers.[5]

The applicants have raised no new arguments which convince us to modify our earlier position.

First, the Commission has reconsidered the conflicting objectives of the NGPA and continues to believe that:

> The Commission should give greater emphasis to the NGPA objective of eliminating pricing disparities between the intrastate and interstate markets and fostering a national market for gas. The Commission believes that it should afford sellers of gas under section 105 or 106(b) the same opportunities as other sellers to collect allowances for State severance taxes under section 110(a)(1). Elimination of the presumption of full recovery would assist in minimizing unnecessary distinctions between the intrastate and interstate markets without significantly eroding the NGPA objective of limiting the escalation of prices for gas subject to existing intrastate contracts.[6]

It may not be possible or even necessary to eliminate all pricing disparities between the old intrastate and interstate markets. We believe, however, that we have a congressional mandate to exercise our authority under

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[1] Order Granting in Part and Denying in Part Rehearing of Order No. 108 and Dissolving Stay and Refund Condition, Order No. 108-A, Docket No. RM80-21, issued Oct. 12, 1983, 48 FR 48223 (Oct. 18, 1983). The Commission issued an Order Granting Rehearing for Purposes of Further Consideration on December 12, 1983 (48 FR 55841, Dec. 16, 1983).

[2] Final Rule, Sales of Natural Gas Made Under the NGPA Sections 110, 105, and 106(b), Order No. 108, issued Nov. 14, 1980, 45 FR 76664 (Nov. 20, 1980). The Commission stayed the January 1, 1981 effective date of Order No. 108 on December 24, 1980. Order No. 108-A dissolved the stay. Order No. 108, therefore, never became effective.

[3] Mobile Gas Service Corp. and Clarke-Mobile Countries Gas District, Alabama (RM80-21-002); Exxon Corp. (RM80-21-003); Phillips Petroleum Co. (RM80-21-004); Getty Oil Co. (RM80-21-005); Tenneco Oil Co. (RM80-21-006); Grace Petroleum Corp. (RM80-21-007); Conecuh-Monroe Countries Gas District, Ala. (Rm80-21-008). Grace Petroleum Corp's application was styled alternatively as a petition for clarification.

[4] In enacting the NGPA, Congress sought to eliminate the bifurcated nature of U.S. gas markets. State of Oklahoma v. FERC, 494 F. Supp. 636, 655 (W.D. Okla. 1981), *aff'd* 661 F.2d 832 (10th Cir. 1981), *cert. denied*, 102 S. Ct. 2902 (1982).

[5] Moreover, application of the presumption of full recovery of State severance taxes to the section 105(b)(1) ceiling price would have precluded the collection of contractually authorized State severance taxes in excess of the section 102 new gas price.

[6] Order No. 106-A, 48 FR 48226 (Oct. 18, 1983).

section 110(a)(1) to put sellers on a reasonably equal basis.[7] In Order No. 108–A, we sought to avoid undue discrimination against intrastate sellers which would have resulted from implementation of the presumption of full recovery, in contrast to Commission regulations that have permitted interstate sellers to collect allowances for State severance taxes since enactment. Moreover, this attempt is consistent with previous Commission action to minimize undue distinctions between the interstate and intrastate markets by permitting sellers of section 105 or 106(b) gas to collect allowances for production-related costs under section 110(a)(2).[8]

Second, Order No. 108–A interpreted section 110(a)(1) as an allowance section which applies to all NGPA pricing sections. After reviewing the applicants' arguments, we continue to believe that there was no congressional intent to implement an exclusion for sales under section 105 or 106(b). As we stated in Order No. 108–A:

> Rescission of the presumption of full recovery is a function of the Commission's discretion under section 110(a)(1) as explained in the legislative history of that section. (citation omitted) The addition of an allowance for State severance taxes under section 110(a)(1) by sellers of gas under section 105 or 106(b) is not inconsistent with the statute.[9]

We continue to hold that we are not obligated to implement section 110(a)(1) differently for section 105 or 106(b) sellers by inquiring into the cost constitutents of the applicable ceiling price. NGPA prices are ceiling prices for the first sale of gas and do not necessarily include State severance taxes. Thus, while section 105 uses a method different from other ceiling price provisions to set a ceiling price, the result is the same as in any other section of Title I of the NGPA—a ceiling price for gas. Thus, since section 110(a)(1) is an allowance section applicable to all maximum lawful prices, the Commission believes that contractually authorized amounts to pay State severance taxes are not per se "unnecessary" under section 110(a)(1).

In this regard, the Commission believes that its ceiling price rules for section 105 intrastate sales should not be interpreted as providing reimbursement for State severance taxes otherwise reimbursable under section 110(a)(1). Consistent with our view of Congressional intent expressed in Order Nos. 68 and 68–A, the ceiling price rules under Subpart E define the maximum lawful price for intrastate sales using total proceeds of the sale and do not distinguish between types of proceeds.[10] Thus, as we stated in Order No. 108–A:

> [A]s a result of the Commission's definition of the maximum lawful price in its ceiling price regulations, collection of State severance tax allowances, if in compliance with section 110(a)(1), in addition to the otherwise applicable section 105 or 106(b) maximum lawful price, will not be considered to result in a double recovery of taxes.[11]

Since the total proceeds from the sale of gas at any ceiling price (including section 105) are fungible, there are no persuasive reasons to discriminate against section 105 sellers by labeling some of the proceeds from the sale of section 105 gas as "tax reimbursements." If collection of that ceiling price generates a severance tax liability, then section 110(a)(1) operates to permit the seller to collect a sufficient amount, contract permitting, to reimburse him for that liability. We believe that Congress did not intend the Commission to second-guess the Congressional definition of the section 105 ceiling price. Our task is not to review the rationale for that price, but rather to ensure compliance with the ceiling price. Applicants offer no convincing reasons to change that view.

Finally, the final rule protects purchasers against possible double recovery by requiring contractual authorization to collect State severance taxes. Because of the great diversity of contractual provisions concerning State severance taxes, the Commission, however, is unwilling to issue a rule which requires the Commission to review the terms of each individual gas sales contract. The final rule, therefore, leaves the parties to determine the amount of taxes which the contract obligates the purchaser to reimburse the seller. It is reasonable to assume that, under this approach, purchasers will not agree to pay State severance taxes more than once.

B. Retroactive Collection of State Severance Taxes

Order No. 108–A precludes retroactive collections by first sellers who did not collect an allowance for State severance taxes before November 17, 1983 even if collections were contractually authorized at that time. Order No. 108–A, in part, states that:

> By precluding retroactive collections, the Commission will avoid the unfairness and inequity of subjecting some purchasers to potentially large reimbursement claims for past deliveries.[12]

In balancing the equities in favor of purchasers of gas and their customers, the Commission was concerned that the assessment of liability for State severance taxes for past periods would surprise some purchasers who had no expectation of liability for State severance taxes under Commission rules.

Producers contest that decision, arguing that section 110(a)(1) establishes a statutory right effective December 1, 1978, to collect State severance taxes and that the distinction between sellers on the basis of whether a seller had or had not collected is arbitrary and capricious. Applicants point out that some pipelines have paid State severance taxes into escrow or into a special account pending rehearing of Order No. 108–A and that many pipelines stopped paying State severance taxes after the Commission issued Order No. 108, notwithstanding the stay of that order.[13]

In light of these petitions, the Commission grants rehearing on the issue of retroactive collections of State severance taxes.

This order permits the recovery of all contractually authorized State severance taxes between December 1, 1978 and November 16, 1983 without regard to whether the producer collected the taxes, demanded payment, or whether the producer or purchaser put taxes into escrow or special reserve account.

In permitting retroactive collections, the Commission is exercising its statutory authority under section 110(a)(1) to permit the collection of State severance taxes for deliveries of intrastate gas made after November 30,

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[7] Local gas distribution company applicants cite the case of *Exxon Corp.* v. *Eagerton* (103 S. Ct. at 2302) (1983) to support their view that the NGPA did not abolish all differences between the interstate and intrastate markets concerning State severance taxes. This case is irrelevant to the issues involved in Order No. 108–A. Among other things, the Court simply recognized that a state may set a lower ceiling rate under NGPA section 602(a) by enacting a statute that prohibits a seller from passing through an increase in State severance taxes for intrastate sales. The Court also held that a state may not enact a statute to prevent pass-through by interstate pipelines for interstate sales because of Natural Gas Act considerations.

[8] Order No. 94–B, "Order Amending Regulations in Subpart B of Part 270 and Subparts E, F, and K of Part 271, and Affirming Certain Final Regulations Issued in Order No. 68," Docket No. RM80–74–003 (issued Jan. 24, 1983), 48 FR 5190 (Feb. 3, 1983). The Commission, however, attached timing and substantive differences to production-related cost allowances for intrastate gas.

[9] Order No. 108–A, 48 FR 48226 (Oct. 18, 1983).

[10] 18 CFR 271.502 and 271.504

[11] Order No. 108–A, 48 FR 48226 (Oct. 18, 1983).

[12] Order No. 108–A, 48 FR 48228 (Oct. 18, 1983).

[13] The stay, among other things, was intended to avoid any interruption of State severance tax collections.

1978 in addition to the applicable maximum lawful price if contractually authorized. This decisioin is consistent with Order No. 108–A which affirmed the lawfulness of continued collections for State severance taxes, if contractually authorized, for sales under section 105 or 106(b). The Commission's decision treats sellers of intrastate gas sold before or after Order No. 108–A the same and thus removes the distinction between sellers based on whether or not a seller was successful in actually collecting State severance taxes for periods before November 17, 1983 when the lawfulness of collections was still an issue. Contractual authorization is the only condition to collection of State severance taxes for past periods. Contractual authorization must have existed at the time the delivery of gas was made.

It would be unfair and inequitable to allow those companies who collected State severance taxes prior to November 17, 1983 to keep them while barring others who did not collect them based on the perception that such collection, although contractually permitted at the time, would have been unlawful. We recognized in Order No. 108–A that this confusion might have existed prior to Order No. 108.

Our action may cause a certain amount of tax collections to be made now for past periods, *i.e.*, retroactive collections where the purchaser or seller has not already put such taxes into escrow or a special account. But because we are only allowing such collections if the contract authorized the collection during those prior periods when the gas deliveries were made, there is no inequity to the purchasers. Only those purchasers who agreed to apply such taxes but, for whatever reason, did not pay them at that time, are now liable for such tax reimbursements. By agreeing to pay for such taxes these purchasers should have made provisons for their payment, especially because the issue of the legality of these payments was to be resolved in the pending rulemaking RM80–21.[14]

C. Retroactively Effective Contract Amendments

Order No. 108–A precludes retroactively effective contract amendments to collect State severance taxes for periods before November 17, 1983. Some applicants argue that the prohibition departs from Order No. 108–A which leaves the interpretation of existing intrastate contracts generally to the parties, is inconsistent with section 110(a)(1), and is not supported by Opinion No. 135.[15] On the other hand, one producer applicant states that it does not expect a great deal of success in negotiating such amendments in the current gas market.

The Commission denies applications for rehearing on this issue. The Commission precluded retroactively effective contract amendments in order to avoid the possibility that a seller might seek to impose a new bargain on the purchaser concerning responsibility for State severance taxes that was not present in the existing contract. In balancing the equities in favor of purchasers and their customers on this issue, the Commission chose to exercise its authority to permit only prospectively effective contract amendments and to hold the parties to their past bargains.[16]

Seller's arguments do not persuade the Commission to eliminate the prohibition as inconsistent with Order No. 108–A.

First, contrary to seller's argument, the prohibition is consistent with the Commission's position in Order No. 108–A that the parties, in the first instance, are to determine whether the contract authorized collection of State severance taxes during any past period. While the rule does abridge the contractual freedom of the parties to some extent, the rule reflects the interpretation of the parties themselves that the contract did or did not authorize collections of State severance taxes during a given past period. Where the parties have found a lack of contractual authorization, the Commission is not convinced that it necessarily must permit the parties to remedy the contractual deficiency by permitting retroactively effective contract amendments.

Second, the Commission is constrained from approving retroactively effective amendments by its responsibility to administer section 110(a)(1) in a reasonable and equitable fashion. In Order No. 108–A, the Commission notes that:

> In concluding that contract amendments should operate prospectively, the Commission believes that public policy considerations generally mitigate against giving retroactive effect to contract amendments * * * [This preclusion] avoid[s] unfairness and inequity to purchasers who could otherwise be billed for State severance taxes relating to the deliveries before the effective date of this Order.[17]

Retroactively effective contract amendments are also at odds with the thrust of Opinion No. 135 and with the preclusion of retroactively effective contract amendments in Order No. 94–B concerning production-related costs.[18]

In determining whether to give retroactive effect to a rule, the Commission must consider factors bearing on the reasonableness of that decision. Factors pertinent for determining the reasonableness of retroactivity include whether the relevant policies were previously unsettled, whether retroactivity would cause an unfair degree of burden, and whether there is a statutory impetus for retroactivity.[19] Permitting retroactively effective contract amendments would not be consistent with the Commission's view that the existing contract provide authorization for past periods. Intrastate purchasers and their customers have relied on the requirement of contractual authorization since December 1, 1978. Moreover, we believe that the Commission has the responsibility to implement its interpretation of section 110(a)(1) in an equitable and fair way without imposing undue burdens on purchasers and their customers. Permitting retroactive collection only if the contract authorizes such collection for a given past period provides the fairest balance of equities to all parties without surprising purchasers and their customers. The statute does not require retroactively effective contract amendments which the Commission believes are not generally in the public interest.

For the foregoing reasons, the Commission orders that: (1) Applications for Rehearing of Mobile Gas Service Corp. and Clarke-Mobile Counties Gas District, Alabama, and Conecuh-Monroe Counties Gas District, Alabama are denied; and

(2) Applications of Exxon Corp., Phillips Petroleum Co., Getty Oil Co., Tenneco Oil Co., and Grace Petroleum Corp. are granted to the extent consistent with the preceding discussion.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

[14] *See*, Proposed Regulations under Section 110 of the NGPA, 45 FR 5747 (Jan. 24, 1980).

[15] Opinion No. 135, Opinion and Order Remanding for Limited Purposes, Docket No. GP80–24 (issued Dec. 11, 1981), 17 FERC ¶ 61,232.

[16] Order No. 108–A revised § 270.205(c) to permit the parties prospectively to amend an intrastate existing, successor, or rollover contract to collect an allowance for State severance taxes. 48 FR at 48225–48226.

[17] Order No. 108–A, 48 FR 48227 (Oct. 18, 1983).

[18] Order No. 94–B, (Feb. 3, 1983).

[19] *See, e.g.*, Order Denying Rehearing Rate of Interest on Amounts Held Subject to Refund: Oil Pipelines, Docket No. RM72–22, 48 FR 55094 (Nov. 25, 1981); Retail, Wholesale and Dep't Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972).

List of Subjects

18 CFR Part 270

Natural gas, Wage and price contracts.

18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

This order shall become effective May 24, 1984.

By the Commission. Commissioner Hughes not participating.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10994 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 84—90]

Change in the Customs Service Field Organization—Aberdeen, Washington

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The document amends the Customs Regulations to change the Customs Service field organization by extending and redefining the geographical limits of the port of entry of Aberdeen, Washington. The change extends the existing port limits to include Bowerman Field Airport, enabling Customs to provide better service to private and commercial aircraft using this airport as their port of arrival into the United States.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, on July 5, 1983, Customs published a notice in the **Federal Register** (48 FR 30670) proposing to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by extending and redefining the geographical limits of the port of entry of Aberdeen, Washington.

Prior to this proposal, T.D. 56229, published in the **Federal Register** on July 31, 1964 (29 FR 11112), extended the geographical limits of Aberdeen, Washington, to include the corporate cities of Aberdeen, Hoquiam, and Cosmopolis, in the State of Washington. By T.D. 79-169, published in the **Federal Register** on June 15, 1979 (44 FR 34478), the port of entry of South Bend-Raymond, Washington, was abolished and the existing port limits of Aberdeen were extended to include the territory previously encompassed by the port of South Bend-Raymond.

The change extends the existing port limits to include Bowerman Field Airport, enabling Customs to provide better service to private and commercial aircraft using this airport as their port of arrival into the United States. Bowerman Field Airport is only 200-300 yards outside the port limits of Aberdeen. It is a landing rights airport used mainly by private fliers and commercial private air taxis. Although Customs is entitled to be reimbursed for mileage traveled to service locations outside port limits, because Bowerman Field is so close, Customs has never charged mileage to collect the minimal amount which would be reimbursable. Some pilots question why Customs does not collect the mileage charge and Customs inspectors explain the situation. By extending the port limits of Aberdeen, Customs will technically correct the mileage charge issue. No additional costs in salary or travel will be incurred by Customs or the traveling public. The change will remedy a bothersome situation by including Bowerman Field Airport within the limits of the port of Aberdeen.

The only comment received in response to the proposal of July 5, 1983, favored the port extension, but requested that the port name be changed to Grays Harbor. Customs believes that the official port name should remain Aberdeen, as listed in the Customs Regulations and existing directories. Any benefits to the Grays Harbor community would not offset the possible confusion of a name change to the general public. Accordingly, it has been determined to adopt the change. This document amends § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to change the Customs field organization by extending and redefining the geographical limits of the port of entry of Aberdeen, Washington, in the Seattle Customs district of the Pacific Region.

Change in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the existing geographical limits of the port of entry of Aberdeen, Washington, are extended to include Bowerman Field Airport. Accordingly, the following territory is included within the extension of the port of Aberdeen: Sections 8 and 9, Township 17 North, Range 10 West, West Meridian, County of Grays Harbor, State of Washington. Thus, the geographical limits of the port of entry of Aberdeen, Washington, are extended and redefined to be as follows:

All of the areas within the corporate limits of the cities of Aberdeen, Hoquiam, and Cosmopolis, and the area within the limits of Bowerman Field Airport, described as sections 8 and 9, Township 17 North, Range 10 West, West Meridian, County of Grays Harbor, all in the State of Washington.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3, Customs Regulations (19 CFR 101.3), is amended by removing "T.D. 79-169." under the column headed "Ports of entry" after "Aberdeen, including territory described in" and inserting, in its place, "T.D. 84-90.", in the Seattle, Washington, Customs district of the Pacific Region.

Executive Order 12291

Because this amendment related to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

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 amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Aberdeen area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is

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

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-10963 Filed 4-23-84; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 101

[T.D. 84-91]

Customs Regulations Amendments Relating to the Customs Field Organization

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs Service field organization by (1) consolidating the geographical limits of the adjacent ports of Owensboro, Kentucky, and Evansville, Indiana, into a single consolidated port of Owensboro-Evansville, and (2) consolidating the geographical limits of the port of Cincinnati, Ohio, and Lawrenceburg, Indiana, into a single consolidated port of Cincinnati-Lawrenceburg. The change is part of Customs continuing program to secure the most economical use of personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on September 8, 1983 (48 FR 40526), which proposed to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by (1) consolidating the geographical limits of the adjacent ports of Owensboro, Kentucky, and Evansville, Indiana, into a single consolidated port of Owensboro-Evansville, and (2) consolidating the geographical limits of the ports of Cincinnati, Ohio, and Lawrenceburg, Indiana, into a single consolidated port of Cincinnati-Lawrenceburg.

These consolidations are deemed necessary because of the close proximity of both sets of ports and the low volume of Customs activities being conducted. Also, because of the new warehouse procedures established by T.D. 82-204, effective December 1, 1982, responsibility has been shifted from Customs personnel to warehouse proprietors to ensure that the necessary Customs procedures are followed in operating bonded warehouses. The new warehouse procedures have allowed Customs to remove its personnel from the duty of warehouse supervision previously required at these ports. Thus, the minimal service needs at these ports coupled with the new Customs warehouse procedures would enable Customs to effect the two port consolidations without any loss in operational efficiency.

Discussion of Comment

The only comment received by Customs in response to the notice proposing these changes was positive but indicated there is a need for limited daily staffing at Lawrenceburg. Even though the port office would be in Cincinnati, Customs will continue to provide service at Lawrenceburg.

After consideration of the comment and further review, it has been determined advisable to adopt the amendments as proposed.

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the geographical limits of the adjacent ports of Owensboro, Kentucky, and Evansville, Indiana, are consolidated into a single port of Owensboro-Evansville. Under the same authority, the geographical limits of the ports of Cincinnati, Ohio, and Lawrenceburg, Indiana, are consolidated into a single port of Cincinnati-Lawrenceburg. Descriptions of the geographical limits of both consolidated ports are as follows:

Owensboro-Evansville

The limits of the consolidated port of Owensboro-Evansville are the geographical territoryl of the existing two ports of Owensboro, Kentucky, and Evansville, Indiana. The geographical limits of the consolidated port are as follows:

All the territory within the corporate limits of the cities of Evansville, Indiana; Henderson, Kentucky; and Owensboro, Kentucky; including that territory encompassing the Owensboro-Daviess County Airport which, on the north is bounded by Kentucky Highways 54, 56, and 81, on the west by Kentucky Highway 81, on the south by Fisher Road, on the east by Carter Road until it intersects with U.S. Bypass 60 and northwest on U.S. Bypass 60 until it meets Kentucky Highways 54, 56, and 81. In addition, the consolidated port also includes that territory located between U.S. Route 60 on the south and the Ohio River on the north from the western city limits of Owensboro, Kentucky, to the eastern city limits of Henderson, Kentucky. It also includes that territory occupied by U.S. Highway 41 proceeding from Evansville's northern corporate limits to the point where Indiana State Route 241 intersects with U.S. Highway 41.

Cincinnati-Lawrenceburg

The limits of the consolidated port of Cincinnati-Lawrenceburg are the geographical territory of the existing two ports of Cincinnati, Ohio, and Lawrenceburg, Indiana. The geographical limits of the consolidated port are as follows:

All the territory within the corporate limits of the cities of Lawrenceburg and Greendale, Indiana, and the territory bounded by a line proceeding north and east on U.S. Highway 50 from the northern corporate limits of Lawrenceburg to the junction of U.S. Highway 50 with the Great Miami River, then proceeding in a northeasterly direction along the eastern bank of the Great Miami River to the northern boundary of Hamilton County, then proceeding in an easterly direction along the northern boundary of Hamilton

County to Ohio State Highway 747, then proceeding in a northerly direction in Butler County along Ohio State Highway 747 to Rialto Road, then proceeding in a general northeasterly direction along Rialto Road to Allen Road, then proceeding in a southerly, then easterly direction on Allen Road to Cincinnati-Dayton Road, then proceeding in a southerly direction on Cincinnati-Dayton Road to the northern boundary of Hamilton County, then proceeding in an easterly direction along the northern boundary of Hamilton County to the eastern boundary of Hamilton County, then proceeding in a southerly direction along the eastern boundary of Hamilton County to the north bank of the Ohio River, then proceeding in a westerly direction along the northern bank of the Ohio River to the bridge at Interstate Highway 275, then proceeding in a westerly direction along Interstate Highway 275 to its intersection with Kentucky State Highway 9, then proceeding in a southeasterly direction along Kentucky State Highway 9 to its intersection with Pooles Creek Road 1, then proceeding due west from that intersection to the eastern bank of the Licking River, then proceeding in a northwesterly direction along the eastern bank of the Licking River to its intersection with Interstate Highway 275, then proceeding in a westerly direction along Interstate Highway 275 to its intersection with Interstate Highway 75, then proceeding in a southerly direction along Interstate Highway 75 to its intersection with Kentucky State Highway 18, then proceeding in a northwesterly direction along Kentucky State Highway 18 to its intersection with Kentucky State Highway 237, then proceeding in a generally northerly direction along Kentucky State Highway 237 to its intersection with Interstate Highway 275, then proceeding in a westerly direction along Interstate Highway 275 to its intersection with the northern bank of the Ohio River, then proceeding in a southwesterly direction to the eastern corporate limits of Lawrenceburg, Indiana.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

1. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "Owensboro, Ky., including the territory described in T.D. 80–22" and "Evansville, Ind." under the column headed "Ports of entry" in the Cleveland, Ohio, Customs District and inserting, in alphabetical order, "Owensboro, Ky.-Evansville, Ind., including the territory described in T.D. 84–91."

2. That column of § 101.3(b), is further amended by removing "Cincinnati, Ohio, including the territory described in T.D. 75–144." and "Lawrenceburg, Ind., including Greendale (E.O. 6634, March 7, 1934)." and inserting, in alphabetical order, "Cincinnati, Ohio-Lawrenceburg, Ind., including the territory described in T.D. 84–91."

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 these amendments. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although these changes may have a limited effect upon some small entities in the Owensboro, Kentucky; Evansville and Lawrenceburg, Indiana; and Cincinnati, Ohio; areas, they are not expected to be significant because the consolidations of Customs ports of entry in other locations have not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because this rule relates to the organization of the Customs Service, it is not a regulation or rule subject to Executive Order 12291, pursuant to section 1(a)(3) of that Executive Order.

Drafting Information

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

Alfred R. De Angelus,

Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-10982 Filed 4-23-84; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 101

[T.D. 84-89]

Customs Regulations Amendments Relating to Toledo and Sandusky, Ohio, and Lake Charles, Louisiana

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by consolidating the ports of entry of Toledo and Sandusky, Ohio, into one port of entry, to be called Toledo-Sandusky, with its headquarters in Toledo, Ohio. This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources. It will eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it will enable Customs to provide better and more economical service to carriers, importers, and the public.

This document also amends the Customs Regulations by transferring jurisdiction over the port of entry of Lake Charles, Louisiana, from the District of the Port Arthur, Texas, Customs District to the District Director of the New Orleans, Louisiana, Customs District. This action is in keeping with Customs policy of aligning its regional boundaries with state lines whenever possible and desirable. This amendment is a change in management structure only and will have no adverse effect on the services provided.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C., 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organizations presently consists of seven geographical regions further divided into districts, with ports of entry within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers are assigned to accept entries of merchandise, collect duties, clear passengers, examine baggage, and enforce the customs and related laws.

Toledo-Sandusky

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), Toledo and Sandusky, Ohio, are listed as separate ports of entry in the Cleveland, Ohio, district. Toledo and Sandusky are located approximately 50 miles apart, with most of the Customs activity in the area being handled in Toledo. Because the Customs activity at Sandusky is seasonal, it is currently staffed only by a port director and one inspector, supplemented by W.A.E. (When Actually Employed) personnel. There are no import specialists, customhouse brokers, or vessel agents located in Sandusky.

After a comprehensive study of the activity at the ports of Toledo and Sandusky, Customs concluded that the most efficient and effective use of its personnel and resources would be made by formally consolidating these ports into one port, to be called Toledo-Sandusky, with its headquarters in Toledo. As explained in the notice published in the Federal Register on July 5, 1983 (48 FR 30671), which proposed this change, the consolidation will provide better and more economical manpower utilization and enhance Customs enforcement effectiveness. The only comment received in response to the notice was submitted by the Bureau of the Census of the U.S. Department of Commerce. They requested continued separate information on vessels for the two locations so that the foreign trade statistics reports which they prepare would be more complete. This comment is beyond the scope of the proposed change. Customs and Commerce will coordinate a joint resolution to this request independent of this proposal. The change will enable Customs to obtain more efficient use of its personnel, facilities and resources. The change will eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it will enable Customs to provide better and more economical service to carriers, importers, and the public. Accordingly, Customs has decided to proceed with the proposal as planned.

The geographical limits of the consolidated port will encompass: All the territory within the corporate limits of the city of Toledo and the rest of Lucas County, Ohio; all the territory within the corporate limits of the cities of Rossford and Northwood and the townships of Lake and Perrysburg, all located in Wood County, Ohio; all the territory located between Ohio State Route 2 and Lake Erie from the southern limits of the eastern portion of Lucas County to the western corporate limits of the city of Sandusky; and all the territory within the corporate limits of the cities of Sandusky and Huron and Huron Township, all located in Erie County, Ohio.

Lake Charles

In the list of Customs regions, districts, and ports of entry set forth in section 101.3(b), Customs Regulations, the port of Lake Charles, Louisiana, is listed in the Port Arthur, Texas, Customs District, in the Southwest Region. Customs believes that is regional boundaries should be aligned with state lines whenever possible and desirable. After consideration of this matter, Customs believes it is both possible and desirable to align its regional boundaries with the State of Lousiana.

Accordingly, jurisdiction over the port of Lake Charles, Louisiana, will be transferred from the District Director of the Port Arthur, Texas, Customs District, in the Southwest Region, to the District Director of the New Orleans, Louisiana, Customs District, in the South Central Region. This amendment is a change in management structure only and will have no adverse effect on the services provided to the public at the Lake Charles port of entry.

The new geographical description for the two Customs Districts will read as follows:

New Orleans, Louisiana—The State of Tennessee, Arkansas, and Louisiana, and that part of the State of Mississippi lying north of latitude 31° N.

Port Arthur, Texas—That part of the State of Texas from Sabine Pass north along the State line to the north boundary line of Shelby County, west to the Neches River, down the western shore of the Neches River to the north boundary of Jefferson County, westerly along the north boundary of Jefferson County to the east boundary of Liberty County, south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

Authority

Changes to the Customs field organization are made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949–1953 Comp., Ch. II)., and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Amendments to the regulations

PART 101—GENERAL PROVISIONS

To reflect these changes, Part 101 Customs Regulations (19 CFR Part 101), is amended as set forth below:

§ 101.31 [Amended]

1. To reflect the consolidation of the Customs ports of entry of Toledo and Sandusky, Ohio, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "Sandusky, Ohio (T.D. 81–72)." and "Toledo, Ohio, including territory described in T.D. 71–157.", under the column headed "Ports of entry" in the Cleveland, Ohio, Customs District of the North Central Region, and inserting, in their place, "Toledo-Sandusky, Ohio, including the territory described in T.D. 84–89."

2. To reflect the transfer of the Customs ports of entry of Lake Charles, Louisiana, from the Port Arthur, Texas, Customs District in the Southwest Region to the New Orleans, Louisiana, Customs District in the South Central Region, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is further amended by: (a) removing "Lake Charles, La (E.O. 5475, Nov. 3, 1930), including territory described in T.D. 54137.", under the column headed "Ports of entry" in the Port Authur, Texas, Customs District; (b) removing "also the parishes of Cameron and Calcasieu in the State of Louisiana.", under the column headed "Area" in the Port Arthur, Texas, Customs District; (c) removing the last ";" which appears in the description under the column headed "Area" in the Port Arthur, Texas Customs, District, and inserting a "." in its place after "Jefferson County border."; (d) inserting "Lake Charles, La., (E.O. 5475, Nov. 3, 1930), including territory described in T.D. 54137.", between "Knoxville, Tenn., including territory described in T.D. 75–128." and "Little Rock-North Little Rock, Ark., including territory described in T.D. 70–146." under the column headed "Ports of entry" in the New Orleans, Louisiana, Customs District; (e) removing "except

the parishes of Cameron and Calcasieu", under the column headed "Area" in the New Orleans, Louisiana, Customs District.

Executive Order 12291

Because this document relates to the organization of the Customs Service, pursuant to section 1(a)(3) of Executive Order 12291, it is not a regulation or rule subject to that Executive Order.

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 these amendments because the changes will not have a significant economic impact on a substantial number of small entities. There will be no meaningful reduction in Customs service as a result of the amendments.

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

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary.

[FR Doc. 84-10964 Filed 4-23-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Establishment and Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of 16 advisory committees (panels) and the termination of 9 others. This document adds to and deletes from the agency's list of standing advisory committees.

EFFECTIVE DATE: April 24, 1984. Authority for the panels will remain in effect until amended or terminated by the Commissioner of Food and Drugs.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and § 14.40(b) (21 CFR 14.40(b)), FDA announces the establishment of the following panels:

Anesthesiology and Respiratory Therapy Devices Panel;
Circulatory System Devices Panel;
Clinical Chemistry and Clinical Toxicology Devices Panel;
Dental Devices Panel;
Ear, Nose, and Throat Devices Panel;
Gastroenterology-Urology Devices Panel;
General and Plastic Surgery Devices Panel;
General Hospital and Personal Use Devices Panel;
Hematology and Pathology Devices Panel;
Immunology Devices Panel;
Microbiology Devices Panel;
Neurological Devices Panel;
Obstetrics-Gynecology Devices Panel;
Ophthalmic Devices Panel;
Orthopedic and Rehabilitation Devices Panel; and
Radiologic Devices Panel.

The panels will review and evaluate data concerning the safety and effectiveness of devices currently in use and advise the Commissioner regarding recommended classification of these devices into one of three regulatory categories; recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; advise on any possible risks to health associated with the use of devices; advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; review classification of devices to recommend changes in classification as appropriate; recommend exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advise on the necessity to ban a device; and respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Concurrently with the establishment of the panels listed above, the Commissioner of Food and Drugs approved the termination of the following panels:

Circulatory System Devices Panel;
Clinical Chemistry and Hematology Devices Panel;
General Medical Devices Panel;
Immunology and Microbiology Devices Panel;
Obstetrics-Gynecology Devices Panel;
Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel;
Radiologic Devices Panel;
Respiratory and Nervous System Devices Panel; and
Surgical and Rehabilitation Devices Panel.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs; Radiation protection.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 14 is amended in § 14.100 by removing and reserving paragraph (e) and by revising paragraph (d), to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(d) *Center for Devices and Radiological Health.* (1) Advisory panels and the dates of their establishments are as follows:

(i) *Anesthesiology and Respiratory Therapy Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ii) *Circulatory System Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iii) *Clinical Chemistry and Clinical Toxicology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iv) *Dental Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(v) *Ear, Nose, and Throat Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vi) *Gastroenterology-Urology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vii) *General and Plastic Surgery Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(viii) *General Hospital and Personal Use Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ix) *Hematology and Pathology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(x) *Immunology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xi) *Microbiology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xii) *Neurological Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiii) *Obstetrics-Gynecology Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiv) *Ophthalmic Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xv) *Orthopedic and Rehabilitation Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xvi) *Radiologic Devices Panel.* (*a*) Established April 14, 1984.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(2) *Device Good Manufacturing Practice Advisory Committee.* (i) Date established: August 12, 1976.

(ii) Function: Reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

(3) *Medical Radiation Advisory Committee.* (i) Date established: October 31, 1963.

(ii) Function: Advises on the formulation of policy and development of a coordinated program for the application of ionizing radiation in the healing arts.

(4) *Technical Electronic Product Radiation Safety Standards Committee.* (i) Date Established: October 18, 1968.

(ii) Function: Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

(e) [Reserved]

* * * * *

Effective date. Because this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon publication in the **Federal Register**, April 24, 1984.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: April 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10942 Filed 4-23-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884 and 886

[Docket No. R-84-1040; FR 1675]

Section 8 Housing Assistance Payments Program for New Construction and Substantial Rehabilitation

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

ACTION: Final rule.

SUMMARY: This rule implements certain provisions in the Housing and Community Development Amendments of 1981 relating to the Section 8 Housing Assistance Payments Program for New Construction and Substantial Rehabilitation. The amendments (1) authorize Section 8 assistance for substantially rehabilitated single-room occupancy (SRO) housing; (2) permit HUD to provide Section 8 assistance for a family residing in a manufactured home where the family rents the space only or where it rents both the space and the manufactured home; (3) provide for limitations on cost and rent increases after the selection of a Section 8 New Construction or Substantial Rehabilitation proposal; (4) require that Section 8 New Construction projects must be modest in design; and (5) provide a preference for locating Section 8 New Construction projects on land provided by States or units of local government.

This rule implements these statutory requirements and also provides for a minimum contract term of twenty years for Section 8 New Construction or Substantial Rehabilitation housing assistance payments contracts as required by the Housing and Community Development Amendments of 1979.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, Room 6128, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-5720. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 28, 1983, the Department published in the **Federal Register** (48 FR 12698) an interim rule amending 24 CFR Parts 880, 881, 883, 884 and 886 to implement provisions of the Housing and Community Development Amendments of 1981 as described in the

Summary, above. At the time of publication, interested persons were invited to submit comments on this interim rule for use by the Department in developing a final rule.

Five public comments were received by the Department concerning the interim rule. Four of the comments expressed general support for the rule, especially those provisions relating to single-room occupancy (SRO) housing, and offered no specific criticisms or recommendations.

The fifth comment, from the Illinois Housing Development Authority, expressed concern about the new limitations on cost and rent increases as applied to State Housing Finance Agencies (see revised § 883.305(b) of interim rule). The commenter objects to these new limitations on the grounds that they will require new HFA certifications, are unnecessary because similar limitations on rent increases are already in effect under 24 CFR 883.408(d), and are an attempt to modify, by regulation, previously executed HAP agreements that do not contain these limitations.

In response, it should be noted that these limitations on cost and rent increases are mandated by the Housing and Community Development Amendments of 1981, and the Department must implement the required limitations. They are applicable by statute to all Section 8 New Construction and Substantial Rehabilitation projects, including those under the State Agencies Program, for which HAP Agreements were executed on or after October 1, 1981.

Section 883.408(d), which the interim rule deleted and replaced with § 883.305(b), provided for HFA certification on rent increases between execution of the HAP Agreement and Contract execution, but did not address rent increases during the period between approval of the project proposal and execution of the Agreement. Because of this discrepancy, and because the list of circumstances in § 883.408(d) that might warrant a rent increase was somewhat different from the statutory language, the Department decided to repalce the certification required by § 883.408(d) with one that more explicitly meets the new statutory requirements. Because the statute also refers to limitations on cost increases, the Department is also requiring that the HFA certify that any replacement cost increases during the same time period are for one of the reasons specified in the statute.

Consistent with the 1981 Amendments, cost and rent increases are permitted only for (a) design changes required by the HFA, HUD, or the State or local government; (b) changes in financing approved by the HFA; or (c) unforeseen factors determined by the HFA to be beyond the owner's control. The rule gives some examples of circumstances that may qualify as "unforeseen factors", but these examples are not intended to be all inclusive. Depending on the particular circumstances, other situations previously listed in § 883.408(d) could possibly be classified by the HFA as "unforeseen factors". Thus, for the majority of cases, there should not be any substantive difference in the circumstances under which a rent increase is approvable.

As noted above, the Department has determined that conformity with the statute requires that these limitations be applied to all projects for which HAP Agreements were executed on or after October 1, 1981. The limitations will apply without regard to whether the Agreement contains specific language to this effect, since the statutory provision constituted law at the time the Agreement was executed. These regulatory changes do not apply to any project for which the HAP Agreement was executed before October 1, 1981. In addition, these changes have no impact on the Annual Adjustment procedure for adjusting rents following completion of the project.

Impact of Housing and Urban-Rural Recovery Act of 1983 (HURRA)

A number of provisions enacted in the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–101, 97 Stat. 1153) are relevant to this final rule.

Section 202 of the 1983 Act authorizes the Secretary of HUD to increase, from 15 to 30 percent, a statutory limitation on units under the jurisdiction of a public housing agency which may be occupied by single persons who are not elderly, handicapped, displaced or the remaining member of a tenant family. Any such percentage increase must follow consultation with the public housing agency involved and a determination by the Secretary that (1) the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by elderly, handicapped or displaced persons or the remaining member of a tenant family due to the condition or location of the units and (2) the units may be occupied if made available to other single persons.

This statutory waiver authority, coupled with the Department's general waiver authority contained in 24 CFR 899.101, will permit HUD to assure that current occupancy restrictions on single individuals who are not elderly, handicapped, displaced or remaining members of a tenant family do not unnecessarily impede the overall purposes of the SRO program. The Department has determined that further elaboration of this waiver authority in the body of the CFR is not necessary. HUD Field Office Managers may direct any requests for waivers of the generally applicable 15 percent limitation found in 24 CFR Part 812 to the Assistant Secretary for Housing.

Section 209 of the 1983 Act effectively repeals the Secretary's authority to enter into Section 8 contracts for newly constructed or substantially rehabilitated units. However, Section 209(b) keeps the authority alive for certain "pipeline" units—i.e., the authorities repealed will remain in effect with respect to any funds obligated for a viable Section 8 project before January 1, 1984. It also keeps the authorities alive with respect to any elderly and handicapped housing project financed under Section 202 of the Housing Act of 1959. With respect to these excepted units, the provisions relating to the Section 8 Substantial Rehabilitation program in this rule still apply. Additional technical changes to the CFR necessitated by enactment of Section 209 of the 1983 Act will be made at a later time.

Section 210 of the 1983 Act provides that assistance under the Section 8 Existing Housing Program may be made available to single room occupancy (SRO) housing where the unit of general local government in which the property is located and the local public housing agency certify to the Secretary that the property complies with local health and safety standards. In order to provide opportunity for public comment, implementation of this new authority will be by separate rulemaking.

Findings and Miscellaneous

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for

consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The changes made by this rule can be considered technical adjustments to the existing structure of the Section 8 program. They do not change the goals toward which program activities are directed. Their effect, both on small and large entities, should be minor.

Information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned the following OMB control numbers: 2502-0118 (Previous Participation Certificate, HUD-2530); 2502-0124 (Application for Assignment of Portion of Set-Aside to Specific Project, HUD-52616); 2502-0182 (Housing Owner's Certification and Application for Housing Assistance, HUD-52670 and 52670(A)); 2502-0204 (Certification and Recertification of Tenant Eligibility, HUD 50059 and 50059(A)); 2502-0232 (Supplemental Application and Processing Forms, Housing for the Elderly or Handicapped, HUD-92013(E)); 2535-0027 (Affirmative Fair Housing Marketing Plan, HUD-935.2).

The Catalog of Federal Domestic Assistance program number is 14.156.

This rule is listed at 48 FR 47421 as items H-130-82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Lists of Subjects

24 CFR Parts 880 and 881

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing; Lower income housing.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, New Construction and substantial rehabilitation, Lower income housing.

24 CFR Part 884

Grant programs—housing and community development, rent subsidies, Rural areas, Low and moderate income housing, Lower income housing.

24 CFR Part 886

Grant programs—housing and community development, Housing assistance payments, Lower income housing.

Accordingly, the interim rule published March 28, 1983 in the **Federal Register** (48 FR 12698) amending 24 CFR Parts 880, 881, 883, 884 and 886 is hereby adopted as a final rule.

Dated: April 16, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-10642 Filed 4-23-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Interim final rule.

SUMMARY: This Notice amends the regulations to require the granting of a suspension of operations to permit time to carry out the activities described in an approved development and production plan for a Gulf of Mexico lease in water depths of 400 to 900 meters.

DATES: This interim final rule becomes effective April 24, 1984. Comments must be delivered or postmarked no later than May 24, 1984.

ADDRESS: Comments should be sent to: Minerals Management Service, Room 6A110, 12203 Sunrise Valley Drive, Mail stop 646, Reston, Virginia 22091, Attention: Jane Roberts.

FOR FURTHER INFORMATION CONTACT: Jane Roberts, telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Section 8(b) of the Outer Continental Shelf (OCS) Lands Act states that an oil and gas lease shall "be for an initial period of five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water. * * *" The current water-depth criterion used by the Minerals Management Service (MMS) for longer lease terms is 900 meters. We believe some accommodation need be made for water depths between 400 and 900 meters.

The primary term provides the right to explore, develop, and produce the lease. If production is commenced within the primary term, the lease remains in effect for so long as production continues. If the primary term is not adequate to allow for exploration, development, and production and, therefore, there is not production to continue the lease, a suspension of operations may be granted under certain circumstances. However, a suspension of operations is discretionary and subject to changes in policy. The lack of certainty as to whether a suspension will be granted may adversely impact bidding on tracts where insufficient time might be a factor. The prospect of losing a lease for lack of time to obtain production through no fault of the lessee adds another risk to a venture that is already inherently risky and costly.

To acknowledge the technical realities of development in deeper waters and to alleviate the uncertainty surrounding the granting of a suspension, this Notice amends the rules at 30 CFR 250.12 to provide for a mandatory suspension for leases in water depths of 400 to 900 meters. The suspension shall be for whatever period of time is necessary to complete the activities described in a development and production plan that has been approved by MMS. The provision for the automatic extension of a 5-year lease term would help ensure that high-cost investments, both for bidding and exploration, would not be jeopardized by unreasonable time frames. We believe this is preferable to an outright extension of the primary term because the time that may actually be required to produce at the 400- to 900-meter water depth may vary significantly from less than 5 years to 10 years.

The automatic extension based on an approved plan is expected to encourage exploration and development notwithstanding that the time frame allowed is increased. The additional time will decrease risk and is expected to increase both the size of the bids and the number of tracts bid on. Financial reality indicates that the timing of exploration is affected by the size of the bid, i.e., the higher the bid, the more costly the delay; therefore, the sooner exploration occurs. Thus providing an adequate time frame would encourage activity. At this time, the rule will only

be applicable for leases in the Gulf of Mexico which contain a corresponding lease stipulation. In order to assess the desirability of application to other OCS areas, we are requesting comments on that issue.

The Department of the Interior (DOI) has determined that it is not required to follow the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and that a Notice of Proposed Rulemaking is not necessary and is contrary to public interest. The subject of extended lease terms for deepwater tracts, those over 400 meters, has already been put before the public in a Request for Comments published in the **Federal Register** on December 20, 1983 (48 FR 56279).

In addition, numerous tracts in water depths of 400 to 900 meters are to be offered in central Gulf of Mexico Sale 81, scheduled for late April 1984. It is in the public interest to offer these tracts with provision for adequate time to explore and develop in order to encourage the size and number of bids and ultimately to increase oil and gas supplies.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. It is estimated that there will be $95,040 saved annually by not having to file additional requests for extensions of discretionary suspensions. Also, it is estimated that industry will realize $2.4 million per year in profit on marginal leases that they might not otherwise bid on and develop.

The Department also certifies that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct such activities.

The information collection requirements in 30 CFR 250.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0030. This amendment will not affect the level of information collection previously cleared.

Author: This document was prepared by Jane Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statement, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting requirements.

43 U.S.C. 1334

Dated: March 24, 1984.

William D. Bettenberg,

Director.

PART 250—[AMENDED]

For the reasons set forth above, 30 CFR Part 250 is amended as follows:

1. Section 250.12 is amended by adding a new paragraph (c) as follows:

§ 250.12 Suspension of operations and lease cancellation.

* * * * *

(c) For leases in the Gulf of Mexico and as provided for by lease stipulation, the Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when such lease is in water depths of 400 to 900 meters, provided that the suspension or temporary prohibition shall be for such period of time as is necessary to complete the activities described in a development and production plan approved by the Regional Supervisor in accordance with § 250.34–2. However, in no case shall the suspension or temporary prohibition be for a period of time which exceeds 5 years.

2. In § 250.12, paragraphs (c), (d), (e), (f), and (g) are redesignated (d), (e), (f), (g), and (h), respectively.

3. In redesignated § 250.12(d), the phrase in the first sentence is revised to read "* * * pursuant to paragraph (a), (b), or (c) of this section. * * *"

4. The reference in redesignated § 250.12(e)(2) to paragraph (d)(1) is changed to (e)(1).

5. The references in redesignated § 250.12 (e)(5) and (f) to paragraph (g) are changed to (h).

6. The references in redesignated § 250.12(g)(1) (ii) and (iii) to paragraph (f)(1)(i) are changed to (g)(1)(i).

7. The references in redesignated § 250.12 (h) to (d), (e), and (f) are changed to (e), (f), and (g), respectively.

8. The reference in redesignated § 250.12(h)(2)(i) to paragraph (g)(1) is changed to (h)(1).

[FR Doc. 84-10685 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 82-025]

Drawbridge Operation Regulations; Navigable Waterways of the United States

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule reorganizes Coast Guard regulations for drawbridges across the navigable waters of the United States. This reorganization has been undertaken to consolidate common requirements previously repeated throughout the regulations and to organize the bridges listed into a more usable format. This reorganization improves the organization and clarity of the drawbridge operating regulations and facilitates the use and understanding of these regulations by drawbridge owners, drawtenders, boaters, and other interested parties.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Al Meschter, 202–426–1380.

SUPPLEMENTARY INFORMATION: On July 12, 1982, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (47 FR 30176) proposing to revise 33 CFR Part 117—Drawbridge Operation Regulations. As a result of the many comments and suggested changes, the Coast Guard published a Supplementary Notice of Proposed Rulemaking (SNPRM) on May 31, 1983 (48 FR 24094) incorporating many of these suggestions and any changes that had been made to individual drawbridge operation regulations under other rulemaking projects since the NPRM was published.

Drafting Information

The principal persons involved in drafting this regulation are: Mr. Frank L. Teuton, Jr., Project Manager, and Stephen H. Barber, Project Attorney.

Discussion of Comments

Twelve comments were received on the SNPRM. Five suggested changes that will require the opportunity for full public participation and separate rulemaking actions. Seven recommended minor editorial changes which have been adopted. A number of changes in bridge ownership are also reflected in this Final Rule.

A footnote has been added to § 117.9, Delaying opening of a draw, recommending that operators of vessels

passing through a draw and vehicles crossing over a drawbridge do so promptly so as not to unnecessarily delay the operation of the draw.

One comment suggested that the regulations inform the vessel operator of the need to repeat the opening signal until the drawtender acknowledges it, rather than proceeding before an acknowledging signal is given. Section 117.15 already contains a similar provision requiring drawtenders to repeat their signals until acknowledged by the vessel. Section 117.15(a) has been changed to incorporate the suggestion.

Several comments suggested that a different signal to open be used during a scheduled closed period for vessels' authorized to be passed during a closed period. Therefore, § 117.15(b)(3) has been changed to require the use of the five short blasts signal for authorized vessels during a closed period, rather than the one prolonged–one short blast signal used during other periods. The signal of five short blasts, also used by the drawtender when the draw cannot be opened immediately or must be promptly closed, is a warning signal indicating that a potentially dangerous situation exists or that passage through the draw is essential.

Section 117.19, Signalling when two or more vessels are approaching a drawbridge, requires the tender to reply in turn to the signal of each vessel. In the case of bridges with scheduled open periods, it would be confusing and unnecessary to require the tender to respond to the signal of each vessel accumulated at the bridge awaiting passage during the scheduled open period. Therefore, § 117.19 has been amended to relieve the tender of the burden of responding in these situations.

For clarity, proposed § 117.41, Discontinuance of drawtender service, has been split into new § 117.39, Closure of draw due to infrequent use, and § 117.41, Maintenance of draw in the fully open position. This is an editorial change to provide more descriptive section headings.

A second editorial change transfers existing § 177.641a, concerning winter requirements for the operation of drawbridges in the Ninth Coast Guard District (Great Lakes area), to a new § 117.45. This existing provision permits the Commander, Ninth Cost Guard District, to allow drawbridges in that district to open on at least 12 hours notice due to icing in the waterways and the seasonal curtailment of vessel traffic. This provision, though appearing in the existing regulations, was inadvertently omitted from the supplemental proposal.

A new § 117.47 is added to include the provision in the existing regulations (§ 117.240(k)) which was mistakenly omitted from the supplemental notice. The existing provision required the installation of clearance gages, one on the upstream and one on the downstream sides of drawbridges across navigable waters discharging into the Atlantic Ocean south of Delaware Bay or into the Gulf of Mexico (except the Mississippi River and its tributaries). The existing provision is restated without substantive change. The gage approval authority of the Commandant has been delegated to the District Commanders and new § 117.47 reflects this delegation.

As a result of adding a new § 117.45 and § 117.47, proposed § 117.45, Process of violations, has been renumbered § 117.49.

Seven new sections have been added, reflecting new bridges or singling out drawbridges originally under other sections or, in two cases, bridges that were unintentionally omitted from the SNPRM.

(a) Section 117.300, Loxahatchee River, was originally a part of § 117.317, Okeechobee Waterway. As the Loxahatchee River is a separate waterway, it is therefore identified as such.

(b) Section 117.460, La Carpe Bayou, was originally a part of § 117.455, Houma Navigation Canal. La Carpe Bayou is more easily identified as a separate section.

(c) The text of § 117.607, Mitchell River, was mistakenly taken from § 117.609, Mystic River.

(d) Section 117.891, Skipanon River, was originally a part of § 117.899, Youngs Bay and Lewis and Clark River, but is more identifiable as a separate section.

(e) Section 117.941, Missouri River, was omitted in error.

(f) Section 117.1053, Lewis River, was a part of § 117.1037, Cowlitz and Lewis Rivers, but is more easily identified in a separate section.

Six sections (§ 117.323, Peace River; § 117.531, Prescumpscot River; § 117.649, St. Joseph Harbor; § 117.877, Dean Creek; § 117.883, Little Nestucca River; and § 117.900, Honolulu Harbor, Kalihi Channel) were deleted because the bridges were removed or converted to or replaced by fixed bridges.

Seven sections were deleted and their provisions transferred to other sections for clarity.

(a) Section 117.357, Black River, was placed in § 117.355, Back River.

(b) Section 117.421, Algiers Alternate Route, was placed in § 117.451, Gulf Intracoastal Waterway.

(c) Section 117.1043, Grays Harbor, was placed in § 117.1047, Hoquiam River.

(d) Section 117.1059, City Waterway, § 117.1061, Puyallup Waterway and River, § 117.1063, Blair Waterway, and § 117.1065, Hylebos Waterway, were placed in a new § 117.1059, Takoma Harbor.

Recommended changes received from the Coast Guard districts have also been incorporated in this Final Rule, as appropriate. These changes are minor and involve updating names of bridge owners, deleting bridges that have been removed, and correcting geographical and mileage references.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980).

This regulatory action reorganizes existing drawbridge operation regulations without, for the most part, adding new requirements. The only additional cost will be in the area of posting of requirements. Section 117.55 will require the owners of drawbridges listed in Subpart B, other than removable span bridges, to post a sign upstream and downstream of the bridge. These signs are of great benefit to vessel operators because they summarize the requirements that are peculiar to that bridge, such as when closed periods are in effect or who to contact for a bridge opening. The signs summarize the specific requirements in Subpart B applicable to the bridge in question but need not list the requirements in Subpart A or those in §§ 117.51 through 117.59 of Subpart B. Many bridges are already required to post this information under the existing regulations. Still other bridges currently post signs as a benefit to vessel operators and as a measure to provide for the safety of the bridge. Nevertheless, this provision will affect a small number of bridges in Subpart B not already posting this information. It is estimated that not more than 25 bridges will have to install signs, at a cost of approximately $200 per bridge (two signs), for a total of $5,000 nationwide.

Because the economic impact is expected to be minimal, the Coast Guard has determined that no further evaluation is necessary.

Regulatory Flexibility Act

The reorganization of Part 117 is intended primarily to simplify and clarify the existing regulations without

substantive change. The only change that imposes new costs will be the posting requirement discussed in the Regulatory Evaluation section above. Therefore, it is certified, in accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164; 5 U.S.C. 601), that these rules will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements.

This rulemaking contains no information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that, under the categorical exclusion provision in sections (2)(B)(3(f)(8) and (2)(B)(4) of Commandant Instruction M16475.1A, the preparation of an Environmental Impact Statement, an Environmental Assessment, or Finding of No Significant Impact for these regulations is not required.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE REQUIREMENTS

Subpart A—General Requirements

Sec.
117.1 Purpose.
117.3 Applicability.
117.5 When the draw shall open.
117.7 General duties of drawbridge owners and tenders.
117.9 Delaying opening of a draw.
117.11 Appurtenances unessential to navigation.
117.15 Signals.
117.17 Signalling for contiguous drawbridges.
117.19 Signalling when two or more vessels are approaching a drawbridge.
117.21 Signalling for opened drawbridges.
117.23 Installation of radiotelephones.
117.31 Closure of draw for emergency vehicles.
117.33 Closure of draw for natural disasters or civil disorders.
117.35 Operations during repair or maintenance.
117.37 Opening or closure of draw for public interest concerns.
117.39 Closure of draw due to infrequent use.
117.41 Maintenance of draw in fully open position.
117.43 Changes in draw operation requirements for regulatory purposes.
117.45 Operation during winter season in the Great Lakes area.
117.47 Clearance gages.
117.49 Process of violations.

Subpart B—Specific Requirements

117.51 Purpose.
117.53 Applicability.
117.55 Posting of requirements.
117.57 Advance notice.
117.59 Special requirements due to hazards.

Alabama

117.101 Alabama River.
117.103 Bayou LaBatre.
117.105 Bayou Sara.
117.107 Chattahoochee River.
117.109 Coosa River.
117.111 Mobile River and Chickasaw Creek.
117.113 Tensaw River.
117.115 Three Mile Creek.

Arkansas

117.121 Arkansas River.
117.123 Arkansas and White Rivers—Automated Railroad Bridges.
117.125 Black River.
117.127 Current River.
117.129 Little Red River.
117.131 Little River.
117.133 Ouachita River.
117.135 Red River.
117.137 St. Francis River.
117.139 White River.

California

117.140 General.
117.141 American River.
117.143 Bishop Cut.
117.145 Burns Cutoff.
117.147 Cerritos Channel.
117.149 China Basin, Mission Creek.
117.151 Cordelia Slough (A tributary of Suisun Bay).
117.153 Corte Madera Creek.
117.155 Eureka Slough.
117.157 Georgiana Slough.
117.159 Grant Line Canal.
117.161 Honker Cut.
117.163 Islais Creek (Channel).
117.165 Lindsey Slough.
117.167 Little Potato Slough.
117.169 Mare Island Strait, Napa River, and their tributaries.
117.171 Middle River.
117.173 Miner Slough.
117.175 Mokelumne River.
117.177 Mud Slough.
117.179 Newark Slough.
117.181 Oakland Inner Harbor Tidal Canal.
117.183 Old River.
117.185 Pacheco Creek.
117.187 Petaluma River.
117.189 Sacramento River.
117.191 San Joaquin River.
117.193 San Leandro Bay.
117.195 Snodgrass Slough.
117.197 Sonoma Creek.
117.199 Steamboat Slough.
117.201 Sutter Slough.

Connecticut

117.207 Housatonic River.
117.209 Mianus River.
117.211 Mystic River.
117.213 New Haven Harbor, Quinnipiac and Mill Rivers.
117.215 Niantic River.
117.217 Norwalk River.
117.219 Pequonnock River.
117.221 Saugatuck River.
117.223 Shaws Cove.
117.225 Yellow Mill Channel.

Delaware

117.231 Brandywine Creek.
117.233 Broad Creek.
117.235 Chesapeake and Delaware Canal.
117.237 Christina River.
117.239 Lewes and Rehoboth Canal.
117.241 Mispillion River.
117.243 Nanticoke River.
117.245 Smyrna River.
117.247 St. Jones River.

District of Columbia

117.253 Anacostia River.
117.255 Potomac River.

Florida

117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.
117.263 Banana River.
117.265 Bayou Chico.
117.267 Big Carlos Pass.
117.269 Biscayne Bay.
117.271 Blackwater River.
117.273 Canaveral Harbor Barge Canal.
117.275 Choctawhatchee River.
117.277 Clearwater Pass.
117.279 Coffeepot Bayou.
117.283 Dunns Creek.
117.285 Garrison Channel.
117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.
117.289 Hillsboro Inlet.
117.291 Hillsborough River.
117.293 Indian Creek.
117.295 Kissimmee River.
117.297 Little Manatee River.
117.299 Longboat Pass.
117.300 Loxahatchee River.
117.301 Manatee River.
117.303 Matlacha Pass.
117.305 Miami River.
117.307 Miami River, North Fork.
117.309 Nassau Sound.
117.311 New Pass.
117.313 New River.
117.315 New River, South Fork.
117.317 Okeechobee Waterway.
117.319 Oklawaha River.
117.321 Orange River.
117.325 St. Johns River.
117.327 St. Marks River.
117.329 St. Marys River.
117.331 Steinhatchee River.
117.333 Suwannee River.
117.335 Taylor Creek.
117.337 Trout River.
117.339 West Palm Beach Canal.
117.341 Whitcomb Bayou.

Georgia

117.351 Altamaha River.
117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.
117.355 Back River.
117.359 Chattahoochee River.
117.361 Flint River.
117.363 Ocmulgee River.
117.365 Oconee River.
117.367 Ogeechee River.

Sec.
117.369 Satilla River.
117.371 Savannah River.
117.373 St. Marys River.

Idaho

117.381 Clearwater River.
117.383 Pend Oreille River.
117.385 Snake River.

Illinois

117.389 Calumet River.
117.391 Chicago River.
117.393 Illinois River.
117.395 Illinois Waterway.
117.397 Wabash River.

Indiana

117.401 Trail Creek.
117.403 Wabash River.

Iowa

117.407 Missouri River.

Kansas

117.411 Missouri River.

Kentucky

117.415 Green River.
117.417 Ohio River.

Louisiana

117.423 Amite River.
117.425 Black Bayou.
117.427 Black River.
117.429 Boeuf Bayou.
117.431 Boeuf River.
117.433 Bonfouca Bayou.
117.435 Caddo Lake.
117.437 Colyell Bayou.
117.439 Des Allemands Bayou.
117.441 D'Inde Bayou.
117.443 DuLarge Bayou.
117.445 Franklin Canal.
117.447 Grand Cabahanosse Bayou.
117.449 Grosse Tete Bayou.
117.451 Gulf Intracoastal Waterway.
117.453 Houma Canal.
117.455 Houma Navigation Canal.
117.457 Houston River.
117.459 Inner Harbor Navigation Canal, New Orleans.
117.460 La Carpe Bayou.
117.461 Lacassine Bayou.
117.463 Lacombe Bayou.
117.465 Lafourche Bayou.
117.467 Lake Pontchartrain.
117.469 Liberty Bayou.
117.471 Little Black Bayou.
117.473 Little River.
117.475 Little (Petit) Caillou Bayou.
117.477 Lower Atchafalaya River.
117.479 Macon Bayou.
117.481 Nezpique Bayou.
117.483 Ouachita River.
117.485 Patout Bayou.
117.487 Plaquemine Bayou.
117.489 Plaquemine Brule Bayou.
117.491 Red River.
117.493 Sabine River.
117.495 Superior Oil Canal.
117.497 Stumpy Bayou.
117.499 Tante Phine Pass.
117.501 Teche Bayou.
117.503 Tensas River.
117.505 Terrebonne Bayou.
117.507 Tigre Bayou.
117.509 Vermilion River.
117.511 West Pearl River.

Maine

117.521 Back Cove.
117.523 Back River.
117.524 Fore River.
117.525 Kennebec River.
117.527 Kennebunk River.
117.529 Narraguagus River.
117.531 Piscataqua River.
117.533 Sheepscot River.
117.535 Taunton River.

Maryland

117.541 Baltimore Harbor—Patapsco River.
117.543 Bear Creek.
117.545 Bohemia River.
117.547 Bush River.
117.549 Cambridge Harbor.
117.551 Chester River.
117.553 Choptank River.
117.555 College Creek.
117.557 Curtis Creek.
117.559 Isle of Wright Bay.
117.561 Kent Island Narrows.
117.563 Marshyhope Creek.
117.565 Miles River.
117.567 Patuxent River.
117.569 Pocomoke River.
117.571 Spa Creek.
117.573 Stoney Creek.
117.575 Susquehanna River.
117.577 Weems Creek.
117.579 Wicomico River (North Prong).

Massachusetts

117.585 Achushnet River.
117.587 Apponaganset River.
117.589 Cape Cod Canal.
117.591 Charles River.
117.593 Chelsea River.
117.595 Danvers River.
117.597 Dorchester Bay.
117.599 Fort Point Channel.
117.601 Malden River.
117.603 Manchester Harbor.
117.605 Merrimack River.
117.607 Mitchell River.
117.609 Mystic River.
117.611 Neponset River.
117.613 North River.
117.615 Plum Island River.
117.617 Reserved Channel.
117.619 Taunton River.
117.621 Weymouth Fore River.

Michigan

117.625 Black River.
117.627 Cheboygan River.
117.629 Crooked River.
117.631 Detroit River (Trenton Channel).
117.633 Grand River.
117.635 Keweenaw Waterway.
117.637 Manistee River.
117.639 Ontonagon River.
117.641 Pine River (Charlevoix).
117.643 Pine River (St. Clair).
117.645 Rouge River (Short Cut Channel).
117.647 Saginaw River.
117.651 St. Joseph River.
117.653 St. Mary's Fall Canal.
117.655 Thunder Bay River.

Minnesota

117.661 Duluth Ship Canal (Duluth-Superior Harbor).
117.663 Minnesota River.
117.665 Red River of the North.
117.667 St. Croix River.
117.669 St. Louis River (Duluth-Superior Harbor).
117.671 Upper Mississippi River.

Mississippi

117.675 Back Bay of Biloxi.
117.677 Big Sunflower River.
117.679 Escatawpa River.
117.681 Old Fort Bayou.
117.683 Pascagoula River.
117.685 Yazoo River.

Missouri

117.687 Missouri River.
117.689 Osage River.

Nebraska

117.691 Missouri River.

New Hampshire

117.695 Bellamy River.
117.697 Hampton River.
117.699 Little Harbor.

New Jersey

117.701 Alloway Creek.
117.703 Bass River.
117.705 Beaver Dam Creek.
117.707 Cape Island Creek.
117.709 Cheesequake Creek.
117.711 Cohansey River.
117.713 Cooper River.
117.715 Debbies Creek.
117.717 Delaware River (Back Channel).
117.719 Elizabeth River.
117.721 Great Channel.
117.723 Hackensack River and Overpeck Creek.
117.725 Manantico Creek.
117.727 Manasquan River.
117.729 Mantua Creek.
117.731 Maurice River.
117.733 New Jersey Intracoastal Waterway.
117.735 Oceanport Creek.
117.737 Oldmans Creek.
117.739 Passaic River.
117.741 Raccoon Creek.
117.743 Rahway River.
117.745 Rancocas River (Creek).
117.747 Raritank River, Arthur Kill, and their tributaries.
117.749 Salem River.
117.751 Shark River (South Channel).
117.753 Ship Channel, Great Egg Harbor Bay.
117.755 Shrewsbury River (South Branch).
117.757 Tuckahoe River.
117.759 Wading River.
117.761 Woodbridge Creek.

New York

117.771 Bronx River.
117.773 Buffalo River.
117.775 Coney Island Creek.
117.777 Dutch Kills.
117.779 Eastchester Bay (Arm of).
117.781 East River.
117.783 Flushing Creek.
117.785 Genessee River.
117.787 Gowanus Canal.
117.789 Harlem River.
117.791 Hudson River.
117.793 Hutchinson River.

Sec.
117.795 Jamaica Bay, and Connecting Waterways.
117.797 Lake Champlain.
117.799 Long Island, New York Island Waterway from East Rockaway Inlet to Shinnecock Canal.
117.801 Newtown Creek (East Branch).
117.803 Niagara River.
117.805 Peekskill (Annsville) Creek.
117.807 Richmond Creek.
117.809 Tonawanda Creek.
117.811 Tonawanda Harbor.
117.813 Wappinger Creek.
117.815 Westchester Creek.

North Carolina

117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.
117.823 Neuse River.
117.825 Newport River.
117.827 New River.
117.829 Northeast River.
117.831 Pamlico and Tar Rivers.
117.833 Pasquotank River.
117.835 Perquimans River.
117.837 Roanoke River.
117.839 Scuppernong River.
117.841 Smiths Creek.
117.843 Trent River.

Ohio

117.847 Ashtabula River.
117.849 Muskingum River (Zanesville Canal).
117.851 Portage River.
117.853 Sandusky Bay.

Oregon

117.861 Blind Slough.
117.863 Catching Slough.
117.865 Clatskanie River.
117.867 Coalbank Slough.
117.869 Columbia River.
117.871 Coos Bay.
117.873 Coos River.
117.875 Coquille River.
117.879 Isthmus Slough.
117.881 John Day River.
117.885 Nehalem River.
117.887 North Portland Harbor (Oregon Slough).
117.889 Siuslaw River.
117.891 Skipanon River.
117.893 Umpqua River.
117.895 Walluski River.
117.897 Willamette River.
117.899 Youngs Bay and Lewis and Clark River.

Pennsylvania

117.901 Chester Creek.
117.903 Darby Creek.
117.904 Delaware River.
117.905 Schuylkill River.

Rhode Island

117.907 Providence River.

South Carolina

117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.
117.913 Ashepoo River.
117.915 Ashley River.
117.917 Battery Creek.
117.919 Black River.
117.921 Broad River.
117.923 Congaree River.
117.925 Cooper River.
117.927 Coosaw River (Whale Branch).
117.929 Durham Creek.
117.931 Harbor River (a tidal estuary in St. Helena Sound).
117.933 Pee Dee River.
117.935 Rantowles Creek.
117.937 Savannah River.
117.939 Wando River.

South Dakota

117.941 Missouri River.

Tennessee

117.943 Cumberland River.
117.945 Hatchie River.
117.947 Obion River.
117.949 Tennessee River.

Texas

117.951 Arroyo Colorado River.
117.953 Brazos River (Diversion Channel).
117.955 Buffalo Bayou.
117.957 Cedar Bayou.
117.959 Chocolate Bayou.
117.961 Clear Creek.
117.963 Colorado River.
117.965 Cow Bayou.
117.967 Greens Bayou.
117.969 Lavaca River.
117.971 Neches River.
117.973 Nueces Bay.
117.975 Old Brazos River.
117.977 Pelican Island Causeway, Galveston Channel.
117.979 Sabine Lake.
117.981 Sabine River.
117.983 Sabine River (Old Channel) behind Orange Harbor Island.
117.984 San Bernard River.
117.985 Taylor Bayou.
117.987 Trinity River.
117.989 Victoria Channel.

Vermont

117.993 Lake Champlain.

Virginia

117.995 Appomattox River.
117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.
117.999 Blackwater River.
117.1001 Cat Point Creek.
117.1003 Chickahominy River.
117.1005 Chuckatuck Creek.
117.1007 Elizabeth River—Eastern Branch.
117.1009 Elizabeth River—Western Branch.
117.1011 Great Wicomico River.
117.1013 Kinsale Creek.
117.1015 Mattaponi River.
117.1017 Nansemond River.
117.1019 Nansemond River—Western Branch.
117.1021 North Landing River.

Washington

117.1031 Chehalis River.
117.1033 Columbia River.
117.1035 Columbia and Snake Rivers in the vicinity of Pasco.
117.1037 Cowlitz River.
117.1039 Deep River.
117.1041 Duwamish Waterway.
117.1045 Hood Canal.
117.1047 Hoquiam River.
117.1049 Lake Washington.
117.1051 Lake Washington Ship Canal.
117.1053 Lewis River.
117.1055 Skagit River.
117.1057 Skamokawa Creek.
117.1059 Snohomish River, Steamboat Sough, and Ebey Slough.
117.1061 Tacoma Harbor.
117.1063 Willapa and Noselle Rivers.
117.1065 Wishkah River.

Wisconsin

117.1081 Black River.
117.1083 Duluth-Superior Harbor (St. Louis River).
117.1085 East River.
117.1087 Fox River.
117.1089 Manitowoc River.
117.1091 Menomonee River.
117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.
117.1095 Root River.
117.1097 Sheboygan River.
117.1099 St. Croix River.
117.1101 Sturgeon Bay.
117.1103 Upper Mississippi River.
117.1105 Wisconsin River.
117.1107 Wolf River.

Authority: 33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).

Subpart A—General Requirements

§ 117.1 Purpose.

This subpart prescribes general requirements relating to the use and operation of drawbridges across the navigable waters of the United States.

Note.—The primary jurisdiction to regulate drawbridges across the navigable waters of the United States is vested in the Federal Government. Laws, ordinances, regulations, and rules which purport to regulate these bridges and which are not promulgated by the Federal Government have no force and effect.

§ 117.3 Applicability.

The provisions of this subpart not in conflict with the provisions of Subpart B apply to each drawbridge.

Note.—For all of the requirements applicable to a drawbridge listed in Subpart B, one must review the requirements in Subpart A and §§ 117.51 through 117.99 of Subpart B, as well as the requirements in Subpart B applicable to the particular drawbridge in question.

§ 117.5 When the draw shall open.

Except as otherwise required by this subpart, drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with this subpart.

§ 117.7 General duties of drawbridge owners and tenders.

(a) Drawbridge owners and tenders shall operate the draw in accordance with the requirement in this part.

(b) Except for drawbridges not required to open for the passage of vessels, owners of drawbridges shall ensure that:

(1) The necessary drawtenders are provided for the safe and prompt opening of the draw;

(2) The operating machinery of the draw is maintained in a serviceable condition; and.

(3) The draws are operated at sufficient intervals to assure their satisfactory operation.

§ 117.9 Delaying opening of a draw.

No person shall unreasonably delay the opening of a draw after the signals required by § 117.15 have been given.

Note.—Trains are usually controlled by the block method. That is, the track is divided into blocks or segments of a mile or more in length. When a train is in a block with a drawbridge, the draw may not be able to open until the train has passed out of the block and the yardmaster or other manager has "unlocked" the drawbridge controls. The maximum time permitted for delay is defined in Subpart B for each affected bridge. Land and water traffic should pass over or through the draw as soon as possible in order to prevent unnecessary delays in the opening and closure of the draw.

§ 117.11 Appurtenances unessential to navigation.

No vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation or which is easily lowered.

§ 117.15 Signals.

(a) *General.* (1) The operator of each vessel requesting a drawbridge to open shall signal the drawtender and the drawtender shall acknowledge that signal. The signal shall be repeated until acknowledged in some manner by the drawtender before proceeding.

(2) The signals used to request the opening of the draw and to acknowledge that request shall be sound signals, visual signals, or radiotelephone communications described in this subpart.

(3) Any of the means of signaling described in this subpart sufficient to alert the part being signaled may be used.

(b) *Sound signals.* (1) Sound signals shall be made by whistle, horn, megaphone, hailer, or other device capable of producing the described signals loud enough to be heard by the drawtender.

(2) As used in this section, "prolonged blast" means a blast of four to six seconds duration and "short blast" means a blast of approximately one second duration.

(3) The sound signal to request the opening of a draw is one prolonged blast followed by one short blast sounded not more than three seconds after the prolonged blast. For vessels authorized to be passed through a draw during a scheduled closure period, the sound signal to request the opening of the draw during that period is five short blasts sounded in rapid succession.

(4) When the draw can be opened immediately, the sound signal to acknowledge a request to open the draw is one prolonged blast followed by one short blast sounded not more than 30 seconds after the requesting signal.

(5) When the draw cannot be opened immediately, or is open and shall be closed promptly, the sound signal to acknowledge a request to open the draw is five short blasts sounded in rapid succession not more than 30 seconds after the vessel's opening signal. The signal shall be repeated until acknowledged in some manner by the requesting vessel.

(c) *Visual signals.* (1) The visual signal to request the opening of a draw is—

(i) A white flag raised and lowered vertically; or

(ii) A white, amber, or green light raised and lowered vertically.

(2) When the draw can be opened immediately, the visual signal to acknowledge a request to open the draw, given not more than 30 seconds after the vessel's opening signal, is—

(i) A white flag raised and lowered vertically;

(ii) A white, amber, or green light raised and lowered vertically; or

(iii) A fixed or flashing white, amber, or green light or lights.

(3) When the draw cannot be opened immediately, or is open and must be closed promptly, the visual signal to acknowledge a request to open the draw is—

(i) A red flag or red light swung back and forth horizontally in full sight of the vessel given not more than 30 seconds after the vessel's opening signal; or

(ii) A fixed or flashing red light or lights given not more than 30 seconds after the vessel's opening signal.

(4) The acknowledging signal when the draw cannot open immediately or is open and must be closed promptly shall be repeated until acknowledged in some manner by the requesting vessel.

(d) *Radio telephone communications.* (1) Radiotelephones may be used to communicate the same information provided by sound and visual signals.

(2) The vessel and the drawtender shall monitor the frequency used until the vessel has cleared the draw.

(3) When radiotelephone contact cannot be initiated or maintained, sound or visual signals under this section shall be used.

§117.17 Signalling for contiguous drawbridges.

When a vessel must past two or more drawbridges close together, the opening signal is given for the first bridge. After acknowledgment from the first bridge that it will promptly open, the opening signal is given for the second bridge, and so on until all bridges that the vessel must pass have been given the opening signal and have acknowledged that they will open promptly.

§ 117.19 Signalling when two or more vessels are approaching a drawbridge.

When two or more vessels are approaching the same drawbridge at the same time, or nearly the same, time, whether from the same or opposite directions, each vessel shall signal independently for the opening of the draw and the drawtender shall reply in turn to the signal of each vessel. The drawtender need not reply to signals by vessels accumulated at the bridge for passage during a scheduled open period.

§ 117.21 Signalling for an opened drawbridge.

When a vessel approaches a drawbridge with the draw in the open position, the vessel shall give the opening signal. If no acknowledgment is received within 30 seconds, the vessel may proceed, with caution, through the open draw.

§ 117.23 Installation of radiotelephones.

(a) When the District Commander deems it necessary for reasons of safety of navigation, the District Commander may require the installation and operation or a radiotelephone on or near a drawbridge.

(b) The District Commander gives written notice of the proposed requirement to the bridge owner.

(c) All comments the owner wishes to submit shall be submitted to the District Commander within 30 days of receipt of the notice under paragraph (b) of this section.

(d) If, upon consideration of the comments received, the District Commander determines that a radiotelephone is necessary, the District Commander notifies the bridge owner that a radiotelephone shall be installed and gives a reasonable time, not to exceed six months, to install the radiotelephone and commence operation.

§ 117.31 Closure of draw for emergency vehicles.

When a drawtender is informed by a reliable source that an emergency vehicle is due to cross the draw, the drawtender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge.

§ 117.33 Closure of draw for natural disasters or civil disorders.

Drawbridges need not open for the passage of vessels during periods of natural disasters or civil disorders declared by the appropriate authorities unless otherwise provided for in Subpart B or directed to do so by the District Commander.

§ 117.35 Operations during repair or maintenance.

(a) When operation of the draw must deviate from the regulations in this part for scheduled repair or maintenance work, the drawbridge owner shall request approval from the District Commander at least 30 days before the date of the intended change. The request shall include a brief description of the nature of the work to be performed and the times and dates of requested changes. The District Commander's decision is forwarded to the applicant within five working days of the receipt of the request. If the request is denied, the reasons for the denial are forwarded with the decision.

(b) When the draw is rendered inoperative because of damage to the structure or when vital, unscheduled repair or maintenance work shall be performed without delay, the drawbridge owner shall immediately notify the District Commander and give the reasons why the draw is or should be rendered inoperative and the expected date of completion of the repair or maintenance work.

(c) All repair or maintenance work under this section shall be performed with all due speed in order to return the draw to operation as soon as possible.

(d) If the operation of the draw will be affected for periods of less than 60 days, the regulations in this part will not be amended. Where practicable, the District Commander publishes notice of the temporary deviations from the regulations in this part in the **Federal Register** and Local Notices to Mariners. If operation of the draw is expected to be affected for more than 60 days, the District Commander publishes temporary regulations covering the repair period.

§ 117.37 Opening or closure of draw for public interest concerns.

(a) For reasons of public health or safety or for public functions, such as street parades and marine regattas, the District Commander may authorize the opening or closure of a drawbridge for a specified period of time.

(b) Requests for opening or closure of a draw shall be submitted to the District Commander at least 30 days before the proposed opening or closure and include a brief description of the proposed event or other reason for the request, the reason why the opening or closure is required, and the times and dates of the period the draw is to remain open or closed.

(c) Approval by the District Commander depends on the necessity for the opening or closure, the reasonableness of the times and dates, and the overall effect on navigation and users of the bridge.

§ 117.39 Closure of draw due to infrequent use.

Upon written request by the owner or operator of a drawbridge, the District Commander may, after notice in the **Federal Register** and opportunity for public comment, permit the draw to be closed and untended due to infrequency of use of the draw by vessels. The District Commander may condition approval on the continued maintenance of the operating machinery.

§ 117.41 Maintenance of draw in fully open position.

The draw may be maintained in the fully open position to permit the passage of vessels and drawtender service discontinued if the District Commander is notified in advance. The draw shall remain in the fully open position until drawtender service is restored or authorization under § 117.39 is given for the draw to remain closed and untended.

§ 117.43 Changes in draw operation requirements for regulatory purposes.

In order to evaluate suggested changes to the drawbridge operation requirements, the District Commander may authorize temporary deviations from the regulations in this part for periods not to exceed 60 days. Notice of these deviations is disseminated in the Local Notices to Mariners and published in the **Federal Register.**

§ 117.45 Operation during winter in the Great Lakes area.

(a) The Commander, Ninth Coast Guard District, may determine that drawbridges located in the Ninth Coast Guard District need not open during the winter season when general navigation is curtailed, unless a request to open the draw is given at least 12 hours before the time of the intended passage.

(b) Notice of these determinations is disseminated in Local Notices to Mariners and other appropriate media. Notices indicate—

(1) The name and location of the bridge affected;

(2) The period of time covered; and

(3) The telephone number and address of the party to whom requests for openings are given.

§ 117.47 Clearance gages.

(a) Clearance gages are required for drawbridges across navigable waters of the United States discharging into the Atlantic Ocean south of Delaware Bay (including the Lewes and Rehoboth Canal, DE) or into the Gulf of Mexico (including coastal waterways contiguous thereto and tributaries to such waterways and the Lower Atchafalaya River, LA), except the Mississippi River and its tributaries and outlets.

(b) Clearance gages shall be approved by the concerned Coast Guard District Commander. They shall be installed on the upstream and downstream sides of each drawbridge by and at the expense of the owner or agency controlling the bridge. These gages shall be kept in good repair and in legible condition.

Note.—Clearance gage requirements, if any, for drawbridges other than those referred to in this section are listed in Subpart B under the appropriate bridge.

§ 117.49 Process of violations.

(a) Complaints of alleged violations under this part are submitted to the District Commander of the Coast Guard District in which the drawbridge is located.

(b) Penalties for violations under this part are assessed and collected under Subpart 1.07 of Part 1 of this chapter.

Subpart B—Specific Requirements

§ 117.51 Purpose.

This subpart prescribes specific requirements relating to the operation of certain drawbridges.

Note.—The drawbridges under this subpart are listed by the waterway they cross and by the state in which they are located. Waterways are arranged alphabetically by state. The drawbridges listed under a waterway are generally arranged in order from the mouth of the waterway moving upstream. The drawbridges on the Atlantic Intracoastal Waterway are listed from north to south and on the Gulf Intracoastal Waterway from east to west.

§ 117.53 Applicability.

(a) The requirements in this subpart apply to the bridges listed and are in addition to, or vary from, the general requirements in Subpart A.

(b) A requirement in this subpart which varys from a general requirement in Subpart A supersedes the general requirement.

(c) All other general requirements in Subpart A not at variance apply to the bridges listed in this subpart.

(d) The draws of a number of the bridges listed in this subpart need not open for the passage of vessels during certain periods, however, this does not preclude the bridge owner from directing the drawtender to open the draw during these periods.

§ 117.55 Posting of requirements.

(a) The owner of each drawbridge under this subpart, other than removable span bridges, shall ensure that a sign summarizing the requirements in this subpart applicable to the bridge is posted both upstream and downstream of the bridge. The requirements to be posted need not include those in Subpart A or §§ 117.51 through 117.99.

(b) The signs shall be of sufficient size and so located as to be easily read at any time from an approaching vessel.

(c) If advance notice is required to open the draw, the signs shall also state the name, address, and telephone number of the person to be notified.

§ 117.57 Advance notice.

Owners and tenders of drawbridges requiring advance notice to open shall use all reasonable means to open the draw at the requested time and give due regard to the possibility that a brief delay may be experienced by the vessel giving the advance notice.

§ 117.59 Special requirements due to hazards.

For the duration of occurrences hazardous to safety or navigation, such as floods, freshets, and damage to the bridge or fender system, the District Commander may require the owner of an operational drawbridge listed in this subpart to have the bridge attended full time and open on signal.

Alabama

§ 117.101 Alabama River.

(a) The draw of the Burlington Northern railroad bridge, mile 105.3 at Coy, shall open on signal if at least 48 hours notice is given.

(b) The draw of the Illinois Central Gulf railroad bridge, mile 277 near Montgomery, shall open on signal if at least 24 hours notice is given.

(c) The draw of the US31 and 82 bridge, mile 278.2 near Montgomery, shall open on signal if at least 24 hours notice is given.

(d) The draw of the Seaboard System Railroad bridge, mile 293.3 near Montgomery, shall open on signal if at least 24 hours notice is given.

§ 117.103 Bayou LaBatre.

The draw of the S188 bridge, mile 2.3 at Bayou LaBatre, shall open on signal; except that, the draw need not be opened from 7:30 a.m. to 8:30 a.m., and 3 p.m. to 4:30 p.m. Monday through Friday except Federal holidays.

§ 117.105 Bayou Sara.

The draw of the Seaboard System Railroad bridge, mile 0.1 at Saraland, shall open on signal from 6 a.m. to 10 p.m. From 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

§ 117.107 Chattahoochee River.

The draws of the Seaboard System Railroad bridge, mile 117.1 near Omaha, GA, shall open on signal if at least six hours notice is given.

§ 117.109 Coosa River.

The draw of the Seaborad System Railroad bridge, mile 175.0 at Gadsden, shall open on signal if at least six hours notice is given.

§ 117.111 Mobile River and Chickasaw Creek.

The draws of the US90 bridge, mile 2.9 Mobile River, and the Seaboard System Railroad bridge, mile 0.0 Chickasaw Creek, both at Mobile, shall open on signal; however, the following special signals shall be used to request openings:

(a) Vessels proceeding either up or down the Mobile River and desiring the US90 bridge to open shall sound three prolonged blasts.

(b) Vessels proceeding down the Mobile River and desiring to proceed up Chickasaw Creek, requiring an opening of the railroad bridge, shall sound one prolonged blast, wait one minute, and then sound three prolonged blasts.

(c) Vessels proceeding up the Mobile River and desiring to proceed up Chickasaw Creek, requiring an opening of both bridges, shall sound three prolonged blasts, wait one minute, and then sound one prolonged blast followed by three prolonged blasts.

§ 117.113 Tensaw River.

The draw of the Seaboard System Railroad bridge, mile 15.0 at Hurricane, shall open on signal from 8 a.m. to midnight. The draw need not be opened from midnight to 8 a.m. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

§ 117.115 Three Mile Creek.

(a) The draw of the US43 bridge, mile 1.0 at Mobile, need not be opened from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m. daily. At all other times, the draw shall open on signal if at least 12 hours notice is given.

(b) The draw of the Southern Railway bridge, mile 1.1 at Mobile, shall open on signal if at least five days notice is given.

Arkansas

§ 117.121 Arkansas River

The draw of the Missouri Pacific Railroad bridge, mile 23.1 near Yancopin, shall open on signal if at least 96 hours notice is given.

§ 117.12 Arkansas and White Rivers—Automated Railroad Bridges.

(a) Across the Arkansas River, the draws of the Cotton Belt railroad (Rob Roy) bridge, mile 67.4, the Chicago, Rock Island, and Pacific railroad bridge, mile 118.2, the Missouri Pacific railroad bridges, mile 118.7 (Junction) and mile 119.6 (Baring Cross), all at Little Rock, are maintained in the closed position and are remotely operated. The following signals shall be used:

(1) The opening signal from the vessel for each of these bridges is three short blasts.

(2) The acknowledging signal is flashing white lights visible upstream and downstream. When the operator of the vessel sights the acknowledging signal, one prolonged blast shall be sounded.

(3) This signal is acknowledged by the bridge controller when the draw is to open by changing the flashing white lights to continuous white lights, and sounding one blast on a horn. When the span is fully raised to a maximum clearance of 52 feet, the navigation lights at mid channel change from red to green, indicating that the draw is ready for passage.

(4) If the draw cannot open, flashing amber warning lights are flashed and four blasts are sounded, indicating that a train is approaching or that maintenance work is in progress.

(5) The vessel shall acknowledge that there is a delay by sounding four short blasts.

(6) When the draw opens (after the train crosses or when maintenance work permits), the amber lights are turned off, the continuous white lights turned on, and one blast sounded, to indicate the draw is ready for passage.

(7) The vessel acknowledges with one blast and, after the draw is fully open, may proceed through the draw.

(8) When the vessel clears the draw, the mid channel navigation light changes from green to red, the amber warning lights will flash, and, after one minute, the draw lowers and locks.

(b) The draws of the Burlington Northern railroad bridge, mile 300.8 Arkansas River at Van Buren, and the Missouri Pacific railroad bridge, mile 7.5 White River at Benzal, are maintained in the open position with a minimum vertical clearance of 52 feet, except as follows:

(1) When a train approaches either bridge, amber lights attached to the bridge begin to flash and an audible signal on the bridge sounds. At the end of 10 minutes, the amber light continues to flash; however, the audible signal stops and the draw lowers and locks if the photoelectric boat detection system detects no obstruction under the span. If there is an obstruction, the draw opens to its full height until obstruction is cleared.

(2) After the train clears the bridge, the draw opens to its full height, the amber flashing light stops, and the mid channel lights change from red to green, indicating the navigation channel is open for the passage of vessels.

§ 117.125 Black River.

The following draws need not be opended for the passage of vessels:

(a) Missouri Pacific railroad bridge, mile 3.4 at Paroquet.

(b) Burlington Northern railroad bridge, mile 68.4 at Black Rock.

(c) Arkansas State Highway Department bridge, mile 90.1 at Pocahontas.

(d) Burlington Northern railroad bridge, mile 90.4 at Pocahontas.

(e) Missouri Pacific railroad bridge, mile 144.4 at Corning.

(f) Arkansas State Highway Department bridge, mile 152.2 at Corning.

§ 117.127 Current River.

The draws of the Arkansas highway bridge, mile 10.2, and the Burlington Northern railroad bridge, mile 12.2, both at Biggers, need not be opened for the passage of vessels.

§ 117.129 Little Red River.

The draws of the Burlington Northern railroad bridge, mile 25.0, and Arkansas highway bridge, mile 25.2, both at Judsonia, and the Arkansas highway bridge, mile 30.5 at Searcy, need not be opened for the passage of vessels.

§ 117.131 Little River.

The draws of the Burlington Northern railroad bridge, mile 7.1 near Fulton, need not be opened for the passage of vessels.

§ 117.133 Ouachita River.

(a) The draw of the Chicago, Rock Island and Pacific railroad bridge, mile 291.7 at Calion, shall open on signal if at least 24 hours notice is given, except as follows:

(1) Any vessel that requires the opening of the draw and that intends to return within 24 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(2) When the pool stage is above 21 feet on the upper gauge at Lock and Dam No. 8, the Commander, Second Coast Guard District, notifies the bridge owner, who is then given one day in which to place a drawtender in constant attendance and open the draw on signal.

(b) The draw of the St. Louis Southwestern railroad bridge, mile 331.4 near Camden, shall open on signal if at least 48 hours notice is given.

§ 117.135 Red River.

(a) The draws of the bridges from mile 66.0 through mile 283.1 shall open on signal if at least 48 hours notice is given. The draws of any of these bridges need not be opened for a vessel that arrives later than two hours after the time specified in the notice, unless a second notice of at least 48 hours is given.

(b) The draws of the bridges above mile 283.1 need not be opened for the passage of vessels.

§ 117.137 St. Francis River.

(a) The draw of the Arkansas highway bridge, mile 29.6 at Cody, shall open on signal if at least 72 hours notice is given. Any vessel that requires the opening of the draw and that intends to return within 72 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(b) The draws of the Chicago, Rock Island and Pacific railroad bridge, mile 59.7 at Madison, and all drawbridges above that point, need not be opened for the passage of vessels.

§ 117.139 White River.

(a) Requirements for the Missouri Pacific railroad bridge, mile 7.5 at Benzal, are in § 117.123.

(b) The draws of the St. Louis Southwestern railroad bridge, mile 98.9 at Clarendon, the US70 highway bridge, mile 121.7 at DeValls Bluff, the Chicago, Rock Island and Pacific Railroad bridge, mile 122.0 at DeValls Bluff, the Missouri Pacific railroad bridge, mile 196.3 at Augusta, and the Missouri Pacific railroad bridge, mile 254.8 at Newport, shall open on signal if at least eight hours notice is given. The draws of any of these bridges need not be opened for a vessel that arrives later than two hours after the time specified in the notice, unless a second notice of at least eight hours is given.

(c) The draws of the Arkansas highway bridge, mile 300.1 at Batesville, and the Missouri Pacific railroad bridge, mile 401.9 at Cotter, need not be opened for the passage of vessels.

California

§ 117.140 General.

In California, when fog prevails by day or night, the drawtender, after sounding the opening signal, shall toll a bell continuously during the approach and passage of a vessel.

§ 117.14 American River.

The draw of the Jiboom Street bridge, mile 0.1 at Sacramento, need not be opened for the passage of vessels.

§ 117.143 Bishop Cut.

The draw of the San Joaquin County highway bridge, mile 1.0 between King Island and Bishop Tract, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.145 Burns Cutoff.

The draw of the Daggett Road bridge, mile 3.0 at Stockton, shall open on signal if at least 48 hours notice is given to the U.S. Naval Communications Station at Stockton.

§ 117.147 Cerritos Channel.

(a) The draw of the Commodore Schuyler F. Heim highway bridge, mile 4.5 at Long Beach, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. The opening signal for the Commodore Schuyler Heim bridge is three prolonged blasts. The acknowledging signal is two prolonged blasts followed by one short blast when the draw will open immediately and five

short blasts when the draw will not open immediately. Channel 13 (156.65 MHZ) or other assigned frequencies may be used.

(b) The draw of the Henry Ford Avenue railroad and highway bridge, mile 4.4 at Long Beach, shall be maintained in the fully open position, except when a train is crossing or for maintenance. If the draw is in the closed position, the opening signal is two short blasts followed by one prolonged blast. The acknowledging signal is two prolonged blasts followed by one short blast when the draw will open immediately and five short blasts when the draw will not open immediately. Channel 13 (156.65 MHZ) or other assigned frequencies may be used.

§ 117.149 China Basin, Mission Creek.

The draws of the 3rd Street bridge, mile 0.0, and the 4th Street bridge, mile 0.2, both at San Francisco, shall open on signal if at least one hour notice is given.

§ 117.151 Cordelia Slough (a tributary of Suisun Bay).

The draws of the Southern Pacific railroad bridge, mile 1.5 at Suisun, shall open on signal if at least 24 hours notice is given.

§ 117.153 Corte Madera Creek.

The draw of the Northwestern Pacific railroad bridge, mile 0.5 near Greenbrae, shall be maintained in the fully open position, except for the crossing of trains or for maintenance.

§ 117.155 Eureka Slough.

The draws of the Northwestern Pacific railroad bridge, mile 0.5 at Eureka, shall open on signal if at least 24 hours notice is given.

§ 117.157 Georgiana Slough.

The draws of the Sacramento County highway bridges, mile 4.5 near Isleton, and mile 12.4 near Walnut Grove, shall open on signal from 6 a.m. to 10 p.m. from May 1 through October 31. The draws shall open on signal from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws of these bridges shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

§ 117.159 Grant Line Canal.

The draw of the San Joaquin County highway bridge, mile 5.5 at Tracy, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.161 Honker Cut.

The draw of the San Joaquin County (Eightmile Road) bridge, mile 0.3 between Empire Tract and King Island at Stockton, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.163 Islais Creek (Channel).

The draw of the 3rd Street bridge, mile 0.4 at San Francisco, shall open on signal if at least one hour notice is given.

§ 117.165 Lindsey Slough.

The center span of the Hastings Farms highway bridge, mile 2.0 between Egbert and Lower Hastings Tracts, shall be removed for the passage of maintenance vessels if at least 72 hours notice is given to the Hastings Farms Office at San Francisco.

§ 117.167 Little Potato Slough.

The draw of the California Department of Transportation highway bridge, mile 0.1 at Terminous, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

§ 117.169 Mare Island Strait, Napa River, and their tributaries.

(a) The draw of the U.S. Navy bridge (Mare Island Causeway), mile 2.8, at Vallejo—

(1) Must be opened on signal from 7:30 a.m. to 3:45 p.m. and 4:45 p.m. to 10 p.m. Monday through Friday except Federal holidays, and from 6:30 a.m. to 10 p.m. on Saturdays, Sundays, and holidays;

(2) Need not be opened for the passage of vessels, other than public vessels of the United States, from 6:30 a.m. to 7:30 a.m. and 3:45 p.m. to 4:45 p.m., except Saturdays, Sundays, and Federal holidays; and

(3) Must be opened on signal from 10 p.m. to 6:30 a.m. daily, if at least two hours notice is given, and as soon as possible during this period for public vessels of the United States.

(b) The draw of the Southern Pacific railroad bridge, mile 7.8 at Brazos, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility at the drawtender's station is less than one mile, up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is opened, the drawtender shall sound three short blasts.

(c) The draw of the Maxwell highway bridge, mile 14.8 near Imola, shall open on signal if at least 72 hours notice is given to the California Department of Transportation office at Napa.

§ 117.171 Middle River.

(a) The draw of the San Joaquin County (Bacon Island Road) highway bridge, mile 8.6 between Bacon Island and Lower Jones Tract, shall open on signal from May 15 through September 15 from 9 a.m. to 5 p.m. From September 16 through May 14, the draw shall open on signal from 9 a.m. to 5 p.m. from Thursday through Monday. At all other times, the draw shall open on signal if at least 12 hours notice is given to the San Joaquin County Department Public Works at Stockton.

(b) The draw of the Atchison, Topeka and Santa Fe railroad bridge, mile 9.8 near Middle River Station, shall open on signal if at least 12 hours notice is given to the Atchison, Topeka and Santa Fe Railway Yardmaster at Stockton.

§ 117.173 Miner Slough.

The draw of the California Department of Transportation highway bridge, mile 5.5 between the northerly end of Ryer Island and Holland Tract, shall open on signal if at least 12 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

§ 117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, mile 3.0 at East Isleton, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress shall be passed as soon as possible but no later than one hour after notice is given.

(b) The draw of the Sacramento and San Joaquin Counties (Millers Ferry) highway bridge, mile 12.1 over the North Fork of the Mokelumne River near Walnut Grove, shall open on signal from May 1 through October 31 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

(c) The removable span of the San Joaquin County highway bridge over the South Fork of the Mokelumne River, mile 18.0 at New Hope Landing, shall be

removed as soon as possible upon notification by the District Commander that an emergency exists which requires the removal.

(d) The draws of the bridges above New Hope Landing need not be opened for the passage of vessels.

§ 117.177 Mud Slough

The draw of the Southern Pacific railroad bridge, mile 0.7 near Alviso, shall open on signal if at least 24 hours notice is given.

§ 117.179 Newark Slough.

The draw of the Southern Pacific railroad bridge, mile 0.5 near Newark, shall open on signal if at least 24 hours notice is given to the Superintendent, Southern Pacific Transportation Company, at Oakland.

§ 117.181 Oakland Inner Harbor Tidal Canal.

The draws of the Alameda County highway bridges at Park Street, mile 7.3; Fruitvale Avenue, mile 7.7; and High Street, mile 8.1; and the U.S. Army Corps of Engineers railroad bridge, mile 7.7 at Fruitvale Avenue, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. However, the draws shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if a least two hours notice is given. The draws shall open as soon as possible for vessels in distress and emergency vessels, including commercial vessels engaged in rescue or emergency salvage operations.

§ 117.183 Old River.

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

§ 117.185 Pacheco Creek.

The draw of the Contra Costa County highway bridge, mile 0.5, and Southern Pacific railroad bridge, mile 0.5, both near Martinez, shall open on signal if at least 24 hours notice is given.

§ 117.187 Petaluma River.

(a) The draws of the Northwestern Pacific railroad bridges, mile 0.8 at Blackpoint and mile 12.4 at Haystack Landing, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(b) The draw of the Petaluma highway bridge at "D" Street, mile 13.7 at Petaluma, shall open on signal if at least four hours notice is given.

§ 117.189 Sacramento River.

(a) The draws of each bridge from Isleton to American River junction shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(b) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, mile 135.5 at Meridian, and mile 169.7 at Butte, shall open on signal if at least 12 hours notice is given to the California Department of Transportation office at Marysville.

(c) The draws of the bridges above Chico Landing need not be opened for the passage of vessels. However, the draws shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.191 San Joaquin River.

(a) The draw of the Port of Stockton railroad bridge, mile 39.7 at Stockton, shall open on signal if at least 12 hours notice is given to the Port Director.

(b) The draws of all other bridges across the San Joaquin River, including those above the Old River Junction, need not be opened for the passage of vessels.

§ 117.193 San Leandro Bay.

The draw of the California Department of Transportation highway bridge, mile 0.0 between Alameda and Bay Farm Island, shall open on signal; except that, from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m., the draw shall open on signal if at least 12 hours notice is given. Notice shall be given to the drawtender of the Bayfarm Island bridge from 8 a.m. to 5 p.m. and to the drawtender of the Park Street bridge at Alameda at all other times. The draw need not be opened for the passage of vessels from 9 p.m. to 5 a.m.

§ 117.195 Snodgrass Slough.

(a) The draw of the Southern Pacific railroad bridge, mile 3.5 at Walnut Grove, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed, a drawtender shall be present and the draw shall open on signal.

(b) The draw of the Sacramento County bridge, mile 4.4 at Walnut Grove, shall open on signal if at least 24 hours notice is given to the Sacramento County Highway Office at Sacramento.

§ 117.197 Sonoma Creek.

The draw of the Northwestern Pacific railroad bridge, mile 5.4 at Wingo, shall open on signal if at least 24 hours notice is given.

§ 117.199 Steamboat Slough.

The draw of the California Department of Transportation highway bridge, mile 11.2 at the head of Grand Island, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

§ 117.201 Sutter Slough.

The draw of the Sacramento County highway bridge, mile 6.4 near Courtland, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to do so.

Connecticut

§ 117.207 Housatonic River.

(a) The draw of the US 1 bridge, mile 3.5 at Stratford, shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 5:45 p.m. Monday through Friday, the draw need not be opened for the passage of vessels.

(b) The draw of the Conrail bridge, mile 3.9 at Stratford, shall open on signal from 5 a.m. to 9 p.m.; except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 5:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels unless an emergency exists. The draw need not be opened more than once in any 60-minute period from 5:30 a.m. to 7 a.m. and from 5:45 p.m. to 8:15 p.m., except on Saturdays, Sundays, and Federal holidays. The draw shall open on signal from 9 p.m. to 5 a.m. if notice is given before 4 p.m. on the day of the intended passage. A delay of up to 20 minutes may be expected if a train is

approaching so closely that it may not be safely stopped.

§ 117.209 Mianus River.

The draw of the Conrail bridge, mile 1.0 at Greenwich, shall open on signal from 5 a.m. to 9 p.m. A delay of up to 20 minutes may be expected if a train is approaching so closely that it may not be safety stopped. The draw need not be opened from 9 p.m. to 5 a.m.; however, public vessels of the United States and foreign vessels shall be passed as soon as possible during this period.

§ 117.211 Mystic River.

(a) The draw of the Amtrak railroad bridge, mile 2.4 at Mystic, shall open on signal from April 1 through October 31 and November 1 through March 31 from 5 a.m. to 9 p.m. The draw shall open on signal from November 1 through March 31 from 9 p.m. to 5 a.m. if at least eight hours notice is given. A delay of up to 20 minutes may be expected if a train is approaching so closely that it may not be safely stopped.

(b) The draw of the US 1 bridge, mile 2.8 at Mystic, shall open on signal from 7:15 p.m. to 8:15 a.m. from May 1 through October 31. From 8:15 a.m. to 7:15 p.m. from May 1 through October 31, the draw shall open hourly at quarter past the hour. From 8 p.m. to 4 a.m. from November 1 through April 30, the draw shall open on signal if at least one hour notice is given. From 4 a.m. to 8 p.m., the draw shall open on signal; however, a delay of up to 20 minutes may be expected.

(c) The draw of each bridge shall open as soon as possible for public vessels of the United States, state and local vessels used for public safety, vessels in an emergency, and commercial vessels.

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

(a) Public vessels of the United States, state or local vessels used for public safety, commercial vessels and vessels in distress, shall notify the operator of the Ferry Street bridge and shall be passed through each of the bridges listed in this section as soon as possible.

(b) The draws of the Tomlinson bridge, mile 0.0, the Ferry Street bridge, mile 0.7, and the Grand Avenue bridge, mile 1.3, across Quinnipiac River, and the Chapel Street bridge, mile 0.4 across Mill River, shall open on signal; except as follows:

(1) From 7:30 to 8:30 a.m., noon to 12:15 p.m., 12:45 to 1 p.m. and 4:45 to 5:45 p.m., the draws need not be opened.

(2) From 9 a.m. to 5 a.m. from October 1 through April 30, the draw of the Ferry Street bridge, Quinnipiac River, shall open on signal, unless the drawtender is at the Grand Avenue or Chapel Street bridges. In this event, a delay of up to one hour may be expected.

(3) From 11 p.m. to 7 a.m., the draw of the Grand Avenue bridge, Quinnipiac River, shall open on signal if at least one hour notice is given to the drawtender at the Ferry Street bridge. In the event that the drawtender is at the Chapel Street bridge, a delay of up to an additional hour may be expected.

(4) From 9 p.m. to 5 a.m., the draw of the Chapel Street bridge, Mill River, shall open on signal if at least one hour notice is given to the drawtender at Ferry Street bridge. In the event that the drawtender is at the Grand Avenue bridge, a delay of up to an additional hour may be expected.

(c) The sound signals for requesting the opening of each bridge are as follows:

(1) The Tomlinson bridge, two short blasts of a whistle or horn.

(2) The Ferry Street bridge, one short blast of a whistle or horn.

(3) The Grand Avenue bridge, one prolonged blast of a whistle or horn.

(4) The Chapel Street bridge, three short blasts of a whistle or horn.

(d) The drawtender shall acknowledge sound signals in the following manner:

(1) When the draw can be opened immediately, the same signal as the requesting signal.

(2) When the draw cannot be opened immediately, or is open and must close, with four short blasts of a whistle or horn, to be repeated until acknowledged by the vessel by the same signal.

(3) When the draw can be reopened, the drawtender shall sound the opening signal and open the draw if any vessels are waiting to pass.

(e) The following visual signals may be used in addition to sound signals for requesting the opening of each bridge when sound signals may not be heard. A white flag by day or a white light by night shall be swung in full circles at arm's length in full sight of the bridge and facing the draw.

(f) The drawtender shall acknowledge visual signals in the following manner:

(1) When the draw can be opened immediately, a white flag by day or a green light by night swung up and down vertically a number of times in full sight of the vessel.

(2) When the draw cannot be opened immediately, or is open and must close, a red flag by day or a red light by night, swung back and forth horizontally in full sight of the vessel, to be repeated until acknowledged by the vessel by the same signal.

§ 117.215 Niantic River.

(a) The draw of the Amtrak bridge, mile 0.0 at Niantic, shall open on signal; except that, from April 1 through October 31 from 8 p.m. to 4 a.m. and from November 1 through March 31 from 6 p.m., the draw shall open on signal if at least one hour notice is given. When a train scheduled to cross the bridge without stopping has entered the drawbridge block, a delay in opening the draw may occur until the train has cleared the block.

(b) The draw of the S156 bridge, mile 0.1 at Niantic, shall open on signal; except that, from 7 a.m. to 8 a.m., and from 4 p.m. to 5 p.m. Monday through Friday except holidays, the draw shall open only for the passage of commercial vessels.

§ 117.217 Norwalk River.

(a) The draw of the Washington Street S136 bridge, mile 0.0 at Norwalk, shall open on signal; except that, from 7 a.m. to 8:45 a.m., 11:45 a.m. to 1:15 p.m., and 4 p.m. to 6 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels that draw less than 14 feet of water. The opening signal is three short blasts. Vessels drawing 14 feet of water or more shall add one prolonged blast after the three short blasts.

(b) The draw of the Conrail bridge, mile 0.1 at Norwalk, shall open on signal as follows:

(1) From 5 a.m. to 9 p.m., except that, from Monday through Friday excluding holidays, the draw need not be opened from 7 a.m. to 8:45 a.m. and 4 p.m. to 6 p.m., unless an emergency exists.

(2) Only once in any 60-minute period from 5:45 a.m. to 7 a.m. and 6 p.m. to 7:45 p.m.

(3) From 9 p.m. to 5 a.m., if at least four hours notice is given.

(4) A delay of up to 20 minutes may be expected if a train is approaching so closely that it may not be safely stopped.

§ 117.219 Pequonnock River.

(a) The draws of the Stratford Avenue bridge, mile 0.1, and the Congress Street bridge, mile 0.4, both at Bridgeport, shall open on signal; except that, the draws of these bridges need not open for passage of vessels from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m. Public vessels of the United States and vessels in distress shall be passed through each draw at any time. The following signals shall be used:

(1) The opening signal for the Stratford Avenue bridge is one

prolonged blast followed by one short blast.

(2) The opening signal for the Congress Street bridge is two prolonged blasts followed by two short blasts.

(b) The draw of the Conrail bridge, mile 0.3 at Bridgeport, shall open on the signal of three short blasts from 5:45 a.m. to 9 p.m., except as follows:

(1) From Monday through Friday, excluding holidays, the draws need not be opened from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., and 4:30 p.m. to 6:10 p.m., unless an emergency exists.

(2) From Monday through Friday, excluding holidays or emergencies, the draws need not be opened more than once during the periods 5:45 a.m. to 6:45 a.m., 7:15 a.m. to 7:45 a.m., 8:15 a.m. to 9 a.m., and 6:10 p.m. to 8:15 p.m., unless an emergency exists.

(3) From 9 p.m. to 5:45 a.m., the draws shall open on signal if at least eight hours notice is given.

(4) A delay of up to seven minutes may be expected if a train is approaching so closely that it may not be safely stopped.

(c) The draw of the East Washington Street bridge shall open on the signal of one prolonged blast followed by two short blasts if at least 24 hours notice is given.

(d) The draw of the Grand Street bridge, mile 0.9 at Bridgeport, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within 12 months after notification by the District Commander to do so.

§ 117.221 Saugatuck River.

The draw of the CONRAIL bridge, mile 1.1 at Saugatuck, shall open on signal from June 1 through September 30 from 5 a.m. to 9 p.m. and from October 1 through May 31 from 8 a.m. to 4 p.m. The draw shall open on signal from October 1 through May 31 from 5 a.m. to 8 a.m. and from 4 p.m. to 9 p.m. if at least eight hours notice is given. The draw need not be opened at all other times.

§ 117.223 Shaws Cove.

The draw of the Amtrak bridge, mile 0.0 at New London, shall open on signal from December 1 through March 31 from 8 a.m. to 5 p.m. Monday through Friday. From December 1 through March 31 from 5 p.m. to 8 a.m. and on Saturdays and Sundays, the draw shall open on signal if at least eight hours notice is given. From April 1 through November 30 from 5 a.m. to 10 p.m., the draw shall open on signal; and, from 10 p.m. to 5 a.m., the draw shall open on signal if at least one hour notice is given. A delay of up to 10 minutes may be expected if a train is approaching so closely that it may not be safety stopped. When a vessel is in an emergency that may endanger life or property, the draw shall open as soon as possible.

§ 117.225 Yellow Mill Channel.

The draw of the Stratford Avenue bridge, mile 0.3 at Bridgeport, shall open on signal if at least 24 hours notice is given. Public vessels of the United States and vessels in distress shall be passed as soon as possible.

Delaware

§ 117.231 Brandywine Creek.

(a) The draw of the Seventh Street bridge, mile 0.1 at Wilmington, shall be maintained in the open position at all times.

(b) The draw of the Conrail bridge, mile 1.1, the Church Street bridge, mile 1.3, and the Sixteenth Street bridge, mile 1.7, all at Wilmington, need not be opened for the passage of vessels.

§ 117.233 Broad Creek.

The draws of the Conrail bridge, mile 8.0, the Poplar Street bridge, mile 8.2, and the US13A bridge, mile 8.2, all at Laurel, shall open on signal if at least four hours notice is given.

§ 117.235 Chesapeake and Delaware Canal.

The draw of the Conrail bridge, mile 7.7, shall open on signal. The following light signals, located in the center of the drawspan on both sides of the bridge, shall be used:

(a) When the draw is to be opened immediately, one fixed amber light.

(b) When the draw is not ready to be opened, one flashing red light.

§ 117.237 Christina River.

(a) The owners of the bridges listed in this section shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high, to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to the operator of each vessel approaching the bridges either up or downstream.

(b) The draws of the Conrail bridge, mile 4.1, the Conrail railroad bridge, mile 4.2, and the Conrail bridge, mile 5.4, all at Wilmington, shall open on signal from 6 a.m. to 8 p.m. if at least 24 hours notice is given. From 8 p.m. to 6 a.m., the draws need not be opened for the passage of vessels.

(c) The draws of the Third Street bridge, mile 2.3, the Walnut Street bridge, mile 2.8, and the Market Street bridge, mile 3.0, all at Wilmington, shall open on signal; except that, from 7 a.m. to 8 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday, except holidays, the draws need not be opened for the passage of vessels. Any vessel which has passed through one or more of these bridges immediately prior to a closed period and which requires passage through the other bridge or bridges in order to continue to its destination shall be passed through the draw or draws of the bridge or bridges without delay.

(d) The draw of the SH141 bridge, mile 7.5 at Wilmington, shall open on signal if at least 24 hours notice is given.

§ 117.239 Lewes and Rehoboth Canal.

The draws of the Delaware highway bridges, mile 2.0 and 7.0, both at Rehoboth, shall open on signal from May 1 through October 31 from 7 a.m. to 8 p.m. and from 8 p.m. to 7 a.m. if at least two hours notice is given. From November 1 through April 30, the draws shall open on signal if at least 24 hours notice is given.

§ 117.241 Mispillion River.

The draws of the S14 bridge, mile 11.0 at Milford, shall open on signal if at least two hours notice is given.

§ 117.243 Nanticoke River.

The draw of the Conrail bridge, mile 39.4 at Seaford, shall open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. and need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

§ 117.245 Smyrna River.

The draw of the Delaware highway bridge, mile 4.0 at Flemings Landing, shall open on signal if at least 24 hours notice is given.

§ 117.247 St. Jones River.

The draw of the Delaware highway bridge, mile 4.5 at Barkers Landing, shall open on signal if at least 24 hours notice is given.

District of Columbia

§ 117.253 Anacostia River.

(a) The draw of the Frederick Douglass Memorial (South Capitol Street) bridge, mile 1.2, shall open on signal if at least 24 hours notice is given. The draw is closed to the passage of vessels on each Presidential Inauguration Day and may occasionally be closed without advance notice to permit uninterrupted transit of dignitaries across the bridge.

(b) The draw of the Conrail bridge, mile 3.4, shall be operated as follows:

(1) The draw shall open on signal on Saturdays, Sundays, and Federal holidays and on weekdays from 10 a.m. to 8 p.m. from April 1 through September 30.

(2) The draw shall open on signal on the hour from April 1 through September 30 Monday through Friday except Federal holidays from 8 p.m. to 10 a.m., and from October 1 through March 31 on Saturdays, Sundays, and Federal holidays from 10 a.m. to 6 p.m.

(3) At all other times, the draw shall open on signal if at least two hours notice is given.

(4) Public vessels of the United States and vessels of Maryland or the District of Columbia used for public safely shall be passed as soon as possible.

(5) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to the operator of each vessel approaching the bridge either up or downstream.

§ 117.255 Potomac River.

(a) The draw of the Woodrow Wilson Memorial (I–495) bridge, mile 103.8, shall open on signal; except that, from 6:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

(b) Public vessels of the United States, vessels in distress, and vessels engaged exclusively in the tourist trade on the Potomac River from Washington, D.C., when the vertical clearance is less than 50 feet, shall be passed at any time.

(c) The draws of all other bridges need not be opened for the passage of vessels.

Florida

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) The draw of the Bridge of Lions (SR A–1–A) brige, mile 777.9, at St. Augustine, shall open on signal; except as follows:

(1) From 7 a.m. to 6 p.m. Monday through Friday except holdiays, the draw need be opened only on the hour and half hour; however, the draw need not be opened at 8 a.m., 12 noon, and 5 p.m.

(2) From 7 a.m. to 6 p.m. on Saturdays, Sundays, and holidays, the draw need be opened only on the hour and half hour.

(3) Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draws of the Seabreeze Boulevard bridge, mile 829.1 at Daytona Beach, and the SR A–1–A bridge, mile 835.5 at Port Orange, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal and Florida State holidays, the draws need not be opened for the passage of vessels. However, the draws shall open at 8 a.m. and 5 p.m. for waiting vessels. During periods when storm signals are displayed in the Daytona Beach area, the draws of these bridges shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more or sea conditions considered dangerous to small craft expected. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(c) The draw of the Memorial bridge, mile 830.6 Halifax River at Daytona Beach, shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except Federal and Florida State holidays, the draw need not be opened for the passage of vessels. However, the draw shall open at 8:15 a.m. and 5:15 p.m. for waiting vessels. During periods when storm signals are displayed in the Daytona Beach area, the draw shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more or sea conditions considered dangerous to small craft are expected. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(d) The draw of the Harris Saxon bridge, mile 846.5 at New Smyrna Beach, shall open on signal; except that, from March 15 through October 15 on Saturdays, Sundays, and Federal holidays from 3 p.m. to 6 p.m., the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(e) The draw of the NASA railroad bridge, mile 876.6 near Jay Jay, shall be operated as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothin under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(f) The draw of the SR402 bridge, mile 878.9 at Titusville, shall open on signal; except that, from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(g) The draw of the John F. Kennedy Space Center (SR405) bridge, mile 885.0 at Addison Point, shall open on signal; except that, from 6:45 a.m. to 8 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not be opened for the passage vessels.

(h) The draw of the SR518 bridge, mile 914.4 at Eau Gallie, shall open on signal; except that, from 6:45 a.m. to 8:15 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels. However, the draws shall open at 8:15 a.m. and 4:15 p.m. if any vessels are waiting to pass. From 8:15 a.m. to 4:15 p.m. Monday through Friday except holidays, the draw need be opened only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(i) The draw of the SR60 bridge, mile 951.9 at Vero Beach, shall open on signal; except that, from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m. and 4 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels; however, the draw shall open at 8:30 a.m., 12:30 p.m., and 4:30 p.m. if any vessels are waiting to pass. During periods when storm signals are displayed in the Vero Beach area, the draw shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more or sea conditions considered dangerous to small craft are expected. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(j) The draw of the Parker (US1) bridge, mile 1013.7 at North Palm Beach, shall open on signal; except that, from November 15 through April 15 from 7 a.m. to 7 p.m., the draw need be opened only on the hour and half hour. From April 16 through November 14 from 9 a.m. to 5 p.m., the draw need be opened only on the hour, 20 minutes after the

hour, and 40 minutes after the hour on Saturdays, Sundays, and holidays to pass accumulated vessels. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(k) The draw of the Flagler Memorial (SRA–1–A) bridge, mile 1021.9 at Palm Beach, shall open on signal; except that, from November 1, to May 31 Monday through Friday except Federal holidays, the draw need not be opened from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m.; however, the draw shall open at 8:30 a.m. and 4:45 p.m. if any vessels are waiting to pass. From 9:30 a.m. to 4 p.m., the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(l) The draw of the Royal Park (SR704) bridge, mile 1022.6 at Palm Beach, shall open on signal; except that, from November 1 through May 31 Monday through Friday except Federal holidays, the draw need not be opened from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m.; however, the draw shall open at 8:45 a.m. 4:15 p.m., and 5 p.m if any vessels are waiting to pass. From 9:30 a.m. to 3:30 p.m., the draw need be opened only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(m) The draw of the Southern Boulevard (SR700/80) bridge, mile 1024.7 at Palm Beach, shall open on signal; except that, from November 1 through May 31 Monday through Friday except Federal holidays, the draw need not be opened from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:30 p.m.; however, the draw shall open at 8:15 a.m. and 5:30 p.m. if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(n) The draw of the Lantana Avenue bridge, mile 1031.0 at Lantana, shall open on signal; except that, from 1 December to 30 April on Saturdays, Sundays, and holidays from 10 a.m. to 6 p.m., the bridge need be opened only on the hour, quarter hour, half hour, and three quarter hour to allow all accumulated vessels to pass. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(o) The draw of the Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach, shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(p) The draw of the SR810 bridge, mile 1050.0 at Deerfield Beach, shall open on signal; except that, from November 1 through May 31 from 11 a.m. to 5 p.m. on Saturdays, Sundays and holidays, the draw need not be opened except on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(q) The draw of the N.E. 14th Street bridge, mile 1055.0 at Pompano, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need be opened only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows and vessels in distress shall be passed at any time.

(r) The draw of the Atlantic Boulevard (SR814) bridge, mile 1056.0 at Pompano, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(s) The draw of the Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea, shall open on signal; except that, from November 1 through May 15 from 12 noon to 6 p.m. Monday through Saturday, and from 9 a.m. to 6 p.m. on Sunday, the draw need open only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States, tugs with tows, vessels in distress, and regularly scheduled cruise vessels shall be passed at any time.

(t) The draw of the Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale, shall open on signal; except that, from November 15 through May 15 from 7:15 a.m. to 6:15 p.m., the draw need be opened only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(u) The draw of the Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale, shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge shall display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening. Public vessels of the United States, tug with tows, and vessels in distress shall be passed at any time.

(v) The draw of the Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood, shall open on signal; except as follows:

(1) From November 15 through May 15 from 10 a.m. to 6 p.m., the draw need be opened only on the hour and half hour.

(2) From May 16 through November 14 on Saturdays, Sundays, Memorial Day, Independence Day, Labor Day, and Veterans Day from 9 a.m. to 7 p.m., the draw need be opened only on the hour and half hour.

(3) Tows, sailing vessels, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(w) The draw of the Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale, shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(x) The draw of the N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles, shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and holidays, the draw need open only on the quarter and three quarter hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(y) The bridges across Biscayne Bay shall be operated as follows:

(1) The draws of each Biscayne Bay bridge shall open at any time for the passage of public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

(2) The draw of the Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands, shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the hour and half hour.

(3) The draw of the West Span of the Venetian Causeway, mile 1088.6 at Miami, shall open on signal; except that, from November 1 through April 30 Monday through Friday from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need be opened only on the hour and half hour. The draw shall open on signal at any time on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday.

(4) The draw of the MacArthur Causeway bridge, mile 1088.8 at Miami, shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the

draw need be opened only on the hour and half hour.

(5) The draws of the Dodge Island bridges, mile 1089.4 at Miami, shall open on signal; except that, from 7:15 a.m. to 5:45 p.m. Monday through Staturday except holidays, the draws need be opened only on the quarter and three quarter hour.

(6) The draw of the Rickenbacker Causeway bridge, mile 1091.6 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. on Monday through Friday except holidays, and 11 a.m. to 6 p.m. on Saturdays, Sundays, and holidays, the draw need be opened only on the hour and half hour. However, during the display of small craft warnings or warnings for winds of greater force by National Weather Service affecting the area, the draw shall open for the passage of vessels at any time.

§ 117.263 Banana River.

The draw of the NASA Causeway bridge, mile 27.6 at Cape Canaveral, shall open on signal if at least four hours notice is given to the NASA Security Office by telephone or in person.

§ 117.265 Bayou Chico.

The draw of the highway bridge, mile 0.3 at Pensacola, shall open on signal at any time for the passage of commercial vessels. The draw shall open at any time for the passage of pleasure vessels; except that, from 6 a.m. to 8 a.m., 11 a.m. to 1 p.m., and 3 p.m. to 6 p.m. Monday through Friday except holidays, the draw need be opened only on the hour and half hour or when five or more pleasure vessels are waiting to pass or in emergencies or severe storms. When the draw is open for commercial vessels during these restricted periods, accumulated pleasure vessels shall be passed.

§ 117.267 Big Carlos Pass.

The draw of the SR865 bridge, mile 0.0 between Estero Island and Black Island, shall open on signal; except that, the draw need not be opened from 7 p.m. to 8 a.m.

§ 117.269 Biscayne Bay.

The draw of the East Span of the Venetian Causeway bridge, between Miami and Miami Beach, shall open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draws shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw shall open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

§ 117.271 Blackwater River.

(a) The draw of the Seaboard System Railroad bridge, mile 2.8 at Milton, shall open on signal; except that, from 8 p.m. to 4 a.m., the draw shall open on signal if at least eight hours notice is given.

(b) The draw of the US90–S10 bridge, mile 3.9 at Milton, shall open on signal if at least 12 hours notice is given.

§ 117.273 Canaveral Harbor Barge Canal.

(a) The draw of the SR3 bridge, mile 1.0 near Indianola, shall open on signal from 6 a.m. to 10 p.m.; except that, from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given. The draw shall open as soon as possible for the passage of public vessels of the United States, tugs with tows, and vessels in distress.

(b) The draw of the SR401 bridge, mile 5.5 at Port Canaveral, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the draws shall open on signal if at least three hours notice is given. The draw shall open as soon as possible for the passage of pubic vessels of the United States, tugs with tows, and vessels in distress.

§ 117.275 Choctawhatchee River.

The draw of the SR20 bridge, mile 20.0 at Ebro, shall open on signal if at least 12 hours notice is given.

§ 117.277 Clearwater Pass.

The draw of the SR699 bridge, mile 0.0 at Clearwater Beach, shall open on signal; except that, from 11 p.m. to 7 a.m., a delay of up to 10 minutes may be expected.

Note.—To avoid delay, notice should be given to the toll booth attendant.

§ 117.279 Coffeepot Bayou.

The draw of the Snell Isle Boulevard bridge, mile 0.4 at St. Petersburg, need not be opened for the passage of vessels.

§ 117.283 Dunns Creek.

The draw of the US17 bridge, mile 0.9 near Satsuma, shall open on signal if at least three hours notice is given.

§ 117.285 Garrison Channel.

The draw of the American Centennial Insurance Company bridge, mile 0.2 at Tampa, shall open on signal if at least 48 hours notice is given.

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

(a) Public vessels of the United States, tugs with tows, and vessels in distress shall be passed through the draw of each bridge listed in this section at any time.

(b) The draw of the US41 bridge, mile 56.9 at Venice, shall open on signal; except that, from 7:30 a.m. to 6 p.m., the draw need be opened only on the hour, quarter hour, half hour, and three quarter hour.

(c) The draw of the Ringling Causeway (SR780) bridge, mile 73.6 at Sarasota, shall open on signal; except that, from 7:30 a.m. to 6 p.m., the draw need be opened only on the hour and half hour.

(d) The draws of the Cortex (SR684) bridge, mile, 87.4, and the Anna Maria (SR64) bridge, mile 89.2, both to Anna Maria Key, shall open on signal; except that, from 10 a.m. to 5 p.m. on Saturdays, Sundays, and holidays, the draws need be opened only on the hour, quarter hour, half hour, and three-quarter hour.

(e) The draw of the Corey Causeway (SR693) bridge, mile 117.7 at South Pasadena, shall open on signal; except that, from 8 a.m. to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(f) The draw of the Treasure Island Causeway bridge, mile 119.0 at Central Avenue, shall open on signal; except that, from 3 p.m. to 6 p.m., Monday through Friday, and from 11 a.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour.

(g) The draw of the Welch Causeway (SR699) bridge, mile 122.8 at Madiera Beach, shall open on signal; except that, from 9:30 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(h) The draw of the Belleair Causeway bridge, mile 131.8 at Clearwater, shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour.

(i) The draw of the Memorial Clearwater Causeway (SR60) bridge,

mile 136.0 at Clearwater, shall open on signal; except that, from 9 a.m. to 6 p.m., the draw need be opened only on the hour, 20 minutes past the hour, and 40 minutes past the hour. From 2 p.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour.

§ 117.289 Hillsboro Inlet.

The draw of the SR A–1–A bridge, mile 0.3 at Hillsboro Beach, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need be opened only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.291 Hillsborough River.

(a) The draws of the bridges at Platt Street, mile 0.0; Brorein Street, mile 0.16; Kennedy Boulevard, mile 0.4; Cass Street, mile 0.7; and Laurel Street, mile 1.0, shall open on signal from 9 a.m. to 4 p.m Monday through Friday, and from 8 a.m. 6 to p.m. Saturdays, Sundays, and Federal holidays. At all other times, the draws shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible, but not longer than one hour, after a request by a public vessel of the United States, a vessel owned or operated by the state, county, or local government and used for public safety purposes, or a vessel in distress.

(b) The draw of the Seaboard System Railroad bridge, mile 0.7, shall open on signal from 4 p.m. to 12 midnight Monday through Friday. At all other times, the draw shall be maintained in the fully open position.

(c) The draws of the City of Tampa highway bridge at West Columbus Drive, mile 2.3, and the State of Florida highway bridge at West Hillsorough Avenue, mile 4.8, shall open on signal from 8 a.m. to 6 p.m. The draws shall open on signal from 6 p.m. to 8 a.m. if at least one hour notice is given.

§ 117.293 Indian Creek.

The draw of the 63rd Street bridge, mile 4.0 at Miami Beach, shall open on signal; except that, from December 1 through April 15 from 11 a.m. to 6 p.m., the draw need be opened only on the hour. Public vessels of the United States, regularly scheduled cruise vessels, and vessels in an emergency involving life or property shall be passed at any time.

§ 117.295 Kissimmee River.

(a) The removable span of the SR78 bridge, mile 0.5, and the removable span of the SR70 bridge, mile 19.5, both at or near Okeechobee, shall be removed if at least 72 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 37.0 at Fort Bassinger, shall open, if at least 72 hours notice is given, for passage of floating equipment employed in flood control work under the jurisdiction of the South Florida Water Management District or the U.S. Army Corps of Engineers. The draw need not be opened for other vessels.

(c) The removable span of the SR98 bridge, mile 39.0 at Fort Bassinger, shall be removed if at least 96 hours notice is given.

§ 117.297 Little Manatee River.

The draw of the Seaboard System Railroad bridge, mile 2.4 at Ruskin, shall open on signal if at least three hours notice is given.

§ 117.299 Longboat Pass.

The draw of the SR789 bridge, mile 0.0 between Longboat Key and Anna Maria Key, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given.

§ 117.300 Loxahatchee River.

The draw of the Florida East Coast Railway bridge across the Laxahatchee River, mile 1.2 at Jupiter, operates as follows:

(a) The bridge is not constantly tended.

(b) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(c) When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(d) After the train has cleared, the draw opens and the lights return to flashing green.

§ 117.301 Manatee River.

The draw of the US41 bridge, mile 4.3 at Manatee, shall open on signal from 6 a.m. to 7 a.m. and 9 a.m. to 4 p.m. The draw need not be opened for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. The draw shall open at 6 p.m. if any vessels are waiting to pass. From 6 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed as soon as possible. During a hurricane alert issued by the National Weather Service, the draw shall open on signal.

§ 117.303 Matlacha Pass.

The draw of the SR78 bridge, mile 6.0 at Fort Myers, shall open on signal from 8 a.m. to 7 p.m. From 7 p.m. to 8 a.m., the draw need not be opened for the passage of vessels.

§117.305 Miami River.

The draw of each bridge from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except New Year's, Independence, Labor, Veteran's, Thanksgiving, and Christmas Days, the draws need not be opened for the passage of vessels. During the period of a hurricane alert issued by the National Weather Bureau, all bridges shall open on signal. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

§ 117.307 Miami River, North Fork.

The draw of the Seaboard System Railroad bridge, mile 5.3 at Miami, shall open on signal from 8:30 a.m. to 5:30 p.m. Monday through Friday. At all other times, the draw shall open on signal if at least three hours notice is given.

§ 117.309 Nassau Sound.

The draw of the Fernandina Port Authority (SR A–1–A) bridge, mile 0.4 between Amelia Island and Talbot Island, shall open on signal from 6 a.m. to 6 p.m. if at least six hours notice is given. The draw need not be opened from 6 p.m. to 6 a.m.

§ 117.311 New Pass.

The draw of the SR789 bridge, mile 0.0 in Sarasota County, shall open on signal; except that, from 7:30 a.m. to 6 p.m., the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.313 New River.

(a) The draw of the S.E. Third Avenue bridge, mile 1.4 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the Andrews Avenue bridge, mile 2.3 at Fort Lauderdale, shall

open on signal; however, the draw need not be opened for upbound vessels when the draw of the Florida East Coast railroad bridge, mile 2.5 at Fort Lauderdale, is in the closed position for the passage of a train.

§ 117.315 New River, South Fork.

(a) The draw of the Southwest 12th Street bridge, mile 0.9 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draws need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

(b) The draw of the SR84 bridge, mile 4.4 at Fort Lauderdale, shall open on signal if at least 24 hours notice is given. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

§ 117.317 Okeechobee Waterway.

(a) The draw of the Roosevelt (US1) bridge, mile 7.5 at Stuart, shall open on signal; except that, from 7:30 a.m. to 9 a.m., 12 noon to 2 p.m., and 4 p.m. to 6 p.m. Monday through Friday, the draws need be opened only on the hour and half hour. When the adjacent Florida East Coast Railway bridge is in the closed position on the hour or half hour during restricted periods, the draw need not be opened for eastbound vessels. When the railway bridge is open, the draw shall open upon signal to pass all accumulated vessels. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draws of the Florida East Coast railroad bridges across the St. Lucie River, mile 7.5 at Stuart, and the St. Lucie Canal, mile 38.0 at Port Mayaca, shall operate as follows:

(1) The bridges are not constantly tended.

(2) The draws are normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches one of the bridges, the navigation lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draws lower and lock, providing the scanning equipment reveals nothing under the draws. The draws remain down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draws open and the lights return to flashing green.

(c) The draw of the Seaboard System Railroad bridge, mile 28.5 at Indiantown, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given.

(d) The draw of the Belle Glade Dike (SR71) bridge, mile 60.7 between Torry Island and Lake Shore, shall open on signal from 7 a.m. to 6 p.m. Monday through Thursday, and from 7 a.m. to 7 p.m. Friday through Sunday. At all other times, the draw need not be opened for the passage of vessels.

(e) The draws of the Seaboard System Railroad bridge, mile 78.3 at Moorehaven, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw need not be opened for the passage of vessels.

(f) The draw of the US27 bridge, mile 78.4 at Moorehaven, the SR29 bridge, mile 103.0 at LaBelle, the SR78A bridge, mile 108.2 at Denaud, the SR78A bridge, mile 116.0 at Alva, and the SR78A bridge, mile 126.3 near Olga, all across the Caloosahatchee Canal and River, shall open on signal; except that, from 10 p.m. to 6 a.m., the draws shall open on signal if at least three hours notice is given.

(g) The draw of the Edison Memorial (US41) bridge, mile 134.5 at Fort Myers, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and from 5 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.319 Oklawaha River.

The draws of the Sharpes Ferry (SR40) bridge, mile 55.1, Muclan Farms bridge, mile 63.9, Moss Bluff (SR46) bridge, mile 66.0, and the Starkes Ferry (SR42) bridge, mile 73.0, shall open on signal if at least three hours notice is given.

§ 117.321 Orange River.

The draw of the SR80 bridge, mile 0.9 between Fort Myers Shores and Tice, shall open on signal if at least 24 hours notice is given. During a hurricane alert for the Caloosahatchee and Orange Rivers area issued by the National Weather Service, the draw shall open at any time.

§ 117.325 St. Johns River.

(a) The draws of the Main Street (US17) bridge, mile 24.7, the Acosta bridge, mile 24.9, and the Fuller Warren (I10–I95) bridge, mile 25.4, all at Jacksonville, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Saturday except holidays, the draw need not be opened for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

(b) The draw of the Florida East Coast automated railroad bridge, mile 24.9, shall operate as follows:

(1) The bridge shall be constantly tended and have a mechanical override capability for the automated operation. A radiotelephone shall be maintained at the bridge for the safety of navigation.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches, large signs on both the upstream and downstream sides of the bridge flash "Bridge Coming Down," the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

§ 117.327 St. Marks River.

The draw of the US98 bridge, mile 9.0 at St. Marks, shall open on signal if at least 48 hours notice is given to the State Road Department Maintenance Office, Tallahassee, Florida.

§ 117.329 St. Marys River.

The draws of US17 bridge, mile 23.0, and the Seaboard System Railroad bridge, mile 23.1, both at Kingsland, shall open on signal if at least 48 hours notice is given.

§ 117.331 Steinhatchee River.

The draw of the SR358 bridge, mile 2.3 at Steinhatchee, shall open on signal if at least three hours notice is given.

§ 117.333 Suwannee River.

The draw of the Seaboard System Railroad bridge, mile 35.0 at Old Town, shall open on signal if at least five days notice is given.

§ 117.335 Taylor Creek.

The draw of US441 bridge, mile 0.3 at Okeechobee, shall open on signal if at least two hours is given.

§ 117.337 Trout River.

The draw of the Seaboard System Railroad bridge, mile 0.9 at Panama Park, shall open on signal from 6 a.m. to 10 p.m. From 10 p.m. to 6 a.m., the draw

shall open on signal if at least 12 hours notice is given.

§ 117.339 West Palm Beach Canal.

The draw of the US1 bridge, mile 0.1 at West Palm Beach, shall open on signal if at least 24 hours notice is given.

§ 117.341 Whitcomb Bayou.

The draw of the highway bridge, mile 0.5 at Tarpon Springs, shall open on signal from 9 a.m. to 6 p.m. on Saturdays and Sundays. At all other times, the draw shall open on signal if at least two hours notice is given.

Georgia

§ 117.351 Altamaha River.

(a) The draws of all bridges, except the Seaboard System Railroad bridge, mile 59.4 at Doctortown, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 59.4 at Doctortown, shall open on signal if at least seven days notice is given.

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) The draw of the Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except holidays, the draw need not be opened, other than at 8:10 a.m. and 5:20 p.m., if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress, shall be passed at any time.

(b) The draw of the SR80 bridge across the Wilmington River, mile 582.8 at Thunderbolt, shall open on signal; except that, from 7:45 a.m. to 9:15 a.m. and 5 p.m. to 6:30 Monday through Friday except holidays, the draw need not be opened other than at 8:30 a.m. and 5:45 p.m., if a vessel is waiting to pass. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(c) The draw of the Torras Causeway bridge across the Frederica River, mile 675.5 at St. Simons Island, shall open on signal; except that, from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. Monday though Friday except holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.355 Back River.

The draw of the St. Simons Island Causeway bridge, mile 1.5 between Brunswick and St. Simon's Island, shall open on signal; except that, from 6 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., the draw need be opened only on the hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.359 Chattahoochee River.

The draw of the Central of Georgia railroad bridge, mile 117.1 at Omaha, shall open on signal if at least six hours notice is given.

§ 117.361 Flint River.

The draws of the Seaboard System Railroad bridges, miles 28.0 and 28.7, both at Bainbridge, shall open on signal if at least 15 days notice is given.

§ 117.363 Ocmulgee River.

The draws of each bridge shall open on signal if at least 24 hours notice is given.

§ 117.365 Oconee River.

The draw of the SR46 bridge, mile 44.3 near Soperton, shall open on signal if at least 24 hours notice is given.

§ 117.367 Ogeechee River.

(a) The draw of the Seaboard System Railroad bridge, mile 30.7 at Richmond Hill, shall open on signal if at least 15 days notice is given.

(b) The draw of the highway bridge, mile 37.8 near Richmond Hill, need not be opended for the passage of vessels.

§ 117.369 Satilla River.

The draw of the Seaboard System Railroad bridge, mile 25.7 at Woodbine, shall open on signal if at least 24 hours notice is given.

§ 117.371 Savannah River.

(a) The draw of the Seaboard System Railroad bridge, mile 60.9 shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the birdge tender's house and the dispatcher's office in Savannah.

(b) The draw of the Seaboard System Railroad bridge, mile 135.4 near Augusta, shall open on signal if at least three hours notice is given.

§ 117.373 St. Marys River.

The draws of the US17 bridge, mile 23.0 and the Seaboard System Railroad bridge, mile 23.1, both at Kingsland, shall open on signal if at least 48 hours notice is given.

Idaho

§ 117.381 Clearwater River.

The draws of the Union Pacific (Camas Prairie) railroad bridge, mile 0.6 at Lewiston, shall open on signal if at least three hours notice is given to the Camas Prairie Railroad in Lewiston.

§ 117.383 Pend Oreille River.

The draw of the Burlington Northern railroad bridge, mile 111.3 near Sandpoint, need not be opened for the passage of vessels.

§ 117.385 Snake River.

The draw of the US12 bridge, mile 140.0 between Lewiston, Idaho, and Clarkston, Washington, operates as follows:

(a) From March 15 through November 15 at 6 a.m., 10 a.m., 3 p.m., 7 p.m., and 9 p.m., the draw shall open if at least two hours notice is given to the Washington State Department of Transportation.

(b) From November 16 through March 14 at 9 a.m., 10 a.m., 2 p.m., and 3 p.m., the draw shall open if at least two hours notice is given to the Washington State Department of Transportation.

(c) At all other times, the draw need not be opened.

Illinois

§ 117.389 Calumet River.

The draws of the Conrail bridges, miles 1.4 and 1.5 at Chicago, operate as follows:

(a) The draws shall open on signal; except that, if either one of the bridges is inoperable because of equipment breakdown, the other bridge need not be opened.

(b) In addition to the signals prescribed in § 117.15, the following special visual signals shall be used on the bridges:

(1) When the draw cannot be opened immediately, or is open and must be closed promptly, two red lights are flashed alternately.

(2) When the draw can be opened immediately, two amber lights are flashed alternately.

(3) When the draw is open for passage, two green lights are flashed alternately.

§ 117.391 Chicago River.

(a) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South Branches, across the South Branch from the junction to and including the West Roosevelt Road, and across the North Branch to and including North Kinzie Street and the Northwest Expressway Feeder bridge shall open on signal from April 1 through December 31; except that, from Monday through Friday from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m., the draws need not be opened for the passage of vessels.

(b) The draws of the bridge across the North Branch of the Chicago River at Grant Avenue, the bridges across the North Branch of the Chicago River north of the Northwest Expressway Feeder bridge to and including North Halsted Street and the bridges across the South Branch of the Chicago River above South Halsted Street to and including West Roosevelt Road shall open on signal from April 1 through December 31; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not be opened for the passage of vessels.

(c) The draws of the bridges across the North Branch of the Chicago River north of North Halsted Street and the South Branch of the Chicago River south of South Halsted Street shall open on signal from April 1 through December 31; except that, from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not be opened for the passage of vessels.

(d) From January 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, North Branch Canal, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given.

(e) The Randolph Street, Cermak Road, Throop Street, and Loomis Street bridges across the South Branch of the Chicago River, the North Halsted Street bridge across the North Branch Canal, and the West Kinzie Street bridge across the North Branch of the Chicago River shall open on signal from April 1 through December 31.

(f) The draw of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge across the North Branch Canal need not be opened for the passage of vessels.

(g) Draws of the following bridges in Chicago shall open on signal if tended or within 30 minutes after notice is given to the Port Director's Office:

(1) *Chicago River, South Branch.*

Washington Street.
Madison Street.
Monroe Street.
Adams Street.
Jackson Boulevard.
Van Buren Street.
Congress Street (Eisenhower Expressway).
Harrison Street.
Roosevelt Road.
Eighteenth Street.
Canal Street.
South Halsted Street.

(2) *West Fork of the South Branch.*

South Ashland Avenue.
South Damen Avenue.

(3) *Chicago River, North Branch.*

Grand Avenue.
Chicago Avenue.
North Halsted Street.
Ogden Avenue.
Division Street.

(4) *North Branch Canal.*

Ogden Avenue.
Division Street.

(h) The draws of bridges across the North Branch Canal that have a vertical clearance of less than 17 feet above Low Water Datum for Lake Michigan shall open at any time to permit the passage of tugs and tugboats.

(i) The draws of any of the bridges listed in this section shall open as soon as possible for the passage of emergency vessels of the City of Chicago or public vessels of the United States.

(j) The draw of the Lake Shore Drive bridge across Ogden Slip need not be opened for the passage of vessels.

(k) The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River need not be opened for the passage of vessels.

(l) The opening signal for all Chicago River bridges is three short blasts or by shouting; except that, four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near West Kinzie Street and the Milwaukee Road bridge near West North Avenue and five short blasts is the opening signal for the Lake Shore bridge when approaching from the north.

§ 117.393 Illinois River.

The draw of the automated Burlington Northern railroad bridge, mile 88.8 at Beardstown, Illinois, operates as follows:

(a) The draw is normally maintained in the fully open position, displaying a green light to indicate that vessels may pass.

(b) When a vessel is approaching and the draw is in the open position, contact shall be established by radiotelephone with the remote operator to assure that the draw remains open until passage is complete.

(c) When a vessel is approaching and the draw is in the closed position, contact shall be established by radiotelephone with the remote operator. If the draw cannot be opened immediately, alternate flashing red lights are displayed. If the draw can be opened immediately, flashing amber lights are displayed.

(d) When a train approaches the bridge and the draw is in the open position, the operator shall activate alternate flashing red lights on top of the draw, sound four short blasts, and scan the river on radar to determine whether any vessel is approaching the bridge. The remote operator shall also broadcast that the draw is closing. If a vessel or vessels are approaching the bridge within one mile, as determined by radar scanning, response to radio broadcast, or electronic detector, the flashing red lights shall be changed to flashing amber and the operator shall keep the draw in the fully open position until the vessel or vessels have cleared the bridge. If no vessel is approaching the bridge or is beneath the draw, the draw may be lowered and locked in place.

(e) After the train has cleared the bridge, the draw shall be raised to its full height and locked in place, the red flashing lights stopped, and the draw lights changed from red to green.

§ 117.395 Illinois Waterway.

The draws of the McDonough Street bridge, mile 287.3, Jefferson Street bridge, mile 287.9, Cass Street bridge, mile 288.1, Jackson Street bridge, mile 288.4, and Ruby Street bridge, mile 288.7, all at Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 8 a.m. and from 4:30 p.m. to 5:30 p.m. Monday through Saturday.

§ 117.397 Wabash River.

The draws of each bridge across the Wabash River shall open on signal if at least 72 hours notice is given.

Indiana

§ 117.401 Trail Creek.

The draw of the Amtrak bridge, mile 0.9 at Michigan City, shall open on signal from 6:30 a.m. to 2:30 p.m. daily except Sunday from Feburary 16 through December 14. The draw is not manned at all other times. If passage is desired, the Chief Dispatcher, Amtrak at Chicago, shall be notified. Collect telephone calls are accepted. The dispatcher shall arrange to have the draw open within 20 minutes.

§117.403 Wasbash River.

The draws of each bridge across the Wabash River shall open on signal if at least 72 hours notice is given.

Iowa

§ 117.407 Missouri River.

The draws of the bridges across the Missouri River from the mouth to Sioux City shall open on signal; except that, from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

Kansas

§ 117.411 Missouri River.

The draws of the bridges across the Missouri River from the mouth to Sioux City, Iowa, shall open on signal; except that, from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

Kentucky

§ 117.415 Green River.

(a) The draw of the Seaboard System Railroad bridge, mile 8.3 at Spottsville, shall open on signal when there is 40 feet or less of vertical clearance beneath the draw. When the vertical clearance is more than 40 feet, at least four hours notice shall be given. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity. A summary of the provisions in this paragraph shall be conspicuously posted at Green River Navigation Locks Nos. 1, 2, 3, and 4.

(b) The draws of the Seaboard System Railroad bridges, miles 71.2 and 79.6 at Livermore and Smallhouse, are normally maintained in the fully open position and a vessel may pass through the draw without further signals. When the draws are in the closed position, they shall open on signal when there is 40 feet or less of vertical clearance. During this period, if the drawtender is informed at the time the vessel passes through the draw that the vessel will return within four hours, the drawtender shall remain on duty until the vessel returns but is not required to remain for longer than four hours. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity. A summary of the provisions in this paragraph shall be conspicuously posted at Green River Navigation Locks Nos. 1, 2, 3, and 4.

(c) The Illinois Central Gulf railroad bridge, mile 95.8 at Rockport, is operated as follows:

(1) When the stage of the river permits a vertical clearance of 34 feet or more under the closed draw, as determined from gauges attached to the upstream and downstream sides of the bridge, the draw shall open on signal for vessels requiring greater clearance if at least eight hours notice is given. If for any reason the vessel is delayed and cannot arrive for passage at the time specified, the authorized representative must be promptly notified of the estimated delay for opening the draw.

(2) When the stage of the river does not permit a vertical clearance of 34 feet or more under the closed draw, the draw is normally maintained in the position and automatic closing for passing of trains is in effect. The owner of the bridge shall arrange for ready telephone communication with an authorized representative at any time from the bridge or its immediate vicinity. A summary of the provisions in paragraph (c) of this section and the automatic operating procedure shall be conspicuously posted at Green River Navigation Locks Nos. 1, 2, 3, and 4.

§ 117.417 Ohio River.

The draw of the Southern Railway railroad bridge, mile 607.4 at New Albany, Indiana, need not be opened for the passage of vessles.

Louisiana

§ 117.423 Amite River.

(a) The draw of the S22 bridge, mile 6.0 at Clio, shall open on signal; except that, from 5 p.m. to 9 a.m., the draw shall open on signal if at least 12 hours notice is given.

(b) The draws of the S16 bridge, mile 21.4 near French Settlement, and the S42 bridge, mile 32.0 at Port Vincent, shall open on signal if at least 48 hours notice is given.

§ 117.425 Black Bayou.

The draws of the US90–S20 bridge, mile 7.0 near Gibson, and Terrebonne Parish Police Jury bridges, miles 7.5, 15.0, 18.7, and 22.5, between Gibson and Houma, shall open on signal if at least 24 hours notice is given.

§ 117.427 Black River.

The draw of the US84 bridge, mile 41.0 at Jonesville, shall open on signal if at least one hour notice is given.

§ 117.429 Boeuf Bayou.

The draw of the S307 bridge, mile 1.3 at Kraemer, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.431 Boeuf River.

The draw of the S4 bridge, mile 32.3 near Mason, shall open on signal if at least 48 hours notice is given.

§ 117.433 Bonfouca Bayou.

The draw of the S433 bridge, mile 7.0 at Slidell, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.435 Caddo Lake.

The draw of the Kansas City Southern railroad bridge, mile 26.4 near Mooringsport, shall open on signal if at least 24 hours notice is given.

§ 117.437 Colyell Bayou.

The removable span of the Louisiana highway bridge, mile 1.0 near Port Vincent, shall be removed for the passage of vessels if at least 48 hours notice is given.

§ 117.439 Des Allemands Bayou.

The draws of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.441 D'Inde Bayou.

The draw of the Southern Pacific railroad bridge, mile 4.3, shall open on signal if at least 72 hours notice is given to the Defense Plant Corporation, Cities Service Refining Corporation Agent.

§ 117.443 DuLarge Bayou.

The draw of the Terrebonne Parish bridge, mile 23.2 near Theriot, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.445 Franklin Canal.

The draw of the Chatsworth bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.447 Grand Cabahanosse Bayou.

The draw of the S70 bridge, mile 7.6 near Paincourtville, shall open on signal if at least 24 hours is given.

§ 117.449 Grosse Tete Bayou.

(a) The draw of the Texas and Pacific railroad bridge, mile 14.7 at Grosse Tete, need not be opened for the passage of vessels.

(b) The removable span of the S377 bridge, mile 15.3 near Rosedale, shall be removed for the passage of vessels if at least 48 hours notice is given.

§ 117.451 Gulf Intracoastal Waterway.

(a) The draw of the Lapalco Boulevard Bridge, Harvey Canal Route, mile 2.8 at Harvey, shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels.

(b) The draw of the S23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, shall open on signal; except that, from 3:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

(c) The draws of the East Main Street bridge, mile 57.5, East Part Avenue bridge, mile 57.6, and the Bayou Dularge bridge, mile 59.9, all at Houma, shall open on signal; except that, the draws need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

(d) The draw of the Louisiana highway bridge, mile 243.8 west of Harvey Canal Locks, shall open on signal when more than 50 feet vertical clearance is required, if at least four hours notice is given to the Louisiana Department of Highways, District Maintenance Engineer, at Lake Charles.

§ 117.453 Houma Canal.

The draw of the S3197 bridge, mile 1.7 at Houma, shall open on signal; except that, from 9 p.m., to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.455 Houma Navigation Canal.

The draw of the bridge across the Houma Navigation Canal at S661, mile 36.0 at Houma, shall open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

§ 117.457 Houston River.

The draw of the Kansas City Southern Railroad bridge, mile 5.2 near Lake Charles, shall open on signal if at least 24 hours notice is given.

§ 117.459 Inner Harbor Navigation Canal, New Orleans.

The draws of the Danziger bridge, mile 3.1 at Chef Menteur Highway (US90), and the New Seabrook bridge, mile 4.6, shall open on signal; except that, from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday, the draws need not be opened.

§ 117.460 La Carpe Bayou.

The draw of the S661 bridge, mile 7.5, shall open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

§ 117.461 Lacassine Bayou.

The draws of S14 bridge, mile 17.0, and the Southern Pacific railroad bridge, mile 20.4, both near Hayes, shall open on signal if at least 24 hours notice is given.

§ 117.463 Lacombe Bayou.

The draw of the US190 bridge, mile 6.8 at Lacombe, shall open on signal if at least 48 hours notice is given.

§ 117.465 Lafourche Bayou.

(a) The draws of the US90–S1 bridge, mile 58.2, and the Lafourche Parish bridge, mile 58.7, both at Raceland, and the S649 bridge, mile 66.1 at Lafourche, shall open on signal if at least six hours notice is given.

(b) The draws of the Southern Pacific railroad bridge, mile 69.0 at Lafourche, shall open on signal if at least 48 hours notice is given.

(c) The draws of the S20 bridge, mile 73.4 at Thibodaux, and all bridges upstream of the S20 bridge need not be opened for the passage of vessels.

§ 117.467 Lake Pontchartrain.

(a) The south draws of the S11 and the Southern Railway bridges near New Orleans shall open on signal if at least 48 hours notice is given. In case of emergency, the draws shall open within 12 hours and shall be kept in condition for immediate operation until the emergency is over.

(b) The draws of the Greater New Orleans Expressway Commission causeway, north bascule spans, shall open on signal if at least three hours notice is given.

§ 117.469 Liberty Bayou.

The draw of the S433 bridge, mile 2.0 at Slidell, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.471 Little Black Bayou.

The draw of the Southern Pacific railroad bridge, mile 1.3 at Southdown, need not be opened for the passage of vessels.

§ 117.473 Little River.

The draw of the Louisiana and Arkansas railroad bridge, mile 12.1 at Archie, shall open on signal if at least 12 hours notice is given.

§ 117.475 Little (Petit) Caillou Bayou.

The draws of the S58 bridge, mile 25.7 at Sarah, the Terrebonne Parish (Smith River) bridge, mile 26.6 near Montegut, the Terrebonne Parish (Duplantis) bridge, mile 29.9 near Bourg, and the S24 bridge, mile 33.7 at Petit Caillou, shall open on signal; except that, from 9 p.m. to 5 a.m., the draws shall open on signal if at least 12 hours notice is given.

§ 117.477 Lower Atchafalaya River.

The draw of the St. Mary Parish bridge, mile 26.8 at Patterson, shall open on signal from 5 a.m. to 9 p.m. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall open on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.479 Macon Bayou.

The draw of the S4 bridge, mile 44.8 near Winnsboro, shall open on signal if at least 24 hours notice is given.

§ 117.481 Nezpique Bayou.

The draw of the S97 bridge, mile 7.0 near Jennings, shall open on signal if at least 48 hours notice is given.

§ 117.483 Ouachita River.

The draws of the S8 bridge, mile 57.5 at Harrisonburg, and the US165 bridge, mile 110.1 at Columbia, shall open on signal if at least one hours notice is given.

§ 117.485 Patout Bayou.

The draw of the S83 bridge, mile 0.4 at Weeks, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall be open on signal if at least 12 hours notice is given.

§ 117.487 Plaquemine Bayou.

The draws of the Texas and Pacific railroad bridge, mile 10.5 at Plaquemine, and the S1 bridge, mile 10.5 at Plaquemine, need not be opened for the passage of vessels.

§ 117.489 Plaquemine Brule Bayou.

(a) The draw of the Southern Pacific railroad bridge, mile 5.1 near Midland, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S91 bridge, mile 8.0 at Estherwood, shall open on signal from 5 a.m. to 9 p.m. if at least four hours notice is given. From 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.491 Red River.

(a) The draws of all bridges from mile 66.0 through mile 283.1 shall open on signal if at least 48 hours notice is given. The draws of the bridges need not be opened for a vessel that arrives at any of these bridges more than two hours after the time specified in the notice, unless a second notice of at least 48 hours is given.

(b) The draws of the bridges above mile 283.1 need not be open for the passage of vessels.

§ 117.493 Sabine River.

The draws of the Southern Pacific railroad bridge, mile 19.3 near Echo, the Kansas City Southern railroad bridge, mile 36.2 near Ruliff, and the S7 bridge, mile 40.8 at Starks, shall open on signal if at least 24 hours notice is given.

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge, mile 6.3 in Cameron Parish, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open if at least 12 hours notice is given.

§ 117.497 Stumpy Bayou.

The removable span of the Louisiana highway bridge, mile 1.0 near Weeks Island, shall be removed for the passage of vessels if at least six days notice is given.

§ 117.499 Tante Phine Pass.

The draw of the Tidewater Associated Oil Company bridge, mile 7.6 near Venice, shall open on signal if at least 24 hours notice is given.

§ 117.501 Teche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from October 1 through January 31 from 9 p.m. to 5 p.m., the draws shall open if at least three hours notice is given and, from February 1 through September 30 from 9 p.m. to 5 a.m., if at least 12 hours notice is given:

(1) St. Mary Parish bridge, mile 3.9 at Calumet.

(2) St. Mary Parish bridge, mile 11.8 at Centerville.

(3) S3069 bridge, mile 16.3 at Franklin.

(4) S322 bridge, mile 17.2 at Sterling.

(5) S323 bridge, mile 22.3 at Oaklawn.

(6) St. Mary Parish bridge, mile 27.0 at Baldwin.

(7) S324 bridge, mile 32.5 at Charenton.

(8) S670 bridge, mile 37.0 at Adeline.

(9) St. Mary Parish bridge, mile 38.9 at Sorell.

(10) S671 bridge, mile 41.8 at Jeanerette.

(11) S3182 bridge, mile 43.5 at Jeanerette.

(12) S320 bridge, mile 48.7 at Olivier.

(13) S87 Spur bridge, mile 52.5 at New Iberia.

(14) S86 bridge, mile 53.0 at New Iberia.

(15) S3156 bridge, mile 53.3 at New Iberia.

(16) S44 bridge, mile 56.7 at Morbihan.

(b) The draws of the following bridges shall open on signal; except that, from 9 p.m. to 5 a.m., the draws shall open if at least 12 hours notice is given:

(1) Iberia Parish bridge, mile 58.0 at New Iberia.

(2) Iberia Parish bridge, mile 60.7 at Vida.

(3) Missouri Pacific railroad bridge, mile 61.0 at Loreauville.

(4) S344 bridge, mile 62.5 at Loreauville.

(5) S86 bridge, mile 69.0 at Daspit.

(6) St. Martin Sugar Cooperative railroad bridge, mile 77.7 at Loreauville.

(c) The draws of the S96 bridge, mile 75.2 at St. Martinville, and the S350 bridge, mile 82.0 at Parks, shall open on signal if at least 24 hours notice is given.

(d) The draws of the S351 bridge, mile 87.5 at Ruth, the S31 bridge, mile 90.5 at Breaux Bridge, and the Southern Pacific railroad bridge, mile 91.0 at Breaux Bridge, shall open on signal if at least 48 hours notice is given.

§ 117.503 Tensas River.

(a) The draw of the Missouri Pacific railroad bridge, mile 27.2 at Clayton, shall open on signal from May 1 through December 31 during normal river stages if at least 12 hours notice is given to the Dispatcher, Missouri Pacific Railroad, Little Rock, Arkansas. During high-water periods, the District Commander may require that the bridge be constantly tended and the draw opened on signal.

(b) The draws of the S15 bridge, mile 27.3 at Clayton, and the S128 bridge, mile 61.0 at New Light, shall open on signal if at least 48 hours notice is given.

§ 117.505 Terrebonne Bayou.

(a) The draw of the S24 bridge, mile 28.8 near Presquille Isle, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S3087 bridge, mile 33.9 at Prospect, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

(c) The draw of the bridge, mile 35.5 at Daigleville, shall open on signal, except that the draw need not open for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

§ 117.507 Tigre Bayou.

The draw of the S330 bridge, mile 2.3 at Delcambre, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.509 Vermilion River.

(a) The draws of the following bridges shall open on signal from 5 a.m. to 9 p.m.; and from 9 p.m. to 5 a.m., the draws shall open on signal if at least 12 hours notice is given:

(1) S82 bridge, mile 22.4 at Perry.

(2) S14 bridge, mile 25.4 at Abbeville.

(3) S14 bridge, mile 26.0 at Abbeville.

(4) Vermillion Parish bridge, mile 34.2 three miles south of Milton.

(5) S92 bridge, mile 37.6 at Milton.

(6) S733 bridge, mile 41.0 at Eloi Broussard.

(7) S3073 bridge, mile 44.9 at New Flanders.

(b) The draw of the S182 bridge, mile 49.0 at Lafayette, shall open on signal if at least 48 hours notice is given.

§ 117.511 West Pearl River.

(a) The draw of the Southern Railway bridge, mile 22.1 at Pearl River Station, shall open on signal if at least six hours notice is given.

(b) The draw of the US90 bridge, mile 7.9 near Pearlington, shall be opened on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Maine

§ 117.521 Back Cove.

The draw of the Canadian National railroad bridge, mile 0.2 at Portland, need not be opened for the passage of vessels. The draw shall be returned to operable condition within six months after notification from the District Commander to do so.

§ 117.523 Back River.

The draw of the Maine Department of Transportation highway bridge, mile 4.6 between Hodgdon and Barters Island at Boothbay, shall open on signal from June 1 through October 31; except that, from 5 p.m. to 8 a.m., the draw shall be opened on signal if notice was given to the drawtender from 8 a.m. to 5 p.m. From November 1 through May 31 the draw shall open on signal if at least 24 hours notice is given to the drawtender or to the Maine Department of Transportation at Augusta.

§ 117.524 Fore River.

(a) The owners of the I–295 bridge, mile 3.4 between Portland and South Portland, shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be placed on the bridge so that they are plainly visible to the operator of a vessel approaching the bridge either up or downstream.

(b) Operators of vessels which can pass under the bridge with a vertical clearance of two feet or more shall not signal for the opening of the draw. In case the operator gives the prescribed signal and the drawtender is uncertain as to whether the vessel can safely pass, the drawtender opens the draw. If the drawtender finds that there would have been a clearance of two feet or more

had the draw remained closed, the matter shall be reported immediately to the District Commander, giving the name of the vessel, the time of opening the draw, the vertical clearance under the bridge as indicated by the gage at the time of opening the draw, and the approximate vertical clearance required by the vessel.

§ 117.525 Kennebec River.

(a) The draw of the highway-railroad bridge, mile 14.0 between Bath and Woolwich, shall open on signal:

(1) From June 16 through September; except that, from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 4:45 p.m. Monday through Friday excluding holidays observed in the locality, the draw need not be opened except for loaded commercial fishing vessels proceeding upstream.

(2) From 3 a.m. to 7 p.m., from April 15 through June 15 and from October 1 through November 15; and at all times from June 16 through September 30.

(3) From April 15 through June 15 and October 1 through November 15 from 7 p.m. to 3 a.m. if at least four hours notice is given.

(4) From February 15 through April 14 and November 16 through December 15 if at least four hours notice is given.

(5) From December 16 through February 14 if at least 24 hours notice is given.

(b) The draw of the Maine highway bridge, mile 27.1 between Richmond and Dresden, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if notice is given to the drawtender from 5 a.m. to 9 p.m.

§ 117.527 Kennebunk River.

The draw of the Main Dock Square highway bridge, mile 1.0 between Kennebunk and Kennebunkport, shall open on signal from April 15 through October 15; except that, from 5 p.m. to 7 a.m., the draw shall open on signal if notice is given to the drawtender from 7 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given to the Main Department of Transportation, Division Office at Scarborough.

§ 117.529 Narraguagus River.

The draw of the highway bridge, mile 1.8 at Milbridge, shall open on signal if at least 24 hours notice is given to the Main State Highway Commission, Division Office at Ellsworth.

§ 117.531 Piscataqua River.

The owners of the U.S. Government bridge, mile 3.5 at Kittery, the Maine Department of Transportation bridge, mile 4.0 at Portsmouth, and the New Hampshire highway bridge, mile 9.4 at Bellany, shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draws at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to the operator of a vessel approaching the bridge either up or downstream.

§ 117.533 Sheepscot River.

The draws of the Maine highway bridge, mile 14, and the Maine Central railroad bridge, mile 15.0, both between Wiscasset and North Edgecombe, need not be opened for the passage of vessels. The draw of the Maine Central railroad bridge shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.535 Taunton River.

The draw of the Maine highway bridge, mile 4.3 between Hancock and Sullivan, need not be opened for the passage of vessels.

Maryland

§ 117.541 Baltimore Harbor—Patapsco River.

(a) The draw of the Hanover Street S2 bridge, mile 12.0 across the Middle Branch of the Patapsco River at Baltimore, shall open on signal from 5 a.m. to 6:30 a.m., 9:30 a.m. to 4 p.m., and 6 p.m. to 9:00 p.m. The draw need not be opened from 6:30 a.m. to 9:30 a.m. and 4 p.m. to 6 p.m.; however, fire boats, police boats, and other vessels engaged in emergency operations shall be passed immediately during this period. When a vessel desires to pass the draw from 9 p.m. to 5 a.m., notice shall be given to the superintendent of the bridge, either at the bridge before 9 p.m. or at the superintendent's residence after 9 p.m. If the notice is given from 5 a.m. to 9 p.m. or if at least one half hour has elapsed since the notice was given, the draw shall open promptly at the time requested.

(b) The draw of the Western Maryland railroad bridge, mile 12.5 across the Middle Branch of the Patapsco River at Baltimore, shall open on signal from 7 a.m. to 12 noon and 1 p.m. to 4 p.m. Monday through Friday except legal holidays. At all other times, the draw shall open if at least six hours notice is given. Marine firefighting equipment and pollution control vessels shall be passed as soon as possible but in no event more than 15 minutes after notice is given.

§ 117.543 Bear Creek.

(a) The draws of the Baltimore County Revenue Authority (Dunbalk Avenue) highway toll bridge, mile 1.5, and the Peninsula Parkway bridge, mile 2.1, both between Dundalk and Sparrows Point, shall open on signal; except that, from April 16 through November 15 from 12 midnight to 8 a.m. except Saturdays, Sundays, and Federal and State holidays, at least one half hour notice is required.

(b) The draw of the Baltimore County highway bridge, mile 3.4 at Wise Avenue between Dundalk and Sparrows Point, shall open on signal if at least four hours notice is given.

§ 117.545 Bohemia River.

(a) The draw of the S213 bridge, mile 4.0 at Cayots, shall open on signal from May 30 through September 30 on Saturdays, Sundays, and Federal and State holidays; from May 30 through September 30, Monday through Friday; and from October 1 through May 29 from 7 a.m. Monday through 7 p.m. Friday if at least three hours notice is given. From October 1 through May 29 from 7 p.m. Friday through 7 a.m. Monday, the draw need not be opened unless the request is made before 7 p.m. Friday.

§ 117.547 Bush River.

The draw of the Amtrak bridge, mile 6.8 at Perryman, shall open on signal twice on Saturdays and twice on Sundays from 10 a.m. to 5 p.m. from June 1 through September 30 if at least 24 hours notice is given to the Bush River Boat Club. The draw need not be opened at all other times.

§ 117.549 Cambridge Harbor.

The draw of the S342 bridge, mile 0.1 at Cambridge, shall open on signal from 6 a.m. to 8 p.m.; except that, from 12 noon to 1 p.m. Monday through Friday, the draw need not be opened. The draw need not be opened from 8 p.m. to 6 a.m.

§ 117.551 Chester River.

The draw of the S213 bridge, mile 26.8 at Chestertown, shall open on signal from April 1 though September 30 from 6 a.m. to 6 p.m. At all other times, the draw shall open on signal if at least six hours notice is given.

§ 117.553 Choptank River.

The draw of the Conrail bridge, mile 50.9 at Denton, shall open on signal from May 30 through September 30 from sunrise to sunset and at all other times if at least four hours notice is given.

§ 117.555 College Creek.

The draws of the Naval Academy highway bridge, mile 0.3 at Annapolis,

and the Maryland highway bridge, mile 0.4 at Annapolis, need not be opened for the passage of vessels.

§ 117.557 Curtis Creek.

The draw of the I695 bridge, mile 0.9 at Baltimore, shall open on signal if at least a one-hour notice is given to the Maryland Transportation Authority in Baltimore.

§ 117.559 Isle of Wright Bay.

The draw of the US50 bridge, mile 0.5 at Ocean City, shall open on signal; except that, from October 1 through April 30 from 6 p.m to 6 a.m., the draw shall open if at least three hours notice is given and, from May 25 through September 15 from 9:25 a.m. to 9:55 p.m., the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to permit accumulated vessels to pass.

§ 117.561 Kent Island Narrows.

The draw of the US301 bridge, mile 1.0 at Kent Island Narrows, operates as follows:

(a) From November 1 through April 30, the draw shall open on signal from 6 a.m. to 6 p.m. but need not be opened from 6 p.m. to 6 a.m.

(b) From May 1 through October 31—

(1) On Monday (except Monday holidays) through Thursday, the draw shall open on signal on the hour from 7 a.m. to 7 p.m. but need not be opened at any other time.

(2) On Friday, the draw shall open on signal on the hour from 6 a.m. to 3 p.m. and at 8 p.m. but need not be opened at any other time.

(3) On Saturday, the draw shall open on signal at 6 a.m., 9 a.m., and 12 noon and on the hour from 3 p.m. to 8 p.m. but need not be opened at any other time.

(4) On Sunday and holidays falling on Monday, the draw shall open on signal on the hour from 6 a.m. to 1 p.m. and at 8 p.m. but need not be opened at any other time.

(5) The draw shall open at scheduled opening times only if vessels are waiting to pass. At each opening, the draw shall remain open for a sufficient period of time to allow passage of all waiting vessels.

(6) If a vessel is approaching the bridge and cannot reach the bridge exactly on the hour, the drawtender may delay the hourly opening up to ten minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(c) All public vessels of the United States and State or local vessels on public safety missions shall be passed at any time. The opening signal for these vessels is five or more blasts of a whistle or horn.

§ 117.563 Marshyhope Creek.

The draw of the S14 bridge, mile 5.8 at Brookview, need not be opened for the passage of vessels. The operating machinery shall be maintained in a serviceable condition.

§ 117.565 Miles River.

The draw of the S370 bridge, mile 10.0 at Easton, shall open on signal from sunrise to sunset. A vessel wishing to pass through the draw between sunset and sunrise shall notify the drawtender of the time at which it is desired to pass and the draw shall open as close to the time requested as practicable.

§ 117.567 Patuxent River.

The draw of S231 bridge, mile 24.4 at Benedict, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if notice is given to the Toll Captain at the Administration Building at the east end of the bridge before 6 p.m.

§ 117.569 Pocomoke River.

(a) The draw of the US13 bridge, mile 15.6 at Pocomoke City, shall open on signal, except that the draw need not open from 10 p.m. to 6 a.m.

(b) The draw of the S12 bridge, mile 29.9 at Snow Hill, shall open on signal if at least five hours notice is given.

§ 117.571 Spa Creek.

The draw of the S181 bridge, mile 0.4 at Annapolis, shall open on signal; except that, from 7:30 a.m to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal and State holidays, the draw need not be opened for the passage of vessels and, from May 1 through November 1 from 10 a.m. to 5 p.m. on Saturdays and Sundays, the draw need not be opened except on the hour and half hour if any vessels are waiting to pass. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

§ 117.573 Stoney Creek.

The draw of the S173 bridge, mile 0.9 at Riviera Beach, shall open on signal; except that, from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except Federal and State holidays, the draw need be opened only at 7:30 a.m. and 5 p.m. if any vessels are waiting to pass. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

§ 117.575 Susquehanna River.

The draw of the Conrail bridge, mile 1.0 at Havre de Grace, shall open on signal if at least 24 hours notice is given.

§ 117.577 Weems Creek.

The draw of the S437 bridge, mile 0.7 at West Annapolis, shall open on signal from sunrise to sunset from May 1 through September 30. At all other times, the draw shall open on signal if at least five hours notice is given.

§ 117.579 Wicomico River (North Prong).

The draw of the Main Street (US50) bridge, mile 22.4 at Salisbury, shall open on signal; except that, from 8 a.m. to 9 a.m., 12 noon to 1 p.m., and 4:30 p.m. to 5:30 p.m., the draw need not be opened for the passage of vessels.

Massachusetts

§ 117.585 Achushnet River.

The draws of the US6 bridge, mile 0.0 between New Bedford and Fairhaven, shall open on signal; except that, from 6:30 a.m. to 8:30 a.m., 11:30 a.m. to 1:30 p.m., and 4 p.m. to 6 p.m. on all days other than Sundays and legal holidays, the draws need not be opened for vessels drawing less than 15 feet of water. From May 1 through September 30 from 9 p.m. to 5 a.m., and from October 1 through April 30 from one hour after sunset to one hour before sunrise, the draw shall open on signal if at least two hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible.

§ 117.587 Apponagansett River.

The draw of the Padanarum highway (Gulf Road) bridge, mile 1.0 at South Dartmouth, shall open on signal from May 1 through October 31 from sunrise to 7:30 a.m., 9:30 a.m., 11:30 a.m., 1 p.m., 4:30 p.m., 6:30 p.m., and one hour after sunset. At all other times, the draw shall open on signal if at least six hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible. Mooring facilities shall be maintained on bridge piers or fenders for vessels to make fast to while waiting for the draw to open.

§ 117.589 Cape Cod Canal.

The draw of the Conrail railroad bridge, mile 0.7 at Bourne, shall operate as follows:

(a) The draw is normally in the fully open position except for the passage of trains or for maintenance. No signal is required if the draw is in the fully open position.

(b) If the draw is not in the fully open position, the opening signal is one prolonged and one short blast.

(c) Signals to be sounded from the bridge are—

(1) Immediately preceding the opening of the draw, one prolonged blast;

(2) Immediately preceding the closing of the draw, two prolonged blasts;

(3) When a vessel has sounded the opening signal and the draw cannot be opened immediately, five short blasts in a rapid succession; and

(4) When the draw is closed and visibility is reduced in foggy weather, five short blasts in rapid succession every two minutes.

§ 117.591 Charles River.

(a) The following requirements apply to all drawbridges listed in this section:

(1) The opening signal is two prolonged blasts followed by two short blasts. During a scheduled closed period, the opening signal for vessels entitled to pass at that time is four prolonged blasts. The acknowledging signal when the draw can be opened is three prolonged blasts. The acknowledging signal when the draw cannot be opened or is open and must be closed is two prolonged blasts.

(2) Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible.

(3) When high tide occurs at the Charlestown Navy Yard within 45 minutes before or after 6:15 a.m. to 9:10 a.m., the draws shall open for no longer than a 10 minute period for vessels which draw more than 12 feet of water. Once a vessel has begun passage, it shall be passed through each bridge, in turn, until it reaches its destination.

(b) The draw of the Charlestown bridge, mile 0.4 at Boston, need not be opened for the passage of vessels.

(c) The draws of the Boston & Maine railroad bridge, mile 0.8 at Boston, shall open on signal; except that, from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 7:40 p.m. except Sundays and legal holidays observed in the locality, the draws need not be opened for the passage of vessels.

(d) The draw of the Massachusetts Bay Transportation Authority (East Cambridge Viaduct) railroad bridge, mile 1.0 at Boston, need not be opened for the passage of vessels. However, the operating machinery of the draw shall be maintained in an operable condition.

(e) The draw of the Metropolitan District Commission bridge, mile 1.0 at Boston, shall open on signal; except that, from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 7:40 p.m. except Sundays and legal holidays observed in the locality, the draw need not be opened for the passage of vessels.

(f) The draw of the Commercial Avenue bridge across Lechmere Canal, mile 0.0 at Boston, need not be opened for the passage of vessels.

(g) The draw of the First Street bridge across Broad Canal, mile 0.0 at Boston, shall open on signal from October 1 through May 31; except that, from Monday through Friday except holidays from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., the draws need not be opened. From June 1 through September 30, the draw shall open on signal if at least 12 hours notice is given.

(h) The draws of the bridges across Broad Canal need not be opened for the passage of vessels.

§ 117.593 Chelsea River.

All drawbridges across the Chelsea River shall open on signal. The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and is two prolonged blasts when the draw cannot be opened or is open and must be closed.

§ 117.595 Danvers River.

The draws of the SR1A bridge, mile 0.0, the Boston and Maine railroad bridge, mile 0.0, and the Essex County bridge, mile 1.0, all at Salem, shall open on signal; except that, from 12 midnight to 8 a.m., the draws shall open as soon as possible after notice is given to the drawtenders either at the bridges during the time the operators are on duty or at their residences after that time.

§ 117.597 Dorchester Bay.

The draw of the William T. Morrisey Boulevard bridge, mile 0.0 at Boston, shall open on signal from April 16 through October 14; except that the draw need not open for the passage of vessels from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

§ 117.599 Fort Point Channel.

(a) The draws of the Northern Avenue bridge, mile 0.1 at Boston, shall open on signal; except that, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except holidays, the draw need not be opened for vessels with a draft of less than 18 feet. From 8 p.m. to 6 a.m., the draw need not be opened for the passage of vessels. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(b) The draws of the Congress Street bridge, mile 0.3, and the Summer Street bridge, mile 0.4, both at Boston, need not be opened for the passage of vessels. However, the drawn shall be returned to operable condition with six months after notification by the District Commander to do so.

§ 117.601 Malden River.

The draw of the US1 bridge, mile 0.3 between Medford and Everett, need not be opened for the passage of vessels.

§ 117.603 Manchester Harbor.

The draw of the Boston and Maine railroad bridge, mile 1.0 at Manchester, shall open on signal from April 1 through November 1 from 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m. At all other times, at least two hours notice is required from 6:45 a.m. to 3:45 p.m. and at least five hours notice is required from 3:45 p.m. to 6:45 a.m. The notice is given to the Chief Dispatcher, Boston and Maine Railroad, Boston.

§ 117.605 Merrimack River.

(a) The draw of the US1 bridge, mile 3.4 at Newburyport, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 8 a.m. to 5 p.m. At all other times, the draws shall open if at least a one-hour notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed through the draw as soon as possible.

(b) The draw of the Boston and Maine railroad bridge, mile 3.4 at Newburyport, is normally maintained in the fully open position. When the draw is in the closed position, a drawtender shall be on duty and the draw shall open on signal.

(c) The draws of the Massachusetts Department of Public Works bridges, mile 5.8 at Newburyport and mile 12.6 at Rock Village, and Groveland bridge, mile 16.5 at Groveland, shall open on signal if at least two hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed through the draw as soon as possible.

§ 117.607 Mitchell River.

The draw of the Chatham highway bridge, mile 0.2 at Chatham, shall open on signal from May 1 through October 31 from 8 a.m. to 4 p.m. if at least one hour notice is given, and from 4 p.m. to 8 a.m. if at least 12 hours notice is given. From November 1 through April 30, the draw shall open on signal if at least 24 hours

notice is given. Notice is given to the duty officer at the Chatham Police Department Headquarters.

§ 117.609 Mystic River.

(a) The draws of the S99 bridge, mile 1.4, and the Boston and Maine railroad bridge, mile 1.8, both at Boston, shall open on signal; except that, from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m. and 5 p.m. to 6 p.m. except Sundays and holidays, the draws need not be opened for the passage of vessels with a draft of less than 18 feet. Public vessels of the United States and state or local vessels used for public safety shall be passed at any time.

(b) The draws of the Wellington bridge, mile 2.5, and the General Lawrence bridge, mile 3.6, both at Boston, need not be opened for the passage of vessels.

§ 117.611 Neponset River.

The draw of the Granite Avenue bridge, mile 0.0 at Boston, shall open on signal from May 1 through October 31 and from November 1 through April 30 from 8 a.m. to 4 p.m. The draw shall open on signal from November 1 through April 30 from 4 p.m. to 8 a.m. if at least 24 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed at any time.

§ 117.613 North River.

The draws of the S3A bridge, mile 1.6 at Scituate, and the Plymouth County (Bridge Street) bridge, mile 4.0 at Norwell, shall open on signal from May 1 through October 31 if at least four hours notice is given. From November 1 through April 30, the draws shall open on signal if at least 24 hours notice is given.

§ 117.615 Plum Island River.

The draw of the Plum Island Turnpike bridge, mile 0.1 between Newburyport and Plum Island, operates as follows:

(a) The draw shall open on signal from April 1 through November 30 during daylight hours two hours before to two hours after each high tide. "Daylight hours" means one half hour before sunrise to one half hour after sunset. High tide occurs one half hour later than the time of high tide for Portland as published in the tide table by the National Oceanic and Atmospheric Administration. At all other times, the draw shall open on signal if at least three hours notice is given.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) Vessels which can pass under the closed draw with a clearance of one foot or more should not signal for the opening of thedraw. In case a vessel gives the prescribed signal and the drawtender is uncertain as to whether the vessel can safely pass, the drawtender shall open the draw. If the drawtender finds that there would have been a clearance of one foot or more had the draw remained closed, the matter shall be reported immediately to the District Commander, giving the name of the vessel, the time of opening the draw, the clearance under the bridge as indicated by the gage at the time of opening the draw, and the approximate vertical clearance required by the vessel.

§ 117.617 Reserved Channel.

The draw of the Summer (L) Street bridge, mile 0.2 at Boston, shall open on signal from 9:30 a.m. to 4 p.m. Monday through Saturday and from 9:30 a.m. to 4 p.m. on Sunday from April 1 through October 3. At all other times, the draw shall open on signal if at least 10 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

§ 117.619 Taunton River.

The draw of the Bristol County bridge, mile 10.3 at Berkley, shall open on signal from May 1 through October 31 from 5 a.m. to 10 p.m. and from November 1 through April 30 from 6 a.m. to 6 p.m. At all other times, the draw shall open on signal if at least a one-half hour notice is given.

§ 117.621 Weymouth Fore River.

The draw of the S3A bridge, mile 3.5 between Quincy Point and North Weymouth, shall open on signal; except that the draw need not be opened from 6:30 a.m. to 9 a.m. and 4:30 to 6:30 p.m. Monday through Friday except holidays observed in the locality. However, the draw shall open at any time for public vessels of the United States, commercial vessels, and state or municipal government vessels used for public safety and in case of emergency or during severe storms.

Michigan

§ 117.625 Black River.

(a) For all drawbridges across the Black River, notice requesting the opening of a draw may be given to the dispatcher of the Port Huron Police Department. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through each drawbridge on the river as soon as possible.

(b) The draws of the Military Street bridge, mile 0.3, and Seventh Street bridge, mile 0.5, both at Port Huron, shall open on signal; except that, from May 1 through October 31 from 9 a.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draw need be opened only on the hour and half hour and, from November 1 through November 30 and April 1 through April 30 from 4 p.m. to 8 a.m., the draw shall open if at least three hours notice is given. From December 1 through March 31, the draw shall open if at least 24 hours notice is given.

(c) The draw of the Tenth Street bridge, mile 0.9 at Port Huron, shall open on signal—

(1) From May 1 through October 31 from 8 a.m. to 11 p.m. and from 11 p.m. to 8 a.m., if at least one hours notice is given;

(2) From April 1 through April 30 and November 1 through November 30, if at least three hours notice is given; and

(3) From December 1 through March 31, if at least 24 hours notice is given.

§ 117.627 Cheboygan River.

The draw of the US23 bridge, mile 0.9 at Cheboygan, shall open on signal:

(a) From March 16 through May 15 and September 16 through December 14.

(b) From May 16 through September 15, from 6:12 p.m. to 7:18 a.m. Monday through Friday, from 5:12 p.m. to 11:18 a.m. on Saturdays, and all day on Sundays.

(c) From May 16 through September 15 three minutes before to three minutes after the quarter hour and the three-quarters hour, from 7:18 a.m. to 6:12 p.m. Monday through Friday and from 11:18 a.m. to 5:12 p.m., on Saturdays.

(d) From December 15 through March 15, if at least 24 hours notice is given to the Cheboygan Police Department.

(e) As soon as possible for the passage of public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress.

§ 117.629 Crooked River.

The draw of the S68 bridge, mile 29.6 at Alanson, shall open on signal; except that, from November 1 through May 15, the draw shall open on signal if at least eight hours notice is given.

§ 117.631 Detroit River (Trenton Channel).

The draw of the Wayne County (Bridge Road) bridge, mile 5.6 at Detroit, shall open on signal; except that, from December 15 through March 15, the draw shall open on signal if at least five hours notice is given.

§ 117.633 Grand River.

(a) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(b) The draw of the Grand Trunk Western railroad bridge, mile 2.8 at Grand Haven, shall open on signal; except that, from December 15 through March 15, the draw shall open on signal if at least 24 hours notice is given.

(c) The draw of the US31 bridge, mile 2.9 at Grand Haven, shall open on signal—

(1) From March 16 through May 14 and from October 15 through December 14;

(2) From May 15 through October 14, from 9:03 p.m. to 6:03 a.m.;

(3) From May 15 through October 14, from 6:03 a.m. to 9:03 p.m., from three minutes before to three minutes after the hour and half hour; and

(4) From December 15 through March 15, if at least 24 hours notice is given.

(d) The draw of the Grand Trunk Western railroad bridge, mile 0.2 across the mouth of Spring Lake, shall open on signal; except that, from December 15 through March 15, the draw shall open on signal if at least 24 hours notice is given.

§ 117.635 Keweenaw Waterway.

The draw of the US41 bridge, mile 16.0 between Houghton and Hancock, shall open on signal; except that, from January 1 through March 15, the draws shall open on signal if at least 24 hours notice is given.

§ 117.637 Manistee River.

The draws of the Maple Street bridge, mile 1.1, the US31 (Smith Street) bridge, mile 1.4, and the Chessie System railroad bridge, mile 1.5, all at Manistee, shall open on signal; except that, from January 1 through March 31, the draws shall open on signal if at least 24 hours notice is given.

§ 117.639 Ontonagon River.

The draw of the S64 bridge, mile 0.2 at Ontonagon, shall open on signal from April 1 through November 15 from 7 a.m. to 11 p.m. and from 11 p.m. to 7 a.m., if at least one hour notice is given. From November 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

§ 117.641 Pine River (Charlevoix).

The draw of the US31 bridge, mile 0.3 at Charlevoix, shall be operated as follows:

(a) The draw shall open on signal; except that, from 6 a.m. to 6 p.m., the draw shall open on signal from three minutes before to three minutes after the hour and half hour. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be placed on the bridge so that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.643 Pine River (St. Clair).

The draw of the S29 bridge, mile 0.1 at St. Clair, shall open on signal from April 1 through November 30 from 2 a.m. to 8 a.m. and from 8 a.m. to 2 a.m. on the hour and one-half hour. From December 1 through March 31, the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw as soon as possible.

§ 117.645 Rouge River (Short Cut Canal).

The draws of the Jefferson Avenue bridge, mile 1.1, and the Fort Street bridge, mile 2.2, both at Detroit, shall open on signal from December 16 through March 14 and on Saturdays, Sundays, and Federal holidays from March 15 through December 15. On Monday through Friday from March 15 through December 15, the draws shall open on signal from 8:30 a.m. to 4 p.m., 4:40 p.m. to 5 p.m., and 6 p.m. to 7:30 a.m. The draws need not be opened at all other times. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through each draw as soon as possible.

§ 117.647 Saginaw River.

(a) The draws of the Detroit and Mackinac railroad bridge, mile 2.5 at Bay City, the Conrail railroad bridge, mile 4.4 at Bay City, and the Chessie System railroad bridge, mile 18.0 at Saginaw, shall open on signal; except that, from December 16 through March 15, the draws shall open on signal if at least 12 hours notice is given.

(b) The draws of the Belinda Street (Independence) bridge, mile 3.3, Veterans Memorial bridge, mile 5.0, and Lafayette Street bridge, mile 6.2, all in Bay City, shall open on signal from March 16 through December 15, except as follows:

(1) From 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. except Saturdays, Sundays, and holidays observed in the locality, the draws need not be opened for the passage of vessels of less than 50 gross tons.

(2) From 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. except on Sundays and Federal holidays, the draws need not be opened for the passage of downbound vessels of over 50 gross tons.

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Belinda Street and Lafayette Street bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Veterans Memorial bridge need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three quarter hour.

(5) From December 16 through March 15, the draws of these bridges shall open on signal if at least 12 hours notice is given.

(c) The draw of the I–75 bridge, mile 14.5 at Zilwaukee, shall open on signal; except that, from December 16 through March 15, the draw shall open on signal if at least 12 hours notice is given.

(d) The draw of the Sixth Avenue bridge, mile 17.1 at Saginaw, shall open on signal from April 1 through November 15 from 7 a.m. to 11 p.m. At all other times, the draw shall open on signal if at least three hours notice is given

(e) The draw of the Chessie System railroad bridge, mile 18.0, shall open on signal if at least three hours notice is given. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed as soon as possible.

(f) The draw of the Grand Trunk Western railroad bridge, mile 19.2, need not be opened for the passage of vessels.

§ 117.651 St. Joseph River.

The draws of the US33 (Blossomland) bridge, mile 0.9, and the BL–94 (Bicentennial) bridge, mile 1.3, both at St. Joseph, shall be operated as follows:

(a) From March 1 through May 14, from October 1 through December 15,

and from 8 p.m. to 7 a.m. from May 15 through September 30, the draws shall open on signal.

(b) From 7 a.m. to 8 p.m. from May 15 through September 30, the draw of the Blossomland bridge need be opened only from three minutes before to three minutes after the hour and half hour, and the draw of the Bicentennial bridge need be opened only from three minutes before to three minutes after the quarter and three-quarter hour.

(c) From December 16 through the last day of February, the draw of both bridges shall open on signal if at least 12 hours notice is given.

(d) Public vessels of the United States, state and local government vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of both bridges as soon as possible.

§ 117.653 St. Mary's Falls Canal.

The draw of the International Railway bridge, mile 1.0 at Sault Ste. Marie, shall be maintained in the fully open position during the navigation season, except for the crossings of trains or for maintenance. Bridge operators shall not give precedence to railway traffic and shall not close the bridge against an upbound vessel after lock gates are open and the vessel is proceeding toward the bridge, nor against a downbound vessel, 1,200 feet or less west of the bridge, unless the vessel is moored at either canal pier awaiting its turn to take position at lock approaches.

§ 117.655 Thunder Bay River.

The draw of the US23 bridge, mile 0.3 at Alpena, shall open on signal if at least three hours notice is given to the Dispatcher, Police Department, City of Alpena, Michigan.

Minnesota

§ 117.661 Duluth Ship Canal (Duluth-Superior Harbor).

The draw of the Duluth Ship Canal bridge, mile 0.1 at Duluth, shall open on signal; except that, from January 1 through March 15, the draw shall open on signal if at least 24 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. If the Duluth Ship Canal Bridge is disabled, the bridge authorities shall give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that the vessels do not attempt to enter the canal. Vessels shall be given precedence over highway or railway traffic at all times.

§ 117.663 Minnesota River.

(a) The draws of the bridges from the mouth of the Minnesota River through LeSueur shall open on signal if at least 24 hours notice is given.

(b) The draws of bridges above LeSueur need not be opened for the passage of vessels.

§ 117.665 Red River of the North.

The draws of the bridges need not be opened for the passage of vessels.

§ 117.667 St. Croix River.

(a) The draws of the Burlington Northern railroad bridge, mile 0.2, and the US–16–61 bridges, mile 0.3, all at Prescott, and the Chicago and Northwestern railroad bridge, mile 17.3 at Hudson, shall open on signal; except that, from December 15 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 bridge, mile 23.4 at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15 Monday through Friday, except Federal holidays, from—

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 3 p.m., every hour and half hour;

(iii) 3 p.m. to 6 p.m., every hour on the hour;

(iv) 6 p.m. to 10 p.m., every hour and half hour; and

(v) 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15 Saturdays, Sundays, and Federal holidays from—

(i) 8 a.m. to 11 a.m., every hour and half hour;

(ii) 11 a.m. to 8 p.m., every hour on the hour;

(iii) 8 p.m. to midnight, every hour and half hour; and

(iv) Midnight to 8 a.m., if at least two hours notice is given.

(3) From October 16 through May 14, if at least 24 hours notice is given.

(c) The draw of the Soo Line railroad bridge, mile 40.7, at Otisville, need not be opened for the passage of vessels.

§ 117.669 St. Louis River (Duluth Superior Harbor).

(a) The draws of the Burlington Northern railroad bridge, mile 5.7, shall open on signal; except that, from January 1 through March 15, the draws shall open on signal if at least 24 hours notice is given. The opening signal for the Minnesota draw is one prolonged blast followed by two short blasts and for the Wisconsin draw is two prolonged blasts followed by two short blasts.

(b) The draws of the Grassy Point bridge, mile 8.0, and the Arrow Head bridge, mile 8.7, shall open on signal; except that, from January 1 through March 15, the draw shall open on signal if at least 24 hours notice is given. The opening signal for the Grassy Point bridge is two prolonged blasts followed by one short blast and for the Arrowhead bridge is three prolonged blasts.

(c) The draw of the Duluth Missabe and Iron Range Railway bridge, mile 16.3, need not be opened for the passage of vessels. The owner shall return the draw to operable condition within a reasonable time when notified by the District Commander to do so.

§ 117.671 Upper Mississippi River.

(a) The draws of all bridges between Lock and Dam No. 10, mile 615.1, and Lock and Dam No. 2, mile 815.2, shall open on signal; except that, from December 15 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 2, mile 815.2, and Lock and Dam No. 1, mile 847.6, shall open on signal; except that, from December 15 through the last day of February, the draws shall open on signal if at least 12 hours notice is given.

Mississippi

§ 117.675 Back Bay of Biloxi.

The draw of the S15 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hours notice is given.

§ 117.677 Big Sunflower River.

The draw of the Columbus and Greenville railroad bridge, mile 96.1 at Baird, shall open on signal if at least four hours notice is given.

§ 117.679 Escatawpa River.

The draw of the S63 bridge, mile 1.0 at Moss Point, shall open on signal; except that, from 6 a.m. to 6:45 a.m., 7 a.m. to 7:30 a.m., 3:25 p.m. to 3:45 p.m., and 4 p.m. to 5 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

§ 117.681 Old Fort Bayou.

The draw of the US90 bridge, mile 1.6 at Ocean Springs, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hours notice is given to the Old Fort Bayou drawtender. During periods of storm or hurricane warnings issued by the National Weather Service, the draw shall open on signal at any time.

§ 117.683 Pascagoula River.

The draw of the US90 bridge, mile 1.8 at Pascagoula, shall open on signal; except that, from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., 3:15 p.m. to 4:15 p.m., and 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

§ 117.685 Yazoo River.

(a) The draws of the Illinois Central Gulf railroad bridge, mile 16.7 at Redwood, and the Satartia highway (S433) bridge, mile 53.3 at Satartia, shall open on signal if at least two hours notice is given. When a vessel has given notice and fails to arrive within the two hour period specified, the drawtender shall remain on duty for two additional hours and open the draw if the requesting vessel appears. After this time, an additional two hour notice is required.

(b) The draws of the bridges upstream from the Satartia highway (S433) bridge shall open on signal if at least four hours notice is given. When a vessel has given notice and fails to arrive within the four hour period specified, the drawtender shall remain on duty for two additional hours and open the draw if the requesting vessel appears. After this time, an additional four hour notice is required.

Missouri

§ 117.687 Missouri River.

The draws of the bridges across the Missouri River from the mouth to St. Joseph, shall open on signal; except that, from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

§ 117.689 Osage River.

The draw of the Missouri Pacific Railroad bridge, mile 5.6 at Osage City, need not be opened for the passage of vessels.

Nebraska

§ 117.691 Missouri River.

The draw of the Illinois Central Gulf railroad bridge, mile 618.3 at Omaha, shall open on signal; except that, from December 1 through the last day of February, the draw shall open on signal if at least 24 hours notice is given.

New Hampshire

§ 117.695 Bellamy River.

The draw of the US4 highway bridge, mile 0.2 at Dover, shall open on signal from April 1 through October 31 from 6 a.m. to 10 p.m. if at least four hours notice is given. At all other times, the draw shall open as soon as possible only for emergencies.

§ 117.697 Hampton River.

The SR1A bridge, mile 0.0 at Hampton, operates as follows:

(a) The draw shall open on signal from April 1 through October 31 for the passage of vessels during daylight hours from three hours before to three hours after each high tide. "Daylight hours" means one-half hour before sunrise to one-half hour after sunset. High tide occurs one-half hour later than the time of high tide for Portland, Maine, as published in the tide tables by the National Oceanic and Atmospheric Administration. At all other times, the draw shall open on signal if at least three hours notice is given.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) Vessels which can pass under the closed draw with a clearance of one foot or more shall not signal for the opening of the draw. In case a vessel gives the prescribed signal and the drawtender is uncertain as to whether the vessel can safely pass, the drawtender shall open the draw. If the drawtender finds that there would have been a clearance of one foot or more had the draw remained closed, the matter shall be reported immediately to the District Commander, giving the name of the vessel, the time of opening the draw, the clearance under the bridge as indicated by the gage at the time of opening the draw, and the approximate vertical clearance required by the vessel.

§ 117.699 Little Harbor.

The draw of the SR1B bridge, mile 1.0 between New Castle and Rye, shall open on signal from April 1 through October 31 from 6 a.m. to 10 p.m. if at least four hours notice is given. At all other times, the draw shall open as soon as possible only for emergencies.

New Jersey

§ 117.701 Alloway Creek.

(a) The draws of the Salem County bridges, miles 5.1 at Hancocks Bridge, and 6.5 at New Bridge, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S49 bridge, mile 9.5 at Quinton, need not be opened for the passage of vessels.

§ 117.703 Bass River.

The draw of the US9 bridge, mile 2.6 at New Gretna, shall open on signal from March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draw shall open on signal if at least six hours notice is given.

§ 117.705 Beaver Dam Creek.

The draw of the Ocean County bridge, mile 0.5 at Point Pleasant, shall open on signal from June 1 through September 30 and from 8 a.m. to 4 p.m. during April, May, October, and November. At all other times, the draw shall be open on signal if at least 24 hours notice is given.

§ 117.707 Cape Island Creek.

The draw of the Cape May County bridge, mile 0.3 at Cape May, need not open for the passage of vessels.

§ 117.709 Cheesequake Creek.

(a) The draw of the S35 bridge, mile 0.0 at Morgan, South Amboy, shall open on signal; except that, from may 15 through October 15 from 7 a.m. to 7 p.m., the draw need only open on the hour. From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

(b) The draw of the New Jersey Transit Rail Operations railroad bridge, mile 0.2, operates as follows:

(1) The draw shall open on signal; except that, at least four hours notice is required—

(i) From January 1 through March 31 from 6 p.m. to 6 a.m.;

(ii) From April 1 through April 30 and November 1 through November 30 from 10 p.m. to 6 a.m. Monday through Thursday, and midnight Sunday through 6 a.m. Monday; and

(iii) From December 1 through December 31 from 10 p.m. to 6 a.m.

(2) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.711 Cohansey River.

The draw of the Broad Street bridge, mile 18.2 at Bridgeton, need not be opened for the passage of vessels.

§ 117.713 Cooper River.

(a) The draws of the State Street bridge, mile 0.3, the Conrail bridge at North River Avenue, mile 0.9, and the Federal Street bridge, mile 1.0, both at

Camden, shall open on signal if at least four hours notice is given.

(b) The draw of the Admiral Wilson Boulevard bridge, mile 1.1 at Camden, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to so.

§ 117.715 Debbies Creek.

(a) The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal; except that, from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need be opened only on the hour and the half hour if any vessels are waiting to pass.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.717 Delaware River (Back Channel).

The draw of the Cities Service Company bridge, mile 117.0 between Petty Island and Camden, need not be opened for the passage of vessels.

§ 117.719 Elizabeth River.

(a) The draw of the South Front Street bridge, mile 0.0 at Elizabeth, shall open on signal; except that, from 12 midnight to 7 a.m., the draw shall open on signal if at least three hours notice is given.

(b) The draws of the South First Street bridge, mile 0.4 at Elizabeth, shall open on signal if at least three hours notice is given.

(c) The draws of the New Jersey Transit Rail Operations railroad bridge, mile 0.7, the Baltic Street bridge, mile 0.9, the Summer Street bridge, mile 1.3, the South Street bridge, mile 1.8, and the Bridge Street bridge, mile 2.1, all at Elizabeth, need not be opened for the passage of vessels.

§ 117.721 Great Channel.

The draw of the Cape May County Bridge Commission bridge, mile 0.7 between Stone Harbor and Nummy Island, shall open on signal except that from November 1 through April 30, the draw shall open on signal if at least 24 hours notice is given.

§ 117.723 Hackensack River and Overpeck Creek.

(a) The draw of each bridge across the Hackensack River shall open on signal, except as follows:

(1) The draw of Amtrak's Portal bridge, mile 5.0 at Snake Hill, need not be opened Monday through Friday except Federal holidays from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, an opening may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator, communicating by radiotelephone, agree to a longer delay.

(2) The draw of the S46 bridge, mile 14.0 at Little Ferry, shall open on signal if at least six hours notice is given.

(3) The draw of the Court Street bridge, mile 16.2 at Hackensack, must shall open or signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m., the draws shall open on signal if at least eight hours notice is given.

(4) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(5) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge either up or downstream.

(b) The draw of the New York, Susquehanna, and Western railroad bridge, mile 16.3, and Midtown bridge, mile 16.5, both at Hackensack, need not be opened for the passage of vessels.

(c) On Overpeck Creek, the draws of the Conrail and the New York, Susquehanna and Western railroad bridges, mile 0.0, operate as follows:

(1) The draws shall open on signal if at least 24 hours notice is given.

(2) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(3) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.725 Manantico Creek.

The draw of the highway bridge, mile 0.5 at Millville, need not be opened for the passage of vessels.

§ 117.727 Manasquan River.

The draw of the S70 bridge, mile 3.4 at Brielle Township, shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m.

§ 117.729 Mantua Creek.

The draw of the highway bridge, mile 1.7 at Paulsboro, shall open on signal from 7 a.m. to 11 p.m. The draw shall open on signal from 11 p.m. to 7 a.m. if at least four hours notice is given.

§ 117.731 Maurice River.

The draw of the Cumberland County bridge, mile 12.1 at Mauricetown, need not be opened for the passage of vessels.

§ 117.733 New Jersey Intracoastal Waterway.

(a) The following requirements apply to all bridges listed in this section:

(1) These bridges need not stay open for more than 10 minutes for the passage of vessels nor need they stay closed for more than 10 minutes for the passage of land traffic.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the S37 bridge, mile 14.1 at Seaside Heights, shall open on signal except as follows:

(1) From December 1 through March 31 from 11 p.m. to 7 a.m, the draw need not be opened.

(2) From Memorial Day through Labor Day from 10 a.m. to 2 p.m. Saturdays, Sundays, and Federal holidays, the draw need only be opened on the hour and half hour, except that it shall open at any time for the passage of vessels with tows.

(c) The draws of the New Jersey Transit Rail Operations railroad bridge, mile 68.9 at Atlantic City, shall open on signal from 11 p.m. to 6 a.m. The draw shall open on signal from 20 minutes to 30 minutes after each hour from 6 a.m. to 11 p.m.

(d) The draw of the Albany Avenue (US40–322) bridge, mile 70.0 at Atlantic City, operates as follows:

(1) The draw shall open on signal from October 1 through May 30, and from June 1 through September 30, from 9 p.m. to 9 a.m.

(2) From June 1 through September 30 from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw shall open on the hour and half hour.

(3) From June 1 through September 30 from 4 p.m. to 6 p.m., the draw need not be opened.

(e) The draw of the Dorset Avenue bridge, mile 71.2 at Ventnor City, shall open on signal; except that, from June 1 through September 30, 9:15 a.m. to 9:15 p.m., the draw need be opened only on the quarter and three-quarter hours. Public vessels of the United States and vessels in distress shall be passed at any time.

(f) The draw of the Route 52 (Ninth Street) bridge, mile 80.4 at Ocean City, shall open on signal; except that, from Memorial Day through Labor Day from 11 a.m. to 5 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

(g) The draw of the Stone Harbor Boulevard bridge across Great Channel, mile 102.0 at Stone Harbor, shall open on signal; except that, on Saturdays, Sundays, and holidays from Memorial Day through Labor Day from 8 a.m. to 6 p.m., the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Public vessels of the United States and vessels with another vessel in tow shall be passed at any time.

§ 117.735 Oceanport Creek.

The draw of the New Jersey Transit Rail Operations railroad bridge, mile 8.4 near Oceanport, shall open on signal if at least four hours notice is given.

§ 117.737 Oldmans Creek.

The draws of the US30 bridge, mile 3.1 at Nortonville, the Conrail railroad bridge, mile 4.0 at Jumbo, and the Salem County bridge, mile 5.1 at Pedricktown, need not be opened for the passage of vessels. However, the draws of any of these bridges shall be restored to operable condition within six months after notification by the District Commander to do so.

§ 117.739 Passaic River.

(a) The draws of each bridge across the Passaic River shall open on signal, except as follows:

(1) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) Amtrak's Dock bridge, mile 5.0, need not be opened from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays. At all other times, an opening may be delayed no more than 10 minutes, unless the drawtender and the vessel operator, communicating by radiotelephone, agree to a longer delay.

(c) New Jersey Rail Operations Morristown Line bridge, mile 5.8, need not be opened from 7:23 a.m. to 9 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays.

(d) The draw of the Route 280 (Stickel Memorial) bridge, mile 5.8, shall open on signal if at least eight hours notice is given. In an emergency, the draw shall open as soon as possible but not more than two hours after the opening request.

(e) The draw of the New Jersey Transit Rail Operations bridge (West Arlington), mile 8.0, shall open on signal from 7 a.m. to 11 p.m. if at least eight hours notice is given. From 11 p.m. to 7 a.m., the draw need not be opened.

(f) The draw of the New Jersey Rail Operations bridge (Lyndhurst), mile 11.7, shall open on signal from 8 a.m. to midnight. From midnight to 8 a.m., the draw shall open on signal if at least six hours notice is given.

(g) The draw of the Route 3 bridge, mile 11.8 at Rutherford, shall open on signal if at least six hours notice is given.

(h) The draw of the Union Avenue bridge, mile 13.2, shall open on signal; except that, from midnight to 8 a.m., the draw shall open on signal if at least eight hours notice is given.

(i) The draws of the following bridges need not be opened for the passage of vessels:

(1) Gregory Avenue bridge, mile 14.0.

(2) Second Street Bridge, mile 14.7.

(3) West Eighth Street bridge, mile 15.3.

§ 117.741 Raccoon Creek.

The draw of the Conrail railroad bridge, mile 2.0 at Bridgeport, shall open on signal; except that, from 10 p.m. to 6 a.m. Monday through Friday and on Saturdays, Sundays and holidays from December 1 through the last day of February, at least four hours notice is required.

§ 117.743 Rahway River.

The draw of the Conrail bridge, mile 2.0 at Linden, shall open on signal from April 1 through November 30 from 6 a.m. to 10 p.m. At all other times, the draw shall open on signal if at least four hours notice is given.

§ 117.745 Rancocas River (Creek).

The draws of the S543 bridge, mile 1.3 at Riverside, the Conrail bridge, mile 1.6 at Delanco, the US130 bridge, mile 3.3 at Bridgeboro, and the S38 bridge, mile 7.8 at Centerton, shall open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. From December 1 through March 31 from 7 a.m. to 11 p.m., the draw shall open on signal if at least 24 hours notice is given. From 11 p.m. to 7 a.m., the draws need not be opened for the passage of vessels.

§ 117.747 Raritan River, Arthur Kill, and their tributaries.

The draws of all bridges shall open on signal; except that, from 7:30 a.m. to 10 a.m. and 5 p.m. to 7:30 p.m., the draws may be opened for the passage of vessels for periods no longer than 10 minutes or remain closed for the passage of land traffic for no longer than 10 minutes. Public vesels of the United States and state or local vessels used for public safety shall be passed at any time. The owners of each bridge shall maintain a tug at the drawbridge to control and aid in the passage of vessels. The owners shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to operators of vessels approaching the bridges either up or downstream.

§ 117.749 Salem River.

The draw of the S49 bridge, mile 3.5 at Salem, shall open on signal if at least 24 hours notice is given.

§117.751 Shark River (South Channel).

The draws of S71 bridge, mile 0.8, the railroad bridge, mile 0.9, and the S35 bridge, mile 0.9, all at Avon, operate as follows:

(a) The bridges operate as one unit. The owners shall provide signal systems so connected that the operator of any of the bridges may simultaneously notify the operators of the other two. The operator of the first bridge to be passed shall be responsible for observing the approach of vessels, for receiving and acknowledging signals, and for coordinating the opening of the other draws.

(b) The draws shall open on signal; except that, from May 15 through September 30 from 4 p.m. to 7 p.m. Monday through Friday except Federal

holidays and from 9 a.m. to 9 p.m. Saturdays, Sundays, and holidays, the draw need be opened only on the hour and half hour if a vessel is waiting to pass.

(c) The owners of the bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to operators of vessels approaching the bridges either up or downstream.

§ 117.753 Ship Channel, Great Egg Harbor Bay.

The draw of the S52 bridge, mile 0.5 at Ocean City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least 24 hours notice is given.

§ 117.755 Shrewsbury River (South Branch).

(a) The draw of the S36 bridge, mile 1.8 at Highlands, shall open on signal; except that, from Memorial Day through Labor Day on Saturdays, Sundays, and holidays from 10 a.m. to 7 p.m., the draw need be opened only on the hour and half hour. The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Monmouth County highway bridge, mile 4.0 at Sea Bright, shall open on signal; except that, from May 15 through September 30 on Saturdays, Sundays, Memorial Day, Independence Day, and Labor Day from 11 a.m. to 7 p.m., the draw need be opened only on the hour and half hour. The draw need not be opened at any time for a sailboat, unless it is under auxiliary power or is towed by a powered vessel. The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.757 Tuckahoe River.

The draw of the State highway bridge, mile 8.0 at Tuckahoe, shall open on signal if at least 24 hours notice is given.

§ 117.759 Wading River.

The draw of the Burlington County highway bridge, mile 5.0 at Wading River, shall open on signal if at least 24 hours notice is given.

§ 117.761 Woodbridge Creek.

The draws of the State Street bridge, mile 0.5, and the railroad bridge, mile 0.6, both at Sewaren, shall open on signal if at least four hours notice is given.

New York

§ 117.771 Bronx River.

(a) The draws of the Bruckner Boulevard highway bridge, mile 1.1 at New York City, shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, the draws need not be opened for the passage of vessels. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed without delay. The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draws of the Westchester Avenue highway bridge, mile 1.5, and the Conrail bridge, mile 1.6, both at New York City, need not be opened for the passage of vessels. The owners of the bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to operators of vessels approaching the bridges either up or downstream.

§ 117.773 Buffalo River.

(a) The draws of the Michigan Avenue bridge, mile 1.3, and the Ohio Street bridge, mile 2.1, both at Buffalo, shall open on signal; except that, from 7:30 a.m. to 9 p.m. and from 4 p.m. to 5:45 p.m. Monday through Saturday except New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of any of these under state law, the draws need not be opened for the passage of vessels.

(b) The draws of the South Park Avenue bridge, mile 5.3 at Buffalo, shall open on signal; except that, from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m. Monday through Saturday except New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of any of these under state law, the draws need not be opened for the passage of vessels.

§ 117.775 Coney Island Creek.

The draws of the Cropsey Avenue bridge, mile 0.4, the Stillwell bridge, mile 0.6, and the New York City Transit Authority bridges near Stillwell Avenue, mile 0.7, all at New York City, need not be opended for the passage of vessels.

§ 117.777 Dutch Kills.

(a) The draw of the Long Island Railroad bridge, mile 1.1 at New York City, shall open on signal if at least six hours notice is given to the Long Island Railroad Movement Bureau. Public vessels of or vessels employed by the United States and state or local vessels used for public safety shall be passed as soon as possible.

(b) The draws of the Borden Avenue bridge, mile 1.2, and the Hunters Point Avenue bridge, mile 1.4, both at New York City, shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room. Public vessels of or vessels employed by the United States and state or local vessels used for public safety shall be passed as soon as possible.

§ 117.779 Eastchester Bay (Arm of).

The draw of the highway bridge, mile 2.2 between Rodman Neck and City Island, need not be opened for the passage of vessels.

§ 117.781 East River.

The draw of the Roosevelt Island bridge, mile 6.4 at New York City, shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

§ 117.783 Flushing Creek.

The draws of the Northern Boulevard bridge, mile 0.2, the Roosevelt Avenue bridge, mile 0.8, and the Long Island Railroad bridge, mile 1.0, all at New York City, need not be opened for the passage of vessels.

§ 117.785 Genessee River.

(a) The following applies to all bridges listed in this section:

(1) At all times, public vessels of the United States, vessels in distress, and

vessels seeking shelter from rough weather shall be passed through the bridges as soon as possible.

(2) Clearance gages of a type approved by the Commander, Ninth Coast Guard District, shall be installed on the upstream and downstream sides of each drawbridge by and at the expense of the owner of or agency controlling the bridge and the gages shall be kept in good repair and legible condition.

(b) The draw of the Conrail bridge, mile 0.9 at Rochester, shall open on signal; except that, from December 15 through March 31, the draw shall open on signal if at least 12 hours notice is given.

(c) The draw of the Stutson Street bridge, mile 1.2 at Rochester, shall open on signal from April 1 through December 15; however, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need be opened only for the passage of commercial vessels. From 9 a.m. to 4 p.m. and 6 p.m. to 11 p.m. Monday through Friday except Federal holidays, and from 7 a.m. to 11 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour, except that commercial vessels shall be passed at any time. From December 16 through March 31, the draw shall open on signal if at least 12 hours notice is given.

§ 117.787 Gowanus Canal.

The draws of the Third Street bridge, mile 1.8, the Carroll Street bridge, mile 2.0, and the Union Street bridge, mile 2.1, all at New York City, shall open on signal; except that, from May 1 through September 30, the draws shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

§ 117.789 Harlem River.

(a) The draws of all the bridges across the Harlem River, except the Spuyten Duyvil railroad bridge, need not be opened from 5 p.m. to 10 a.m. At all times, public vessels of the United States, and New York City vessels used for public safety shall be passed through the draw of each bridge listed in this section as soon as possible.

(b) The draw of the Spuyten Duyvil railroad bridge, mile 7.9, shall open on signal at any time.

(c) The draws of the bridges at 103rd Street, mile 0.0, Willis Avenue, mile 1.5, 3rd Avenue, mile 1.9, Madison Avenue, mile 23, 145th Street, mile 2.8, Macombs Dam, mile 3.2, 207th Street, mile 6.0, and the two Broadway bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. if at least four hours notice is given to the New York City Highway Radio (Hotline) Room.

(d) The draws of the Triborough (125th Street) bridge, mile 1.3, and the Conrail (Park Avenue) bridge, mile 2.1, shall open on signal from 10 a.m. to 5 p.m. A delay of up to five minutes may be experienced at the Conrail bridge.

§ 117.791 Hudson River.

(a) The draws of the bridges listed in this section shall open as soon as possible at any time for the passage of downbound vessels during a freshet whose height exceeds an elevation determined by the District Commander, public vessels of the United States, state or local vessels used for public safety, vessels of 500 tons or more, and tugs with a tow on a hawser.

(b) The draws of the bridges listed in this section shall not remain open for more than 15 minutes and may remain closed for up to 10 minutes to allow accumulated land traffic to pass.

(c) The draw of the Conrail bridge, mile 146.2 between Albany and Rensselaer, shall open on signal; except that, from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(d) The draw of the state highway bridge, mile 150.2 between Troy and Menands, need not be opened for the passage of vessels.

(e) The draw of the highway bridge, mile 152.7 between Troy and Green Island, operates as follows:

(1) From April 1 through December 15, the draw shall open on signal from 9 a.m. to 4 p.m.; except that, the draw need not be opened from 6 p.m. to 7 a.m., unless notice is given before 4:30 p.m. to the time the vessel is expected to pass, and need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

(2) From December 16 through March 31, the draw need not be opened.

(f) The draws of the 112th Street bridge, mile 155.4 between Troy and Cohoes operate as follows:

(1) The draws shall open on signal from 9 a.m. to 4 p.m.

(2) The draws shall open on signal from 6 p.m. to 7 a.m., if notice is given, before 4:30 p.m., of the time the vessel is expected to pass.

(3) The draws need not be opened from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

(4) During the period that the Federal Lock at Troy is inoperative, the draws need not be opened for the passage of vessels, provided that emergency openings be made as soon as possible.

§ 117.793 Hutchinson River.

The draws of the Hutchinson River Parkway bridge, mile 0.9, and the New England Thruway (I–95) bridge, mile 2.2, both at New York City, shall open on signal if at least six hours notice is given.

§ 117.795 Jamaica Bay and Connecting Waterways.

(a) The draws of the New York City Transit Authority (Cross Bay Memorial) bridge, mile 10.6 across the North Channel at Hamilton Beach, and the New York City highway bridge, mile 10.0 at Jamaica Bay Boulevard, need not be opened for the passage of vessels.

(b) The draws of the New York City highway bridge, mile 0.8 across Mill Basin on Belt Parkway, need not be opened for the passage of vessels from noon to 9 p.m. on Sundays from May 15 to September 30, Memorial Day, Independence Day, and Labor Day. However, on these days, from two hours before to one hour after predicted high tide, the draw shall open on signal. For the purpose of this section, predicted high tide occurs 15 minutes later than that predicted for Sandy Hook, as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all times, public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(c) The draw of the Marine Parkway bridge, mile 3.0 at Rockaway Inlet, shall open on signal Monday through Friday from 8 a.m to 4 p.m. At all other times, the draw shall open on signal if at least eight hours notice is given; however, the draw shall open on signal if at least a one hour notice is given for the passage of U.S. Navy or National Oceanic and Atmospheric Administration vessels.

§ 117.797 Lake Champlain.

(a) The draw of each bridge listed in this section shall open as soon as possible for public vessels of the United States and vessels of the Vermont Fish and Game Department.

(b) The draw of the US2 bridge, mile 91.8 between Sandy Island and North Hero Island, shall open on signal—

(1) From May 15 through October 15 from 7 a.m. to 9 p.m.

(2) From May 15 through October 15 from 9 p.m. to 7 a.m. if at least four hours notice is given; and

(3) From October 16 through May 14 if at least 24 hours notice is given.

(c) The draw of the Canadian National railroad bridge, mile 105.6 across the Missisquoi Bay of Lake Champlain, shall open on signal from June 15 through September 15 from 7 a.m. to 11 p.m. The draw shall open on signal at all other times if at least 24 hours notice is given.

(d) The draw of the SR78 bridge, mile 105.9 across the entrance to Missisquoi Bay between Alburg Tongue and Hog Island at East Alburg, shall open on signal if at least 24 hours notice is given.

§ 117.799 Long Island, New York inland Waterway from East Rockaway Inlet to Shinnecock Canal.

(a) At all times, public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draws of each bridge listed in this section as soon as possible.

(b) The draw of each bridge listed in this section need not be opened for sailing vessels, unless the vessels are under machinery power or under tow, if an opening would unduly delay other vessel or vehicular traffic.

(c) The owners of the bridges listed in this section shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to operators of vessels approaching the bridges either up or downstream.

(d) The draws of the West Bay bridge, mile 0.1 across Quantuck Canal, Beach Lane bridge, mile 1.1 across Quantuck Canal, Quoque bridge, mile 1.1 across Quoque Canal, the Smith Point bridge, mile 6.1 across Narrow Bay, and Ponquoque Point bridge, mile 78.0 across Shinnecock Bay, shall open on signal from October 1 through April 30 from 8 a.m. to 4 p.m. and from May 1 through September 30 from 6 a.m. to 10 p.m. At all other times during these periods, the draws shall open as soon as possible but no more than one hour after a request to open is received.

(e) The draw of the Atlantic Beach Bridge across Reynolds Channel, mile 0.4, shall open on signal—

(1) From October 1 through May 14;

(2) From May 15 through September 30, except that it need be opened only on the hour and half-hour from 4 p.m. to 7 p.m. on weekdays and from 11 a.m. to 9 p.m. on Saturdays, Sundays, Memorial Day, Independence Day, and Labor Day; and

(3) From May 15 through September 30, from two hours before to one hour after predicted high tide. Predicted high tide occurs 10 minutes earlier than that predicted for Sandy Hook, as given in the tide table published by the National Oceanic and Atmospheric Administration.

(f) The draw of the Loop Parkway Bridge across Long Creek, mile 0.7, shall open on signal every other hour on the even hour; except that, from April 1 through October 31 on Saturdays, Sundays, and Federal holidays, the draw shall open on signal every three hours beginning at 3 a.m. If an opening is desired at other than a scheduled time, notice may be given from the telephone located on either side of the bridge or via marine radiotelephone.

(g) The draw of the Long Beach Bridge across Reynolds Channel, mile 4.7, shall open on signal—

(1) From October 1 through May 14; except that, from midnight to 7 a.m., the draw shall open on signal if at least four hours notice is given; and

(2) From May 15 through September 30; except that, from 3 p.m. to 8 p.m. on Saturdays, Sundays, Memorial Day, Independence Day, and Labor Day, the draw need be opened only on the hour and half hour. From midnight to 7 a.m., the draw shall open on signal if at least four hours notice is given.

(h) The draw of the Meadowbrook State Parkway bridge, mile 12.8 across Sloop Channel, shall open on signal if at least one half hour notice is given to the New York State Department of Transportation, as follows:

(1) Every other hour on the even hour.

(2) From April 1 through October 31 on Saturdays, Sundays, and Federal holidays, every three hours beginning at 1:30 a.m. Notice may be given from the telephone located at the moorings on each side of the bridge or by marine radiotelephone.

(i) The draws of the Wantagh State Parkway bridge, mile 16.1 across Goose Creek, and the Captree State Parkway bridge, mile 30.7 across State Boat Channel at Captree Island, shall open on signal if at least one half hour notice is given to the New York State Department of Transportation, as follows:

(1) Every other hour on the even hour.

(2) From April 1 through October 31 on Saturdays, Sundays, and Federal holidays, every three hours beginning at 3 a.m. Notice may be given from the telephone located at the moorings on each bridge or by marine radiotelephone.

§ 117.801 Newtown Creek (East Branch).

The draw of the Grand Street bridge, mile 3.1 at New York City, shall open on signal; except that, from Monday through Saturday except holidays, the draw need not be opened from 6:45 a.m. to 7 a.m., 7:15 a.m. to 7:30 a.m., 7:45 a.m. to 8 a.m., 4:30 p.m. to 4:45 p.m., and 5 p.m. to 5:15 p.m.

§ 117.803 Niagara River.

The draw of the Canadian National Railway bridge, mile 33.0 at Buffalo, need not be opened for the passage of vessels.

§ 117.805 Peekskill (Annsville) Creek.

The draw of the Conrail bridge, mile 0.0 at Peekskill, need not be opened for the passage of vessels.

§ 117.807 Richmond Creek.

The draw of the Richmond Avenue bridge, mile 2.0 at New York City, need not open for the passage of vessels.

§ 117.809 Tonawanda Creek.

The draw of the Penn Central Corporation railroad bridge, mile 0.1 at Tonawanda, is permanently maintained in the open position.

§ 117.811 Tonawanda Harbor.

The draw of the Tonawanda Island Railroad bridge, mile 0.2 between North Tonawanda and Tonawanda Island, shall open on signal if at least 24 hours notice is given.

§ 117.813 Wappinger Creek.

The draw of the Metro-North Commuter railroad bridge, mile 0.0 at New Hamburg, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.815 Westchester Creek.

The draw of the Bruckner Boulevard bridge, mile 1.3, shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, state or local vessels used for public safety, or vessels in distress shall be passed without delay. The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

North Carolina

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

(a) The draw of the S58 bridge, mile 206.7 at Atlantic Beach, Bogue Sound, shall open on signal; except that, from March 15 through October 15, the draw need be opened only on the hour from 8 a.m. to 8 p.m. for the passage of pleasure craft. If a pleasure craft is approaching the draw and cannot reach the draw exactly on the hour, the drawtender may

delay the opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting. Public vessels of the United States, tugs with tows, commercial vessels, and any vessel in an emergency involving danger to life or property shall be passed at any time.

(b) The draw of the SR74 bridge, mile 283.1 at Wrightsville Beach, shall open on signal from November 1 through April 30 and from 7 p.m. to 7 a.m. from May 1 through October 31. From May 1 through October 31 from 7 a.m. to 7 p.m., the draw need be opened only on the hour. If a pleasure boat is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure boat and any other pleasure boats that are waiting to pass. Public vessels of the United States, commercial vessels, and any vessel in an emergency involving danger to life or property shall be passed at any time.

§ 117.823 Neuse River.

(a) The draw of the US17 bridge, mile 33.7 at New Bern, shall open on signal; except that, the draw need not be opened from 6:30 a.m. to 7:30 a.m. and from 4:30 p.m. to 5:30 p.m., Monday through Friday. From May 24 through September 8 on Sundays and Federal holidays, the draw need not be opened from 2 p.m. to 7 p.m.; however, the draw shall open at 4 p.m. and 6 p.m. if any vessels are waiting to pass. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the Atlantic and East Carolina Railway bridge, mile 80.0 at Kinston, shall open on signal if at least 24 hours notice is given.

§ 117.825 Newport River.

The draw of the Atlantic and East Carolina Railway bridge, mile 13.0 at Newport, need not be opened for the passage of vessels.

§ 117.827 New River.

The draw of the Seaboard System Railroad bridge, mile 21.1 at Jacksonville, shall open on signal if at least 24 hours notice is given.

§ 117.829 Northeast River.

The draw of the Seaboard System Railroad bridge, mile 27.0 at Castle Hayne, need be opened on signal only from 7:30 a.m. to 4:30 p.m. Monday through Friday. The draw shall open on signal from 4:30 p.m. to 7:30 a.m. Monday through Friday and on Saturdays and Sundays for tugs with tows if at least 24 hours notice is given.

§ 117.831 Pamlico and Tar Rivers.

The draws of the US17–264 bridge, mile 37.2 at Washington, and the Boyds Ferry bridge, mile 44.8 at Grimesland, shall open on signal if at least 24 hours notice is given. The bridge owners shall restore constant attendance when so directed by the District Commander.

§ 117.833 Pasquotank River.

The draw of the Southern railroad bridge, mile 47.7 at Elizabeth City, is maintained in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw shall open on signal.

§ 117.835 Perquimans River.

The draw of the US17 bridge, mile 12.0 at Herford, shall open on signal from 8 a.m. to midnight from April 1 through September 30 and from 10 a.m. to 10 p.m. from October 1 through March 31. The draw need not be opened at all other times.

§ 117.837 Roanoke River.

(a) The draw of the US17 bridge, mile 37.5 at Williamson, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 94.0 at Palmyra, need not be opened for the passage of vessels.

§ 117.839 Scuppernong River.

The draw of the US64 bridge, mile 4.5 at Columbia, shall open on signal if at least 24 hours notice is given. Public vessels of the United States, commercial fishing vessels unable to pass the closed draw, or vessels in an emergency involving danger to life or property shall be passed as soon as possible.

§ 117.841 Smiths Creek.

The draw of the US117–S133 bridge, mile 1.5 at Wilmington, shall open on signal if at least 24 hours notice is given.

§ 117.843 Trent River.

(a) The draws of the US70 bridge, mile 0.0 at New Bern, shall open on signal; except that, the draw need not be opened from 6:30 a.m. to 7:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday. From May 24 through September 8 on Sundays and Federal holidays, the draw need not be opened from 2 p.m. to 7 p.m.; however, the draw shall open at 4 p.m. and 6 p.m. if any vessels are waiting to pass. Public vessels of the United States, State or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draws of the Seaboard System Railroad bridge, mile 18.0 near Pollocksville, need not be opened for the passage of vessels.

Ohio

§ 117.847 Ashtabula River.

(a) The draw of the Fifth Street bridge, mile 1.4 at Ashtabula, shall open on signal for the passage of commercial and emergency vessels and on the hour and half hour for all other vessels.

(b) The draw of the Conrail bridge, mile 2.2 at Ashtabula, shall open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given.

§ 117.849 Muskingum River (Zanesville Canal).

The draw of the Conrail bridge, mile 77.1 at Zanesville, shall open on signal Tuesday through Friday if the Conrail office is notified by 12:01 p.m. on the day preceding the day the opening is required. For openings Saturday through Monday, the Conrail office shall be notified by 12:01 p.m. on Friday specifying which day and time the opening is required. In case of emergency, the draw shall open as soon as possible.

§ 117.851 Portage River.

(a) Public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress or seeking shelter from rough weather shall be passed through the bridges listed in this section as soon as possible.

(b) The owners of the bridges listed in this section shall provide and keep in good legible condition two board gages painted white with black figures to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) The draws of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From May 1 through May 14 and from November 1 through December 1, the draw shall open on signal.

(2) From May 15 through October 31 from 12 midnight to 6 a.m., the draw shall open on signal; except that, from 6 a.m. to 12 midnight, the draw shall open on signal only from three minutes before to three minutes after the hour and half hour.

(3) From December 2 through April 30, the draw shall open on signal if at least 24 hours notice is given.

(d) The draws of the Conrail bridge, mile 1.5 at Port Clinton, shall open on

signal; except that, from December 2 through April 30, the draw shall open on signal if at least 24 hours notice is given.

§ 117.853 Sandusky Bay.

(a) The draw of the Conrail bridge, mile 3.5 at Sandusky, shall open on signal from April 1 through October 31 and from November 1 through November 30 from 8 a.m. to 4 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given to the Chief Dispatcher, Central Union Terminal, Toledo.

(b) The draw of the Ohio Highway 269 bridge, mile 8.2 at Sandusky, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given to the State Highway Patrol at Sandusky.

Oregon

§ 117.861 Blind Slough.

The draws of the Burlington Northern railroad bridge, mile 1.1 at Knappa, shall open on signal if at least one hour notice is given. However, the draw shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period established by the Columbia River Compact (Washington State Department of Fisheries and the Fish Commission of Oregon) for the Columbia River Fishery below Bonneville Dam.

§ 117.863 Catching Slough.

The draw of the secondary highway bridge, mile 1.0 near Eastside, shall open on signal if at least 48 hours notice given.

§ 117.865 Clatskanie River.

The draw of the Burlington Northern railroad bridge, mile 0.7 at Clatskanie, shall open on signal if at least one hours notice is given. However, the draw shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period established by the Columbia River Compact (Washington State Department of Fisheries and the Fish Commission of Oregon) for the Columbia River Fishery below Bonneville Dam.

§ 117.867 Coalbank Slough.

The draws of the Southern Pacific railroad bridge, mile 0.1, and the US101 highway bridge, mile 0.2, both at Coos Bay, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.869 Columbia River.

(a) The draw of the Interstate 5 bridge, mile 106.5 at Vancouver, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels.

(b) The draw of the Port of Hood River bridge, mile 169.8 at Hood River, shall open on signal if at least 12 hours notice is given.

§ 117.871 Coos Bay.

The draw of the Southern Pacific railroad bridge, mile 9.0 at North Bend, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. During foggy weather, a fog bell installed in the center of the draw shall be rung continuously, striking ever 10 seconds. At any time during foggy weather when the draw is closed and passage is not clear for vessels, a siren shall be sounded continuously. The siren shall be capable of being heard at a distance of one mile from the draw. When the bridge is again opened, the siren shall be stopped, indicating that the way is clear for the passage of vessels.

§ 117.873 Coos River.

The draw of the Oregon State secondary highway bridge, mile 2.2 near Eastside, shall open on signal if at least 12 hours notice is given.

§ 117.875 Coquille River.

(a) The draws of the US101 highway bridge, mile 3.5 at Bandon, shall open on signal if at least two hours notice is given to the Coos Bay South Slough bridge attendant.

(b) The draws of the Oregon Secondary highway bridge, mile 24.0 at Coquille, shall open on signal if at least 48 hours notice is given.

§ 117.879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0 at Coos Bay, shall open on signal if at least four hours notice is given.

§ 117.881 John Day River.

(a) The draw of the Burlington Northern railroad bridge, mile 0.0 near Astoria, shall open on signal if at least one hour notice is given. However, the draw shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period established by the Columbia River Compact (Washington State Department of Fisheries and the Fish Commission of Oregon) for the Columbia River Fishery below Bonneville Dam.

(b) The draw of the US30 highway bridge, mile 1.0 near Astoria, shall open on signal if at least 48 hours notice is given.

§ 117.885 Nehalem River.

The draw of the US101 highway bridge, mile 6.5 at Nehalem, need not open for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.887 North Portland Harbor (Oregon Slough).

The draw of the Burlington Northern railroad bridge, mile 3.2 at Portland, shall open on signal if at least one half hours notice is given.

§ 117.889 Siuslaw River.

(a) The draw of the US101 bridge, mile 5.0 at Florence, shall open on signal if at least two hours notice is given.

(b) The draw of the Southern Pacific railroad bridge, mile 8.0 near Cushman, shall open on signal if at least 24 hours notice is given.

§ 117.891 Skipanon River.

The draw of the Burlington Northern railroad bridge, mile 1.9 at Warrenton, shall be maintained in the fully open position, except for the crossing of trains or visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prologned blast followed by one short blast.

§ 117.893 Umpqua River.

(a) The draw of the US101 bridge, mile 11.1 at Reedsport, shall open on signal from 8 a.m. to 4 p.m. Monday through Friday from May 1 through October. At all other times, the draw shall open on signal if at least four hours notice is given.

(b) The draw of the Southern Pacific railroad bridge, mile 11.5 at Reedsport, shall be maintained in the fully open position, except for the crossing of trains or other railroad equipment or for maintenance. During foggy weather when the draw is closed and the channel is not clear for the passage of vessels, a fog horn with an audible range of one-half mile from the draw shall be sounded. Two clear signals of approximately six seconds duration each, repeated at intervals of 60 seconds from completion of the second signal to commencement of the next signal, shall be sounded and repeated from commencement of closure to full opening of the draw. When the draw is again in the open position, the fog horn shall be stopped, indicating that the channel is clear for the passage of vessels.

(c) The draw of the US101 bridge across the side channel of the Umpqua River, mile 11.1 near Reedsport, need not be opened for the passage of vessels.

§ 117.895 Walluski River.

The draw of the Oregon State secondary highway bridge, mile 1.0 near Astoria, shall open on signal if at least 48 hours notice is given.

§ 117.897 Willamette River.

(a) The draw of the following bridges operate as follows:

(1) The draws shall open on the signal listed below; except that, from 7 a.m. to 8:30 a.m. and 4 p.m. to 5:30 p.m. except Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of these days under State law, the draws need not be opened for the passage of vessels:

(i) Broadway Bridge, Portland, mile 11.7, two prolonged followed by one short blast.

(ii) Steel Bridge, Portland, mile 12.1, one prolonged followed by one short blast.

(iii) Burnside Bridge, Portland, mile 12.4, one prolonged followed by two short blasts.

(iv) Morrison Bridge, Portland, mile 12.8, one prolonged followed by three short blasts.

(v) Hawthorne Bridge, Portland, mile 13.1, one prolonged followed by four short blasts.

(2) The closed periods do not apply to harbor patrol or fire boats answering calls and, for the Broadway Bridge only, oceangoing vessels of 750 gross tons or over.

(3) Signals to open shall be given by vessels at a distance of at least 1,000 feet from the bridge, except in case of a vessel leaving a wharf or anchorage or when waiting less than 1,000 feet from the bridge. In these cases, the signal must be given early enough to allow the operator of the bridge sufficient time in which to clear and open the draw before arrival of the vessel.

(4) In case two vessels which are approaching from opposite directions meet at or near the bridge, the vessel bound downstream has the right of way.

(b) The draw of the Southern Pacific railroad bridge, mile 84.3 at Salem, need not be opened for the passage of vessels.

(c) The draw of the Southern Pacific railroad bridge, mile 119.6 at Albany, shall open on signal if at least six hours notice is given.

(d) The draw of the Oregon highway bridge, mile 132.1 at Corvallis, shall open on signal if at least seven days notice is given; however, the draw need not be opened on Saturdays, Sundays, and Federal holidays.

(e) The draw of the Southern Pacific railroad bridge, mile 164.3 near Harrisburg, need not be opened for the passage of vessels.

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7 across Youngs Bay at Smith Point, shall open on signal for the passage of vessels. The opening signal is two prolonged blasts followed by two short blasts.

(b) The draw of the Burlington Northern railroad bridge, mile 0.8 across Youngs Bay at Smith Point, Astoria, shall be maintained in the fully open position, except for the crossing of trains or other railroad equipment or for maintenance. When the draw is closed and visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prolonged blast followed by one short blast.

(c) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4 across Youngs Bay at the foot of Fifth Street, shall open on signal from 5 a.m. to 9 p.m. At all other times, the draw shall open on signal if at least one half hour's notice is given to the drawtender at the New Youngs Bay bridge by marine radio, telephone, or other suitable means. The opening signal is two prolonged blasts followed by one short blast.

(d) The draw of the Oregon State highway bridge, mile 1.0 across the Lewis and Clark River, shall open on signal from 5 a.m. to 9 p.m. At all other times, the draw shall open on signal if at least one half hour's notice is given to the drawtender at the New Youngs Bay bridge by marine radio, telephone, or other suitable means. The opening signal is one prolonged blast followed by four short blasts.

Pennsylvania

§ 117.901 Chester Creek.

The draw of the Front Street bridge, mile 0.1 at Chester, shall open on signal if at least 24 hours notice is given.

§ 117.903 Darby Creek.

The draws of the Conrail railroad bridge, mile 0.3 at Essington, and the Reading railroad bridge, mile 0.3 at Essington, shall open on signal as follows:

(a) From 11 p.m. to 7 a.m., the draws need not be opended for the passage of vessels. From May 15 through October 15 at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m., and 10:30 p.m. and from 7 a.m. to 11 p.m., the draws shall open if an opening will not unduly delay railroad operations. Any vessel which has passed through one of these bridges shall be passed through the draw of the other bridge without delay. When open for the passage of any vessel, these bridges shall remain open sufficiently long to permit the passage through both bridges of all vessels waiting to pass.

(b) From October 16 through May 14, the draws shall open if at least 24 hours notice is given.

(c) The draws shall open as soon as possible for an emergency or vessel in distress.

(d) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.904 Delaware River.

The owners of drawbridges across the Delaware River shall provide and keep in good legible condition two board gages painted white with black figures to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

§ 117.905 Schuylkill River.

(a) The owners of the bridges listed in this section shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Conrail Bridge, mile 5.5 at Grays Ferry Avenue, and the University Avenue bridge, mile 6.2, both at Philadelphia, shall open on signal from 8 a.m. to 4 p.m. and 8 p.m. to 4 a.m. Monday through Friday. At all other times, the draw shall open on signal if at least two hours notice is given.

(c) The draws of the Conrail bridge, mile 6.4 near Christian Street at Philadelphia, shall open on signal if at least two hours notice is given.

Rhode Island

§ 117.907 Providence River.

The draw of the US1 (Point Street) bridge, mile 7.5 at Providence, need not be opened for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given to the Director of Public Works, City Hall, Providence. Public vessels of the United States, state and local vessels used for public safety, loaded, self-propelled cargo vessels, and assisting tugs shall be passed as soon as possible.

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) The draw of the Ben Sawyer (S703) bridge across Sullivan's Island Narrows, mile 462.2 (AIWW) between Sullivan's Island and Mount Pleasant, shall open on signal, except that the draw need not be opened from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday. On Saturdays, Sundays, and Federal holidays from 2 p.m. to 6 p.m., the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the S171/700 bridge across Wappoo Creek, mile 470.8 at Charleston, shall open on signal, except that the draw need not be opened from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday. On Saturdays, Sundays, and Federal holidays from 2 p.m. to 6 p.m., the draw need be opened only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(c) The draw of the Lady's Island bridge across the Beaufort River, mile 536.0 at Beaufort, shall open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except legal holidays, the draw need open only at 8 a.m. and 5 p.m. if any vessels are waiting to pass. Public vessels of the United States, commercial tows, and vessels in distress shall be passed at any time.

§ 117.913 Ashepoo River.

The draw of the Seaboard System Railroad bridge, mile 32.0 at Ashepoo, need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within six months after notification by the District Commander to do so.

§ 117.915 Ashley River.

(a) The draws of the US17 highway bridges, miles 2.4 and 2.5 at Charleston, shall open on signal; except that, from 7 a.m. to 9 a.m. Monday through Friday and 4 p.m. to 7 p.m. daily, the draws need be opened only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

(b) The draw of the Seaboard System Railroad bridge, mile 12.0 near Drayton Hall, shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m., the draw shall open on signal if at least three hours notice is given.

§ 117.917 Battery Creek.

The draw of the State highway bridge, mile 2.1 between Beaufort and Parris Island, shall open on signal if at least 24 hours notice is given.

§ 117.919 Black River.

The draw of the US17 highway bridge, mile 8.0 near Georgetown, shall open on signal if at least 12 hours notice is given.

§ 117.921 Broad River.

(a) The draw of the S170 bridge, mile 14.0 near Beaufort, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 17.0 near Whale Branch, shall open on signal if at least 24 hours notice is given.

§ 117.923 Congaree River.

The draw of the Southern Railway bridge, mile 4.3 at Moye's Station, shall open on signal if at least 24 hours notice is given.

§ 117.925 Cooper River.

The draw of the Seaboard System Railroad bridge, mile 42.8 near Cordesville, shall open on signal from 7 a.m. to 12 noon and 1 p.m. to 4 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given.

§ 117.927 Coosaw River (Whale Branch).

The draw of the Seaboard System Railroad bridge, mile 5.3 at Seabrook, and the draw of the US21 bridge, mile 7.0 at Beaufort, shall open on signal from 6 a.m. to 8 p.m. Monday through Friday if at least 24 hours notice is given. At all other times, the draw need not be opened for the passage of vessels.

§ 117.929 Durham Creek.

The removable span of the Seaboard System Railroad bridge, mile 1.7 at Bushy Park, shall be removed to allow the passage of dredges and construction equipment if at least 20 days notice is given. When notified by the City of Charleston of an emergency in the Bushy Park Reservoir, the span shall be removed as soon as possible to permit the passage of dredges and construction equipment.

§ 117.931 Harbor River (a tidal estuary in St. Helena Sound).

The draw of the S285 bridge, mile 0.5 at Hunting Island, shall open on signal if at least 24 hours notice is given.

§ 117.933 Pee Dee River.

The draws of the Seaboard System Railroad bridges, mile 72.6 near Poston and mile 107.2 near Pee Dee, need not be opened for the passage of vessels.

§ 117.935 Rantowles Creek.

The draw of the Seaboard System Railroad bridge, 1.1 near Rantowles, need not be opened for the passage of vessels.

§ 117.937 Savannah River.

The draw of the Seaboard System Railroad bridge, mile 60.9 at Clyo, shall open on signal from 6 a.m. to 11 a.m. and 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. VHF radiotelephone communications are available at the bridge tender's house and the dispatcher's office in Savannah, Georgia.

§ 117.939 Wando River.

The draw of the S41 bridge, mile 10.0 near Cainhoy, shall open on signal if at least 12 hours notice is given.

South Dakota

§ 117.941 Missouri River.

The draws of the US81 bridge, mile 805.7 at Yankton, and the Chicago and Northwestern Railroad bridge, mile 1066.5 at Pierre, need not be opened for the passage of vessels.

Tennessee

§ 117.943 Cumberland River.

The draw of the Seaboard System Railroad bridge, mile 126.5 at Clarksville, shall open on signal when the vertical clearance under the navigational span is 47 feet or less. The draw shall open on signal if at least two hours notice is given when the vertical clearance is greater than 47 feet. The draw need not be opened for a vessel that arrives at the bridge more than 30 minutes after the time specified in the notice, unless a second two hours notice has been given. A summary of these regulations shall be conspicuously posted by the bridge owner at the Kentucky and Pickwick Locks on the Tennessee River and at the Barkley and Cheatham Locks on the Cumberland River.

§ 117.945 Hatchie River.

The draws of the Illinois Central Gulf railroad bridge, mile 35.0 at Covington, and the Seaboard System Railroad bridge, mile 71.0 at Brownsville, need not be opened for the passage of vessels.

§ 117.947 Obion River.

The draws of all bridges on the Obion River need not be opened for the passage of vessels.

§ 117.949 Tennessee River.

The draws of the Southern Railway (Chief John Ross) bridge, mile 464.1 at Chattanooga, and the Southern Railway bridge, mile 470.7 at Hixon, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours and informs the drawtender of the probable time of return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Notice of these regulations shall be posted by the bridge owner at the Nickajack and Watts Bar Locks on the Tennessee River.

Texas

§ 117.951 Arroyo Colorado River.

The draw of the S106 highway bridge, mile 22.5 at Rio Hondo, shall open on signal if at least 12 hours notice is given.

§ 117.953 Brazos River (Diversion Channel).

(a) The draw of the S36 highway bridge, mile 4.4 at Freeport, shall open on signal if at least 12 hours notice is given.

(b) The draw of the Missouri Pacific railroad bridge, mile 22.6 at Brazoria, need not be opened for the passage of vessels.

§ 117.955 Buffalo Bayou.

(a) The draw of the Southern Pacific railroad bridge, mile 0.1 at Houston, and all drawbridges upstream of it, except the Houston Belt and Terminal railroad bridge, mile 4.3, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Houston Belt and Terminal railroad bridge, mile 4.3, need not be opened for the passage of vessels.

§ 117.957 Cedar Bayou.

The draw of the Missouri Pacific railroad automated bridge, mile 7.0 at Baytown, operates as follows:

(a) The draw shall be maintained at a vertical clearance of 81.4 feet above mean high water. Fixed green navigation lights shall be displayed in the center of the draw.

(b) When a train approaches the bridge, the navigation lights shall be changed from green to red, alternating flashing red lights turned on, and a horn sounded for six minutes. At the end of six minutes, the draw may be lowered and locked if the scanning equipment does not detect any object under the span. If the scanning equipment detects an obstruction, the draw shall be raised until the obstruction is cleared.

(c) After a train has cleared the bridge, the draw shall be raised to 81.4 feet above mean high water, the flashing red lights stopped, and the navigation lights changed from red to green.

§ 117.959 Chocolate Bayou.

The draw of the Missouri Pacific railroad bridge, mile 11.4 at Liverpool, need not be opened for the passage of vessels.

§ 117.961 Clear Creek.

(a) The draw of S146 bridge, mile 1.0 between Kemah and Seabrook, shall open on signal; except that, from 8 a.m. to 8 p.m. on Saturdays, Sundays and Federal holidays, the draw need be opened only every other 10 minutes if any vessels are waiting to pass.

(b) The draw of the Southern Pacific railroad bridge, mile 1.0 at Seabrook, shall be maintained in the fully open position except for the crossing of trains or for maintenance.

§ 117.963 Colorado River.

The draw of the highway bridge, mile 10.7 at Wadsworth, shall open on signal if at least 24 hours notice is given.

§ 117.965 Cow Bayou.

The draws of the Orange County highway bridge, mile 2.9 at West Orange, and the S87 bridge, mile 4.5 at Bay City, shall open on signal if at least six hours notice is given.

§ 117.967 Greens Bayou.

The draw of the Port Terminal Railroad Association railroad bridge, mile 2.8 at Houston, shall open on signal if at least four hours notice is given. The draw shall open on signal for three hours thereafter for returning downbound vessels.

§ 117.969 Lavaca River.

The draws of the Missouri Pacific railroad bridge, mile 11.2, and the highway bridge, mile 11.2, both at Vanderbilt, shall open on signal if at least 48 hours notice is given. In emergencies, the draws shall open as soon as possible.

§117.971 Neches River.

The draw of the Atchison, Topeka and Santa Fe railroad bridge, mile 53.9 at Evadale, need not be opened for the passage of vessels.

§ 117.973 Nueces Bay.

The draw of the US181 bridge, mile 0.5 at Corpus Christi, need not be opened for the passage of vessels.

§ 117.975 Old Brazos River.

The draw of the Missouri Pacific railroad bridge, mile 4.4 at Freeport, shall be maintained in the fully open position, except for the crossing of trains or for maintenance.

§117.977 Pelican Island Causeway, Galveston Channel.

The draw of the Pelican Island causeway bridge, mile 356.1 across Galveston Channel at Galveston, shall open on signal; except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Saturday except Federal holidays, the draw need not be opened for the passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

§ 117.979 Sabine Lake.

The draw of the S82 bridge, mile 10.0 at Port Arthur, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least six hours notice is given to the Maintenance Construction Supervisor or the Maintenance Foreman at Port Arthur.

§ 117.981 Sabine River.

The draws of the Southern Pacific railroad bridge, mile 19.3 at Echo, the Kansas City Southern railroad bridge, mile 36.2 at Ruliff, and the Texas and Louisiana railroad bridge and the Louisiana S7 bridge, mile 40.8, both at Deweyville, shall open on signal if at least 24 hours notice is given.

§ 117.983 Sabine River (Old Channel) behind Orange Harbor Island.

The draw of the highway bridge, mile 9.5 at Orange, shall open on signal from 7 a.m. to 12 midnight Monday through Friday except Federal holidays. The draw shall open on signal at all other times if at least eight hours notice is given.

§ 117.984 San Bernard River.

The draw of the Missouri Pacific railroad bridge, mile 20.7, shall open on

signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m., the draw shall open on signal if at least three hours notice is given.

§ 117.987 Taylor Bayou.

The draws of the Southern Pacific railroad bridge, mile 2.0, and the S73 bridge, mile 10.2, both at West Port Arthur, need not be opened for the passage of vessels.

§ 117.989 Trinity River.

The draws of the Southern Pacific railroad bridge, mile 41.4 at Liberty, the Missouri Pacific railroad bridges, mile 54.8 at Kenefick and mile 181.8 at Riverside, and the Atchison, Topeka and Santa Fe railroad bridge, mile 96.2 at Romayor, need not be opened for the passage of vessels.

§ 117.991 Victoria Channel.

The draw of the Missouri Pacific railroad automated bridge, mile 29.4 near Bloomington, operates as follows:

(a) The draw is not constantly manned and is normally in the down position, providing a vertical clearance of 22 feet above mean high water.

(b) Three prolonged blasts of a horn or whistle from an approaching vessel activates navigational approach detectors, located one-half mile upstream and downstream from the bridge. If the draw is inoperable, the vessel's sound signals activate an alarm to alert bridge maintenance crews.

(c) When a vessel interrupts the beam of a navigational approach detector, the draw opens to the fully raised position of 50 feet above mean high water for 10 minutes; a navigation warning siren sounds; a navigation light in the center of the draw changes from red to green; and indicator lights located on quarter mile of each side of the bridge change from red to yellow. However, if a train is approaching the bridge so closely that the train may not be safely stopped, the navigation light on the bridge and the indicator lights on either side of the bridge remain red and the draw remains closed until the train has passed.

(d) Interruption of the detector bream located at the end of the bridge fender system cancels the existing time intervals and starts a new 10 minute interval during which the draw remains open. The draw remains open until the vessel clears the detector located at the opposite end of the fender system, or the 10 minute interval elapses, whichever occurs earlier.

(e) If a vessel is unable to reach the detectors located on the outer ends of the fender system before the draw closes, an additional signal of three prolonged blasts of a horn or whistle causes the draw to reopen and initiate a new 10 minute interval.

(f) If the draw is in the open position for the passage of a vessel and a train enters an approach circuit to the bridge, the bridge remains open for five minutes if the detector beam has been interrupted. If the detector beam has not been interrupted, the draw closes at the end of the original 10 minute opening period and will not reopen in response to the additional signal described in paragraph (e) of this section. After the train passes, the draw opens on signal for any waiting vessels.

Vermont

§ 117.993 Lake Champlain.

(a) The draws of the bridges listed in this section shall open as soon as possible for the passage of public vessels of the United States and Vermont Fish and Game Department vessels.

(b) The draw of the US2 bridge, mile 91.8 between South Hero Island and North Hero Island, shall open on signal—

(1) From May 15 through October 15 from 7 a.m. to 9 p.m.;

(2) From May 15 through October 15 from 9 p.m. to 7 a.m. if at least four hours notice is given; and

(3) From October 16 through May 14 if at least 24 hours notice is given.

(c) The draw of the Canadian National railroad bridge, mile 105.6 between South Hero Island and North Hero Island, shall open on signal from 7 a.m. to 11 p.m. from June 15 through September 15. At all other times, the draw shall open on signal if at least 24 hours notice is given.

(d) The draw of the SR78 bridge, mile 105.9 between Alburg Tongue and East Alburg, shall open on signal if at least 24 hours notice is given.

Virginia

§ 117.995 Appomattox River.

The draw of the Seaboard System Railroad bridge, mile 2.5 at Hopewell, shall open on signal if at least 24 hours notice is given to the Seaboard System Agent at Hopewell. However, a drawtender shall be in constant attendance and the draw shall open on signal upon 30 days notice, in writting, to do so from the District Commander.

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge across the South Branch of the Elizabeth River, mile 2.8 at Portsmouth-Chesapeake, shall open on signal; except that, from 6:30 a.m. to 7:30 a.m. from 3:30 p.m. to 4:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of pleasure craft.

(b) The draw of the Norfolk and Western railroad bridge across the South Branch of the Elizabeth River, mile 3.6 at Portsmouth-Chesapeake, shall be maintained in the open position; except the draw may close for the crossing of trains and maintenance of the bridge. When the draw is closed, a drawtender shall be present and the draw shall open on signal.

(c) The draw of the I64 bridge across the South Branch of the Elizabeth River, mile 7.1 at Chesapeake, shall open on signal if at least 24 hours notice is given.

(d) The draw of the S168 bridge, mile 12 at Chesapeake (Great Bridge), shall open on signal; except that, from 6 a.m. to 7 p.m., the draw need be opened only on the hour. If any vessel is approaching the bridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Vessels in an emergency condition which presents danger to life or property shall be passed at any time.

§ 117.999 Blackwater River.

The draw of the S189 bridge, mile 9.2 at South Quay, shall open on signal if at least 24 hours notice is given.

§ 117.1001 Cat Point Creek.

The draw of the S634 bridge, mile 0.3 at Naylors, need not be opened for the passage of vessels.

§ 117.1003 Chickahominy River.

The draw of the highway bridge, mile 1.5 at Barrets Ferry, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if a least 12 hours notice is given.

§ 117.1005 Chuckatuck Creek.

The draw of the US17 bridge, mile 1.0 at Crittendon, shall open on signal if at least two hours notice is given. If an emergency exists, the draw shall open as soon as possible.

§ 117.1007 Elizabeth River—Eastern Branch.

The draw of the Campostella bridge, mile 1.8 at Norfolk, shall open on signal; except that, from 7:35 a.m. to 7:50 a.m. Monday through Friday, the draw need not be opened except for the passage of tugs with tows.

§ 117.1009 Elizabeth River—Western Branch.

(a) The draw of the Seaboard System Railroad bridge, mile 3.8 at Portsmouth, shall open on signal; except that, from 1 a.m. to 6 a.m. from April 1 through October 31, the draw shall open on signal if at least eight hours notice is given. Operators of vessels intending to return through the draw during this period shall notify the drawtender before 6 a.m. of the time of return passage and the draw shall open on signal at the specified time. From November 1 through March 31, the draw shall open on signal if at least four hours notice is given.

(b) The draw of the S337 bridge, mile 4.7 Hodges Ferry, shall open on signal if at least eight hours notice is given.

§ 117.1011 Great Wicomico River.

The draw of the S200 bridge, mile 8.0 at Tipers, shall open on signal; except that, if an opening is desired from 6 p.m. to 6 a.m., the drawtender on duty shall be notified before 6 p.m.

§ 117.1013 Kinsale Creek.

The draw of the state highway bridge, mile 4.0, at Kinsale need not be opened for the passage of vessels.

§ 117.1015 Mattaponi River.

The draws of the Lord Delaware (S33) bridge, mile 0.8 at West Point, and the S629 bridge, mile 28.5 at Walkerton, shall open on signal if at least 24 hours notice is given. The drawtender service for either bridge shall be increased to the degree determined to be adequate within 30 days after written notice is received from the District Commander to do so.

§ 117.1017 Nansemond River.

The draw of the US 460 bridge, mile 18.2 at Suffolk, shall open on signal if at least 12 hours notice is given.

§ 117.1019 Nansemond River—Western Branch.

The draw of the S10 bridge, mile 2.0 at Reids Ferry, need not be opened for the passage of vessels.

§ 117.1021 North Landing River.

The draw of the S165 bridge, mile 20.2 at Chesapeake, shall open on signal; except that, from 6 a.m to 7 p.m., the draw need be opened only on the hour and half hour for the passage of pleasure craft. Public vessels of the United States, commercial vessels, and vessels in an emergency endangering life or property shall be passed at any time.

Washington

§ 117.1031 Chehalis River.

(a) The draw of the US101 highway bridge, mile 0.1 at Aberdeen, shall open on signal; except that, from 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels of less than 5,000 gross tons.

(b) The draw of the Union Pacific railroad bridge, mile 13.1 at South Montesano, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed, a drawtender shall be present and the draw shall open on signal.

§ 117.1033 Columbia River.

(a) The draw of the Interstate 5 bridge, mile 106.5 at Vancouver, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Port of Hood River bridge, mile 169.8 at Hood River, shall open on signal if at least 12 hours notice is given.

§ 117.1035 Columbia and Snake Rivers in the vicinity of Pasco.

The draws of the Union Pacific railroad bridge across the Columbia River, mile 323.5, the Burlington Northern railroad bridge across the Columbia River, mile 328.0, and the Burlington Northern railroad bridge across the Snake River, mile 1.5, operate as follows:

(a) The draws shall open on signal; except that, from 4 p.m. to 8 a.m., the draw of the Burlington Northern bridge across the Columbia River at mile 328.0 shall open on signal if at least two hours notice is given through the General Yardmaster, Pasco, Washington.

(b) The opening sound signal for the Union Pacific bridge, mile 323.5, is two prolonged blasts and one short blast. The opening sound signal for the Burlington Northern bridges, mile 328.0 and 1.5, is one prolonged blast and two short blasts.

(c) Opening visual signals may be used in conjunction with sound signals. The visual signals are a white flag by day and a white light at night swung in a full circle at arm's length facing the draw in full sight of the bridge.

(d) When the draw will open, the acknowledging sound signal is the same as the opening sound signal. When the draw cannot open, the acknowledging signal is four short blasts given in rapid succession and repeated until acknowledged by the same signal from the vessel.

(e) Sound and visual signals may be omitted when radiotelephone communications have been satisfactorily established between the drawtender and the approaching vessel and maintained until the vessel has passed through the bridge.

(f) When two vessels approaching from opposite directions meet near one of the bridges, the downbound vessel has the right-of-way.

(g) When one vessel waits for passage of another, the waiting vessel shall repeat the opening signal for the bridge and receive an acknowledging signal from the drawtender before proceeding through the bridge.

§ 117.1037 Cowlitz River.

The draws of the Burlington Northern railroad bridge, mile 1.5, and the City of Kelso highway bridge at Allen Street, mile 5.5, both at Kelso, operate as follows:

(a) The draws shall open on signal if at least 24 hours notice is given.

(b) In the event of an emergency declared by the Cowlitz County Department of Emergency Services, the owners of these bridges shall maintain a two hour capability for responding to bridge opening requests. Notification of emergencies and requests for openings during emergencies are initiated through the Cowlitz County Department of Emergency Services.

(c) The operating machinery of the draws shall be maintained in a serviceable condition and the draws opened and closed at intervals frequent enough to make certain that the machinery is in proper order for satisfactory operation.

(d) When fog prevails by day or by night, the drawtender, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and pasage of vessels.

§ 117.1039 Deep River.

The draw of the Washington State highway bridge, mile 3.5 near Deep River, shall open on signal if at least four hours notice is given.

§ 117.1041 Duwamish Waterway.

The draws of each bridge across the Duwamish Waterway operate as follows:

(a) The draws shall open on signal, except that the draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of

vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m. Monday through Friday except Federal holidays, except for a vessel of 5,000 tons or more.

(b) The following bridges shall open on the specified signals:

(1) Burlington Northern railroad bridge, mile 0.3, and Southwest Spokane Street bridge, mile 0.3, one prolonged blast followed quickly by three short blasts.

(2) Burlington Northern railroad bridge, mile 0.4, one prolonged blast followed quickly by one short blast.

(3) First Avenue South bridge, mile 2.5, three prolonged blasts.

(4) Fourteenth Avenue South bridge, mile 3.8, one prolonged blast followed quickly by one short blast and one prolonged blast.

(c) When fog prevails by day or by night, the drawtender of bridges listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

§ 117.1045 Hood Canal.

The draw of the Washington State pontoon highway bridge near Port Gamble operates as follows:

(a) The draw shall open on signal if at least one hour's notice is given.

(b) Telephone requests for bridge openings may be directed as collect calls to the Toll Office at the bridge site. The call may also be made by direct telephone communication through the Seattle Marine Operator, Station KOH, or through other marine wire or radio telephone service.

(c) The sound signal to request the opening of the draw is one prolonged blast of a horn or whistle followed quickly by two short blasts. When the draw will open, the drawtender shall acknowledge with the same signal.

(d) When the draw cannot be opened immediately, or is open and shall be closed promptly, the drawtender shall sound five or more short blasts of a horn or whistle, to be repeated at regular intervals until acknowledged by the requesting vessel.

(e) During unusual or emergency periods, the authorized representative of the owner of or agency controlling the bridge shall open the draw on a demand basis for specified periods of time, normally not exceeding 48 hours, when requested by the Department of the Navy. While on a demand basis, a drawtender shall be in attendance on the bridge with radio communications equipment in operation.

§ 117.1047 Hoquiam River.

(a) When fog prevails by day or night, the drawtender of each bridge listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

(b) The draw of the Burlington Northern railroad bridge, mile 0.3 at Hoquiam, shall be maintained in the fully open position except for the passage of trains or for maintenance. When the draw of the bridge is closed and the visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound one long blast followed by one short blast.

(c) The draw of the Simpson Avenue bridge, mile 0.5 at Hoquiam, shall open on signal if at least a one hour notice is given by marine radio, telephone, or other suitable means to the Washington State Department of Transportation or to the drawtender of the US101 highway bridge across the Chehalis River at Aberdeen. The opening signal is two prolonged blasts followed by one short blast.

(d) The draw of the Riverside Avenue (Sixth Street) bridge, mile 0.9 at Hoquiam, shall open on signal from 4 a.m. to 8 p.m. At all other times, the draw shall open on signal if at least one hours notice is given by marine radio, telephone, or other suitable means to the Washington State Department of Transporatation or to the drawtender of the US101 highway bridge across the Chehalis River at Aberdeen.

§ 117.1049 Lake Washington.

The draw of the pontoon highway bridge between Foster Island and Evergreen Point, operates as follows:

(a) The draw shall open on signal if at least one hours notice is given.

(b) Telephone requests for bridge opening may be directed as collect calls to the Highway Radio or made by direct telephone communication through the Seattle Marine Operator, Station KOH, or through other marine wire or radiotelephone service.

(c) The sound signal to request the draw to open is one prolonged blast of a horn or whistle followed quickly by two short blasts in the immediate vicinity of the draw. The drawtender shall acknowledge by repeating the requesting signal.

(d) The draw need not be opened Monday through Friday from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m for any vessel or other watercraft of less than 2,000 gross tons, unless the vessel has in tow a vessel of 2,000 gross tons or over or a vessel with a piledriver that is unable to pass under the fixed spans.

(e) All non-self-propelled vessels, crafts, and rafts navigating this waterway for which the opening of any draw is necessary shall be towed by a suitable self-propelled vessel while passing the draw.

§ 117.1051 Lake Washington Ship Canal.

(a) When fog prevails by day or by night, the drawtender of each bridge listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

(b) All non-self-propelled vessels, craft, or rafts navigating this waterway for which the opening of any draw is necessary shall be towed by a suitable self-propelled vessel while passing the draw.

(c) The draw of the Burlington Northern railroad bridge, mile 0.1, shall open on signal. The opening signal is one prolonged blast followed by one short blast.

(d) The draws of the Ballard (15th Avenue) bridge, mile 1.1, Fremont Avenue bridge, mile 2.6, University bridge, mile 4.3, and Montlake bridge, mile 5.2, all at Seattle, operate as follows:

(1) The draws shall open on signal; except that, the draws need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except Federal holidays for vessels of less than 1,000 tons, unless the vessel has a vessel in tow of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified. The draws shall open on signal from 12 midnight to 8 a.m. if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue bridge at mile 2.6.

(2) The opening sound signal for each bridge is one prolonged blast followed by one short blast, except that the University bridge, mile 4.3, opens on one prolonged blast followed by three short blasts.

§ 117.1053 Lewis River.

The draw of the Burlington Northern railroad bridge, mile 2.0 at Woodland, need not be opened for the passage of vessels.

§ 117.1055 Skagit River.

The draws of all bridges across the Skagit river need not be opened for the passage of vessels. However, the draws shall be returned to operable condition within one year after notification by the District Commander to do so.

§ 117.1057 Skamokawa Creek.

The draw of the Washington State highways bridge at Skamokawa need

not be opened for the passage of vessels.

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

(a) Drawtenders of bridges listed in this section shall acknowledge sound signals as follows:

(1) When draw can be opened immediately, two prolonged blasts followed by one short blast or three loud and distinct strokes of a bell.

(2) When draw cannot be opened immediately, or when it is open and must be closed promptly, two prolonged blasts or two loud and distinct strokes of a bell. This signal may also be used by a vessel to countermand its call signal.

(b) When fog prevails by day or by night, the drawtender of each bridge listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

(c) The draw of the Burlington Northern railroad bridge across the Snohomish River, mile 3.5 at Everett, shall open on signal. The opening signal is one prolonged blast, one short blast, and one prolonged blast.

(d) The draws of the SR99 (Twin) bridges across the Snohomish River, mile 3.6 at Everett, shall open on signal if at least a one hour notice is given. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander. Notice shall be given by marine radio, telephone, or other means on weekends to the drawtender at these bridges and on weekdays to the drawtender at the SR99 bridge across Ebey Slough at Maryville. The opening signal is three prolonged blasts followed by one short blast. One signal opens both draws.

(e) The draw of the SR2 bridge across the Snohomish River, mile 6.9 at Everett, shall open on signal if at least four hours notice is given. During freshets, a drawtender shall be in constant attendance and the draw shall open on signal when so ordered by the District Commander. The opening signal is three long blasts.

(f) The draws of the state highway bridge, mile 15.0, and the Burlington Northern railroad bridge, mile 15.5, both across the Snohomish River at Snohomish, need not be opened for the passage of vessels.

(g) The draw of the Burlington Northern railroad bridge across Steamboat Slough, mile 1.0 near Maryville, shall open on signal if at least four hours notice is given. The opening signal is one short blast followed by one prolonged blast.

(h) The draws of the SR99 (Twin) bridges across Steamboat Slough, miles 1.1 and 1.2 near Maryville, shall open on signal if at least four hours notice is given. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander. Notice shall be given by marine radio, telephone, or other means on weekends to the drawtender at these bridges and on weekdays to the drawtender at the SR99 bridge across Ebey Slough at Maryville. The opening signal is two prolonged blasts followed by one short blast. One signal opens both draws.

(i) The draw of the SR99 bridge across Ebey Slough, mile 1.6 at Maryville, shall open on signal if at least one hours notice is given. During freshets, a drawtender shall be in constant attendance and the draw shall open on signal when so ordered by the District Commander. Notice shall be given by marine radio, telephone, or other means on weekends to the drawtender at these bridges and on weekdays to the drawtender at the bridge. The opening signal is three prolonged blasts followed by one short blast.

§ 117.1061 Tacoma Harbor.

(a) When fog prevails by day or night, the drawtender of each bridge listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

(b) The draw of the South 11th Street bridge across Tacoma Harbor, mile 0.6 at Tacoma, shall open on signal if at least two hours notice is given. However, the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel of 1,000 gross tons or over or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. Under emergency conditions, openings shall be made as soon as possible upon notification to the City of Tacoma, Department of Public Works.

(c) The draw of the East 11th Street bridge across Blair Waterway at Tacoma shall open on signal; except that, the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel of 1,000 gross tons or over or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. Under emergency conditions, openings shall be made as soon as possible upon notification to the City of Tacoma, Department of Public Works.

(d) The draw of the East 11th Street bridge across Hylebos Waterway at Tacoma shall open on signal; except that, the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel of 1,000 gross tons or over or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. Under emergency conditions, opening shall be made as soon as possible upon notification to the City of Tacoma, Department of Public Works.

§ 117.1063 Willapa and Naselle Rivers.

(a) The draws of the US101 bridge across the North Fork of the Willapa River, mile 7.8 at Raymond, and the Washington State highway bridge across the Naselle River, mile 2.5 at Naselle, shall open on signal from 8 a.m. to 5 p.m. Monday through Friday except Federal holidays if at least two hours notice is given, and at all other times if at least eight hours notice is given. The opening signal for the North Fork bridge at Raymond is one prolonged blast, one short blast, and one prolonged blast and the bridge at Naselle, one prolonged blast.

(b) The draw of the Burlington Northern railroad bridge across the South Fork of the Willapa River, mile 0.3 at Raymond, shall open on signal if a least 24 hours notice is given. The opening signal is two prolonged blasts followed by one short blast.

§ 117.1065 Wishkah River.

(a) When fog prevails by day or by night, the drawtender of each bridge listed in this section, after giving the acknowledging signal to open, shall toll a bell continuously during the approach and passage of vessels.

(b) The draw of the Burlington Northern railroad bridge, mile 0.1 at Aberdeen, shall be maintained in the fully open position, except for the passage of trains or for maintenance. When the draw of the bridge is closed and the visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prolonged blast followed by one short blast.

(c) The draws of the Heron Street bridge, mile 0.2, and the Wishkah Street bridge, mile 0.4, both at Aberdeen, shall open on the signal of one prolonged blast followed by two short blasts if at

least one half hour notice is given. Notice for openings of the bridges shall be given to the Washington State Department of Transportation or to the drawtender at the US101 highway bridge across the Chehalis River, mile 0.1 at Aberdeen, by marine radio, telephone, or other suitable means.

Wisconsin

§ 117.1081 Black River.

The draw of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge, mile 1.0 at La Crosse, shall open on signal if at least two hours notice is given.

§ 117.1083 Duluth-Superior Harbor (St. Louis River).

(a) The draws of the Burlington Northern railroad bridge, mile 5.7 at Duluth, shall open on signal; except that, from January 1 through March 15, the draws shall open on signal if at least 24 hours notice is given. The opening signal for the Minnesota Draw is one prolonged blast followed by two short blasts and for the Wisconsin Draw is two prolonged blasts followed by two short blasts.

(b) The draws of the Grassy Point bridge, mile 8.0 at Duluth, and the Arrowhead bridge, mile 8.7 at Duluth, shall open on signal; except that, from January 1 through March 15, the draws shall open on signal if at least 24 hours notice is given. The opening signal for the Grassy Point bridge is two short blasts followed by one prolonged blast and for the Arrowhead bridge is three prolonged blasts.

(c) The draw of the Duluth, Missabe and Iron Range Railway bridge, mile 16.3 at Duluth, need not be opened for the passage of vessels. The owner shall return the draw to operable condition within a reasonable time when notified by the District Commander to do so.

§ 117.1085 East River.

The draw of the Monroe Avenue bridge, mile 0.3 at Green Bay, need not be opened for the passage of vessels.

§ 117.1087 Fox River.

(a) The draws of the Main Street bridge, mile 1.6, Walnut Street bridge, mile 1.8, and Mason Street bridge, mile 2.2, all at Green Bay, need not be opened for the passage of vessels from 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m. Monday through Saturday except Federal holidays. Public vessels of the United States, tugs, fireboats, and vessels with a cargo capacity of 300 short tons or over engaged in commercial transportation shall be passed at any time. The opening signal for the Main Street bridge is two short blasts followed by one prolonged blast, for the Walnut Street bridge one prolonged blast followed by two short blasts, and for the Mason Street bridge one prolonged blast, followed by one short blast, followed by one prolonged blast.

(b) The draw of the George Street bridge, mile 7.2 at DePere, shall open on signal during the navigation season; except that, from 6 p.m. to 8 a.m. during the navigation season, the draw shall open on signal if at least two hours notice is given.

(c) The draws of the Main Street bridge, mile 56.3, Jackson Street bridge, mile 56.5, Wisconsin Street bridge, mile 57.0, and the Congress Avenue bridge, mile 58.3 all at Oshkosh, shall open on signal from 8 a.m. to 12 midnight; except that, from Monday through Friday from 11:45 a.m. to 12:15 p.m., 12:45 p.m. to 1:15 p.m., and 3 p.m. to 5 p.m., the draws need not be opened for other than public vessels of the United States except on Memorial Day, Independence Day, and Labor Day. From 12 midnight to 8 a.m., the draws shall open on signal if at least two hours notice is given by radiotelephone to the Main Street bridge drawtender or the Winnebago County Sheriff's Department.

(d) The draw of each bridge at or between Berlin and Portage need not open for the passage of vessels.

§ 117.1089 Manitowoc River.

(a) The draws of the Eighth Street bridge, mile 0.3, and the Tenth Street bridge, mile 0.5, both at Manitowoc, shall open on signal Monday through Friday except Saturdays, Sundays, New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or on the Monday following these holidays when they occur on a Sunday. The draws need not be opened from 6:50 a.m. to 7 a.m., 7:50 a.m. to 8 a.m., 11:55 a.m. to 12:10 p.m., and 12:45 p.m. to 1 p.m. The opening signal for the Eighth Street bridge is one prolonged blast followed by one short blast and for the Tenth Street bridge is two short blasts followed by one prolonged blast. When signal is given by a car ferry or other large vessel to open either bridge, the remaining bridge shall also be opened promptly so that the vessel is not held between the two bridges.

(b) The draw of the Soo Line railroad bridge, mile 0.9 shall open on the signal of two short blasts followed by one prolonged blast.

§ 117.1091 Menominee River.

The draw of the Ogden-First Street bridge, mile 0.4 at Marinette, shall open on signal from 7 a.m. to 11 p.m. from May 1 through October 31. From 11 p.m. to 7 a.m. from May 1 through October 31, the draw shall open on signal if at least two hours notice is given. From November 1 through April 30, the draw shall open on signal if at least 12 hours notice is given.

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

(a) The draws of each bridge listed in this section shall open as soon as possible for the passage of public vessels of the United States, vessels carrying United States mail, vessels licensed to carry 50 or more passengers when on their regular routes, and fireboats of the City of Milwaukee.

(b) For all bridges, the drawtender's acknowledging signal when the draw will open is the same as the opening signal. The acknowledging signal when the draw will not open, or is open and must be closed promptly is four short blasts.

(c) The draws of bridges across the Milwaukee River operate as follows:

(1) The draws of the North Broadway Street bridge, mile 0.5, North Water Street bridge, mile 0.6, and Michigan Street bridge, mile 1.1, all at Milwaukee, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened.

(2) The draws of all other bridges across the Milwaukee River shall open on signal if at least two hours notice is given; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., the draws need not be opened.

(3) The opening signals are as follows:

(i) The Chicago and Northwestern bridge, mile 0.3, two prolonged blasts.

(ii) The North Broadway Street bridge, mile 0.5, three prolonged blasts followed by one short blast.

(iii) The North Water Street bridge, mile 0.6, three prolonged blasts followed by two short blasts.

(d) The draws of bridges across the Menomonee River and South Menomonee Canal operate as follows:

(1) The draw of the North Plankinton Avenue bridge across the Menomonee River, mile 0.1, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened.

(2) The draws of all other bridges across the Menomonee River and South Menomonee Canal shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened and, from 11 p.m. to 7 a.m., the draws

shall open on signal if at least two hours notice is given.

(3) The opening signal for the Chicago, Milwaukee, St. Paul and Pacific railroad bridge across the Menomonee River, mile 0.1, is two prolonged blasts followed by two short blasts.

(e) The draws of bridges across the Kinnickinnic River operate as follows:

(1) The draw of the Kinnickinnic Avenue bridge, mile 1.5, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draw need not be opened.

(2) The draws of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge, mile 1.5, and the Chicago and Northwestern Railway bridge, mile 1.52, shall open on signal if at least two hours notice is given.

(3) The draws of all other bridges across the Kinnickinnic River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened and, from 11 p.m. to 7 a.m., the draws shall open on signal if at least two hours notice is given.

(4) The opening signal for the Chicago and Northwestern bridge, mile 1.0, is two prolonged blasts.

(f) The draws of bridges across the Burnham Canal operate as follows:

(1) The draw of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge, mile 0.8, shall open on signal if at least two hours notice is given.

(2) The draws of all other bridges across the Burnham Canal shall open on signal: except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened and, from 11 p.m. to 7 a.m., the draws shall open on signal if at least two hours notice is given.

§ 117.1095 Root River.

(a) The draw of the Main Street bridge, mile 0.3 shall open on signal; except that, from April 1 through December 1 from 6 a.m. to 6 p.m., the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour to pass all accumulated vessels; and, from December 2 through March 31, the draw shall open on signal if at least two hours notice is given. At all times, public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed as soon as possible.

(b) The draw of the State Street bridge, mile 0.5, shall open on signal; except that, from October 16 through April 30, the draw shall open on signal if at least two hours notice is given. At all times, public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed as soon as possible.

§ 117.1097 Sheboygan River.

The draw of the Eighth Street bridge, mile 0.7 at Sheboygan, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. including Sundays and legal holidays; except that, from 6:10 a.m. to 7:10 p.m. Monday through Saturday, the draw need be opened only at 10 minutes after the hour, on the half hour, and at 10 minutes before the hour. At all other times, the draw shall open on signal if at least two hours notice is given. At all times, public vessels of the United States, state or local vessels used for public safety, and vessels seeking shelter from rough weather shall be passed as soon as possible.

§ 117.1099 St. Croix River.

(a) The draws of the Burlington Northern railroad bridge, mile 0.2, the US16–61 bridges, mile 0.3, all at Prescott, and the Chicago and Northwestern Railroad bridge, mile 17.3 at Hudson, shall open on signal; except that, from December 15 to the last day of February, the draws shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 (Stillwater) bridge, mile 23.4 at Stillwater, shall open on signal as follows:

(1) On Monday through Friday, except Federal holidays, the draw shall open—

(i) Every hour on the hour from 3 p.m. to 6 p.m.

(ii) Every hour and half hour from 6 p.m. to 10 p.m.; and

(iii) From 10 p.m. to 8 a.m. if at least two hours notice is given.

(2) On Saturdays, Sundays, and Federal holidays, the draw shall open—

(i) Every hour and half hour from 8 a.m. to 11 a.m.

(ii) Every hour on the hour from 11 a.m. to 8 p.m.

(iii) Every hour and half hour from 8 p.m. to midnight; and

(iv) Midnight to 8 a.m. if at least two hours notice is given.

(3) From October 16 through May 14 if at least 24 hours notice is given.

(c) The draw of the Soo Line railroad bridge, mile 40.7 at Otisville, need not be opened for the passage of vessels.

§ 117.1101 Sturgeon Bay.

The draw of the highway bridge, mile 4.3 at Sturgeon Bay, shall open as follows:

(a) From March 15 through May 14 and from September 15 through December 31, the draws shall open on signal.

(b) From May 15 through September 15, the draw shall open on signal from 6 p.m. to 6:30 a.m.

(c) From May 15 through September 15 from 6:30 a.m. to 6 p.m., the draw shall open on the hour and half hour, provided vessels are waiting to pass. However, public vessels of the United States and commercial vessels shall be passed through the draw without delay during this period.

(d) From January 1 through March 14, the draw shall open on signal if at least 12 hours notice is given.

§ 117.1103 Upper Mississippi River.

(a) The draws of all bridges between Lock and Dam No. 10, mile 615.1, and Lock and Dam No. 2, mile 815.2, shall open on signal; except that, from December 15 through March 1, the draws shall open if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 2, mile 815.2, and Lock and Dam No. 1, mile 847.6, shall open on signal; except that, from December 15 through the last day of February, the draws shall open on signal if at least 12 hours notice is given.

§ 117.1105 Wisconsin River.

The draws of each drawbridge across the Wisconsin River shall open on signal if at least 48 hours notice is given.

§ 117.1107 Wolf River.

The draw of the Winneconne highway bridge, mile 2.4 at Winneconne, shall open on signal; except that, from 11 p.m. to 7 a.m. from May 1 through October 31, at least two hours notice is required and, from November 1 through April 30, at least 12 hours notice is required. At all times, public vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed as soon as possible.

Dated: March 29, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-10537 Filed 4-23-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION
Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for certain provisions of the program of school assistance under the Impact Aid Program authorized by Pub. L. 81–874 (the Act). These final regulations establish procedures for carrying out school board elections under section 6 of the Act. The Secretary takes this action to implement a statutory requirement. These regulatory provisions will affect the election of school boards that oversee the 18 schools established under section 6 of the Act.

DATES: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6272. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 6 of Pub. L. 81–874 the Secretary is required to make arrangements to provide free public education to children who reside on Federal property where local school districts cannot provide this education. Every agency with which the Secretary makes a section 6 arrangement is required to establish an elective school board for schools assisted under that arrangement. These school boards are responsible for overseeing school expenditures and operations, subject to audit procedures established by the Secretary, and other provisions of section 6. The Secretary is required by the Act to establish procedures governing the election of these school boards.

On June 29, 1979, the Commissioner of Education published a notice of proposed rulemaking (NPRM) containing these procedures (at 44 FR 38223). At that time the regulations implementing Pub. L. 81–874 were designated as 45 CFR Part 115. The specific provisions governing elective school boards were proposed as 45 CFR 115.91. Since that time, the regulations at 45 CFR Part 115 have been redesignated as 34 CFR Part 222, and the provisions governing elective school boards will be numbered as 34 CFR 222.59a. Public comments were invited on the NPRM. Four comments were received concerning the school board provision, and they are summarized in the comment section of this preamble together with the Secretary's responses.

Section 6 of the Act requires that school boards be established for schools assisted under section 6. The school boards are empowered to oversee the operations and expenditures of the schools, subject to audit procedures established by the Secretary, and other provisions of section 6 and the governing regulations. The school boards must be composed of at least three members elected by the parents of children in attendance at the schools.

The regulations would require that parents be given adequate notice of the time and place of the election. The election must be by secret ballot and plurality vote. No individual employed by the school or school system is eligible to serve on the board. Candidates for board membership must be nominated by one or more parents of students in attendance at the schools.

Summary of Comments and Responses

Section 222.59a(a) [identified in the NPRM as § 115.91(a)]

Comment. One commenter asked what is meant by "independently of the section 6 arrangement." How many section 6 schools are already governed by an elected board? What is the school has an elected board but it doesn't conform to section 6(g) of the Act in number and duties of members? Should it be made to conform?

Response. No change has been made. In those situations where section 6 arrangements have been made between the Secretary and an LEA having a duly constituted school board, it would appear redundant and potentially troublesome to have a second elected school board. However, the Secretary believes that it is essential that the parents of children who are in attendance at the section 6 school be involved with, and consulted by, the school officials and the Board of Education of the school district.

Section 222.59a(b)(2) [identified in the NPRM as § 115.91(b)(2)]

Comment. One commenter asked if these boards will have policy-making powers or will they be purely advisory.

Response. A change has been made. The regulations clarify the term "oversee." The Department of Education is authorized to make arrangements for the provision of suitable free public education under section 6 with an LEA, or the head of the Federal department or agency administering Federal property on which children reside who are to be provided the education. Such arrangements generally have been made after consultation with the SEA and it is determined no LEA is able to provide suitable free public education. The arrangements place upon the head of the Federal department or agency or the Board of Education of the school district with which an arrangement has been made, the responsibility for the provision of this education. These are the entities which are held responsible for the success of the arrangement, the education provided, and the appropriate receipt and disbursement of funds necessary to carry out the arrangement. Since the base commander or the duly elected local board of education (if the arrangement is with an LEA) is the legally responsible agency or department, the board of education authorized in §222.59a does not have unrestricted policy-making power and authority. Certainly policy may be adopted by this board or recommended for adoption that does not conflict with other legal requirements and responsibilities.

Section 222.59a(d)(3) [identified in the NPRM as § 115.91(d)(3)]

Comment. One commenter stated that the law does not exclude "personnel employed in the school system" from being on the board. Why was this provision felt necessary?

Response. No change has been made. The Secretary believes that a teacher or other school system employee serving as a voting member on the board of education would constitute a conflict of interest situation. The final regulations reflect common practice among the States to avoid conflicts of interest.

Section 222.59a(d)(4) [identified in the NPRM as § 115.91(d)(4)]

Comment. One commenter asked whether people can nominate themselves for membership on the board.

Response. No substantive change has been made. The procedure does not prohibit parents from nominating themselves as candidates for membership on the school board.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major

because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations propose simple and flexible election procedures, and fewer than 20 school systems are affected.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant program—education, Public housing.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.041. School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: April 23, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Subpart F of Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The table of contents for Subpart F of Part 222 is amended by adding a new § 222.59a, to read as follows:

Subpart F—Arrangements Under Section 6 of the Act

Sec.

* * * * *

222.59a Elected school board required.

2. Section 222.59a is added to read as follows:

§ 222.59a Elected school board required.

(a) This section applies to all schools operated with funds provided under section 6, except those which, independently of the section 6 arrangement, are governed by an elected school board as required by State or local law.

(b)(1) An agency with which the Secretary makes a section 6 arrangement shall establish an elective school board for schools assisted under that section.

(2) The agency shall empower this elective school board to oversee—review and monitor—school expenditures and operations, subject to audit procedures established by the Secretary, and other provisions of section 6 and this Subpart F.

(c) A school board established under paragraph (b) of this section must be composed of a minimum of three members elected by parents of students in attendance at the schools.

(d) The agency shall ensure the following election procedures:

(1) The parents must have adequate notice of the time and place of the election.

(2) The election must be by secret ballot and those candidates are elected who receive a plurality of the votes.

(3) Personnel employed in the schools may not be board members.

(4) Candidates for board membership must be nominated by one parent, or more, of students who are in attendance at the schools.

(20 U.S.C. 241(g))

[FR Doc. 84-11111 Filed 4-23-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-X-FRL-2570-7]

Approval and Promulgation of Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves revisions to the Alaska State Implementation Plan (SIP) which (1) add revised regulations for the control of open burning and wood smoke from residential home heating; (2) revise the emission standards for municipal wastewater treatment plant sewage sludge incinerators and woodwaste burning equipment; and (3) update, clarify and reorganize the provisions of the previously approved SIP. These revisions were submitted on November 15, 1983 by the Alaska Department of Environmental Conservation (ADEC) after adequate opportunity for public, private, and industry input.

EFFECTIVE DATE: This action will be effective on June 25, 1984 unless notice is received before May 24, 1984 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal thirty-day comment period on this action.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, (10A-84-1), Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

Copy of the State's submittal may be examined at: The Office of Federal Register, 1101 L Street N.W., Room 8401, Washington, D.C.

Comments should be addressed to: Laurie M. Kral, Environmental Protection Agency, 1200 Sixth Avenue, M/S 532, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washinton 98101, Telephone: (206) 442-8577, FTS: 399-8577.

SUPPLEMENTARY INFORMATION: EPA is today approving a number of revisions to the Alaska SIP which were submitted on November 15, 1983. The primary effects of these revisions are to revise the provisions for open burning and for controlling wood smoke from residential home heating, and to update, revise and reorganize the provisions of the currently approved SIP. EPA is only approving new and/or revised provisions of the November 15, 1983 submittal and is not reapproving portions of the submittal which are identical to the currently-approved SIP.

The revisions to Volume II of the State Air Quality Control Plan which EPA is approving are described below.

Section I *BACKGROUND* and subsection I.A. INTRODUCTION are retitlings of the currently-approved Section I. *INTRODUCTION* and subsection I.A. *SUMMARY*. Subsections I.A. INTRODUCTION, I.B. AIR QUALITY CONTROL REGIONS, and I.C. ATTAINMENT/NONATTAINMENT DESIGNATIONS have been revised to clarify the current status. A new subsection I.D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS has been added which includes certain revised provisions of the currently approved subsection I.C.3 *PRevention of Significant Deterioration Designations.* (Other provisions of subsection I.C.3

which relate to prevention of significant deterioration (PSD) reclassifications have been relocated to the new Appendix IV.C.)

Section II *STATE AIR QUALITY CONTROL PROGRAM* is a retitling of the current Section II *ALASKAN AIR QUALITY CONTROL PROGRAMS* and has been revised and updated to reflect the current status of the State and local air pollution control programs.

Section III *AREA WIDE POLLUTANT CONTROL PROGRAM* is a retitling and revision of the current Section III *AREA WIDE POLLUTANT CONTROL EFFORTS.* The current subsection III.A.1.c Other Areas, which discusses the attainment of the carbon monoxide standard in areas other than the two nonattainment areas has been deleted. Subsection III.D TOTAL SUSPENDED PARTICULATE MATTER has been renumbered from the current III.B. *TOTAL SUSPENDED PARTICULATE MATTER,* and has been revised to eliminate the discussion of attainment area status. Subsection III.E. ICE FOG has been renumbered from III.C. *ICE FOG,* and has been revised to clarify the State's control efforts. Subsection III.F. OPEN BURNING has been renumbered and retitled from the current III.D. *OPEN BURNING—FOREST PRACTICES,* and has been revised and expanded to clarify the revised regulations for control of open burning. A new section III.G. WOOD SMOKE POLLUTION CONTROL has been added to discuss the revised regulations for control of smoke from residential home heating.

Section IV *POINT SOURCE CONTROL PROGRAM* has been retitled from the current Section IV *POINT SOURCE CONTROL EFFORTS* and has been extensively revised. Subsection IV.A. SUMMARY has been revised to reflect the current program. A new subsection IV.A.1. Annual Review Report, has been added which is a revision and relocation of the current subsection IV.G.10. *Annual Review.* A new subsection IV.B. STATE AIR QUALITY REGULATIONS is an update and relocation of the current subsection IV.I *STATE AIR QUALITY CONTROL REGULATIONS.* A new subsection IV.C. LOCAL PROGRAMS is a revision and relocation of the current subsection IV.F. *LOCAL PROGRAM ENFORCEMENT.* A new subsection IV. D. DESCRIPTION OF SOURCE CATEGORIES AND POLLUTANTS is added which relocates, consolidates and revises the current subsection IV.B. *DESCRIPTION OF SOURCE CATEGORIES AND POLLUTANTS* as a new subsection IV.D.1. Typical Point Sources, and the current subsection IV.C. *SUMMARY OF MAJOR EMITTING FACILITIES* as a new subsection IV.D.2 Summary of Major Emitting Facilities. The current subsection IV.D. *HISTORY OF POINT SOURCE CONTROL PROGRAM* has been deleted. New subsections IV.E. POINT SOURCE CONTROL, IV.F. FACILITY REVIEW PROCEDURES, IV.G. APPLICATION REVIEW AND PERMIT DEVELOPMENT, and IV.H. PERMIT ISSUANCE REQUIREMENTS, have been added which reorganize and revise the provisions of the current subsection IV.G. *NEW SOURCE REVIEW AND APPROVAL.*

Section V *AMBIENT AIR MONITORING* has been updated by revising subsection V.A. PURPOSE, revising and retitling subsection V.B. COMPLETED AIR MONITORING PROJECTS from the current subsection V.B. *DESCRIPTION OF PREVIOUS AIR MONITORING NETWORK,* revising subsection V.C. AIR MONITORING NETWORK, and revising subsection V.E. ANNUAL REVIEW, to reflect the current status of the State and local monitoring programs.

The revisions to Volume III: Appendices to the State Air Quality Control Plan which EPA is approving are described below.

The current Appendix I–1 Summary of Public Hearings and Written Testimony, Summary of Changes made to Air Quality Regulations, Response to Selected EPA Comments, Notice of Public Hearings, Discussion of Proposed Changes to Regulations, Old Regulations, Proposed Changes to Regulations, and Appendix I–2 Recommendations for attainment/nonattainment designations, have been deleted since they are unnecessary.

The new Appendix II.A State Air Statutes, State Attorney General Opinion on Legal Authority, contains the provisions of the current Appendices II–1 Alaska Statutes and II–5 Alaska State Department of Law Legal Opinion. The new Appendix II.B Municipality of Anchorage/Cook Inlet/ADEC Agreements, contains the provisions of the current Appendix II–4 Municipality of Anchorage/Alaska Department of Environmental Conservation Agreement.

The new Appendix II.C Fairbanks North Star Borough Ordinances/FNSB & ADEC Agreements, contains the provisions of the current Appendices II–2 Regulations of the Fairbanks North Star Borough and II–3 Fairbanks North Star Borough/Alaska Department of Environmental Conservation Agreement. The new Appendix III.G. Ordinance of the City and Borough of Juneau, contains the ordinance for control of wood smoke from residential home heating.

The new Appendix IV.1 PSD Area Classification and Reclassifications, contains information on Class I areas (Appendix IV.1.A Class I Area Boundaries and Appendix IV.1.B. Areas Protected from Visibility Degradation) and the procedures for reclassification (Appendix IV.1.C. Reclassifications) which are revised and relocated from the current Section I.C.3.c. PSD Reclassification Procedures.

The new Appendix IV.2 Compliance Assurance, relocates and revises the provisions of the current subsection IV.H *COMPLIANCE ASSURANCE.*

The new Appendix IV. 3 Testing Procedures, renumbers and revises the current Appendix IV–3 Testing Procedures, to incorporate EPA test methods. The current Appendices IV–1 Summaries of Emission Inventories and IV–2.D Permit to Operate for the Fairbanks Municipal Utilities System are deleted since they are unnecessary for maintenance of ambient standards.

The current Appendix IV–4 ADEC Ambient Analysis Procedures is renumbered as Appendix V.A.

The current Appendix V–1 Air Quality Data is deleted since it is unnecessary.

The revisions to the ADEC regulations (TITLE 18. ENVIRONMENTAL CONSERVATION, *CHAPTER 50. AIR QUALITY CONTROL*) which EPA is approving are described below.

Section 18 AAC 50.021 STATE AIR QUALITY CLASSIFICATIONS, is revised by adding a new subsection (d) which designates the Mendenhall Valley of Juneau as a wood smoke control area. The Editor's Note for this section is updated to reflect the November 1, 1983 State Air Quality Control Plan. Section 18 AAC 50.030. OPEN BURNING, is revised by adding a new subsection (g) which prohibits open burning in wood smoke control areas between November 1 and March 31.

Section 18 AAC 50.040. INCINERATORS, is revised by amending subsections (a)(2) and (c), making the opacity and emission standard for municipal wastewater treatment plant sludge incinerators applicable to those installed before November 1, 1982 as well as those installed or modified after that date.

Section 18 AAC 50.050. INDUSTRIAL PROCESSES AND FUEL BURNING EQUIPMENT, is revised by amending subsections (a)(2) and (b)(4) so as to make these specific opacity and grain loading standards applicable only to woodwaste burning equipment in operation before November 1, 1982 and not all such equipment.

Section 18 AAC 50.085. WOOD-FIRED HEATING DEVICES, is revised by amending the emission standard in subsection (1) from "70 percent or greater for more than 20 minutes in any one hour" to "50 percent or greater for more than 15 minutes in any one hour", and by adding a new subsection (3) which bans the operation of wood-fired heating devices in wood smoke control areas whenever an air pollution emergency episode has been called.

EPA notes that the State did not submit these wood-firing heating device provisions as part of a demonstration of attainment and maintenance of the national ambient air quality standards for particulates. For that reason, in reviewing these provisions EPA did not determine the extent to which the resulting particulate emission reductions would be creditable in such a demonstration.

Section 18 AAC 50.300. PERMIT TO OPERATE, is revised by amending subsection (a)(1) to clarify which minor facilities need permits to operate, and by amending subsection (a)(7) to clarify the applicability date for the nonattainment area permit program.

Section 18 AAC 50.400. APPLICATION REVIEW AND ISSUANCE OF PERMIT TO OPERATE, is revised by amending subsection (d)(6) to change authority from the deputy director of ADEC to the regional supervisor.

Section 18 AAC 50.500. SOURCE TESTING, is revised by updating the cite to EPA's New Source Performance Standards in subsection (d), by revising the ADEC source test methods in subsection (e), and by updating the reference to the state Air Quality Control Plan in the Editor's Note for this section.

Section 18 AAC 50.510. AMBIENT ANALYSIS METHODS, is revised by updating the reference to the state Air Quality Control Plan in the Editor's Note for this section.

Section 18 AAC 50.520. EMISSION AND AMBIENT MONITORING, is revised by updating the reference to EPA's ambient monitoring regulations in subsection (a) and the reference to EPA's New Source Performance Standards in subsection (b).

Section 18 AAC 50.610. AIR EPISODES, is revised by adding new subsections (a)(1)(D) and (a)(3)(D) which establish specific alert and emergency levels for particulates in wood smoke control areas which are more stringent than the general total suspended particulate alert and emergency levels.

Section 18 AAC 50.620. AIR QUALITY CONTROL PLAN, is revised by updating the reference to the November 1, 1983 version of the state Air Quality Control Plan.

Section 18 AAC 50.900. DEFINITIONS, is revised by deleting the definition of deputy director (subsection 15), adding a definition of "regional supervisor" (subsection 39), renumbering subsections (39) through (45) as (40) through (46), and adding definitions of "wood-fired hearing device" (subsection (47)) and "wood smoke control area" (subsection (48)).

It is important to note that six portions of the submittals are not being approved. Subsections III.B.10 and III.C.10 contain specific emergency episode plans for the Anchorage and Fairbanks carbon monoxide nonattainment areas. However, these plans do not satisfy the requirements of 40 CFR 51.16 in that they do not include measures which are adequate to ensure that significant harm levels are not exceeded. The local agencies are currently revising these plans so EPA is taking no action at this time on these submittals. Subsection IV.D.3 discusses the sources which are currently under State variances. Since these variances are not submitted for EPA approval, EPA is taking no action on the subsection which discusses them. Subsection V.D refers to the local agencies' carbon monoxide control plans for the episode monitoring programs. However, since EPA is taking no action on the submitted episode plans, it is also taking no action on this subsection. Appendix II.A: State Air Statutes, Section 46.03.170 VARIANCES, and Appendix II.C: Fairbanks North Star Borough Ordinances, Section 8.04.070 VARIANCES, are provisions which provide discretion to the directors of ADEC and the Fairbanks North Star Borough regarding source compliance. However, it is inappropriate for these provisions to be included in the EPA-approved SIP in order to implement 40 CFR 51.34. Rather, to implement 40 CFR 51.34, all variances must be submitted as individual SIP revisions. Therefore, EPA is taking no action on these sections.

Finally, the provisions included in these submittals are intended to replace the existing, EPA-approved SIP (48 FR 30623, July 5, 1983). Through this approval EPA is therefore replacing or deleting the provisions of the existing SIP where there are new provisions which supersede the old or where deletion has been justified.

In summary, EPA is approving the following portions of the November 15, 1983 submittal as revisions to the Alaska SIP:

VOLUME II. ANALYSIS OF PROBLEMS, CONTROL ACTIONS

Section I. *BACKGROUND*

A. INTRODUCTION
B. AIR QUALITY CONTROL REGIONS
C. ATTAINMENT/NONATTAINMENT DESIGNATIONS
D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS

Section II. *STATE AIR QUALITY CONTROL PROGRAM*

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

D. TOTAL SUSPENDED PARTICULATE MATTER
E. ICE FOG
F. OPEN BURNING
G. WOOD SMOKE POLLUTION CONTROL

Section IV. *POINT SOURCE CONTROL PROGRAM*

A. SUMMARY
  1. Annual Review Report
B. STATE AIR QUALITY REGULATIONS
C. LOCAL PROGRAMS
D. DESCRIPTION OF SOURCE CATEGORIES AND POLLUTANTS
  1. Typical Point Sources
  2. Summary of Major Emitting Facilities
E. POINT SOURCE CONTROL
  1. Introduction
F. FACILITY REVIEW PROCEDURES
  1. Who needs a permit?
  2. Standard Application Procedures
  3. PSD Application Procedures, Preliminary report and meeting, Pre-construction monitoring, PSD application format.
  4. Nonattainment Application Procedures.
G. APPLICATION REVIEW AND PERMIT DEVELOPMENT
  1. Application Review
  2. Permit Development Requirements, Monitoring and Testing Requirements, Ambient Monitoring, Continuous Emissions Monitoring, Source Testing.
  3. Prevention of Significant Deterioration Review, Basis of Program, PSD Regulations, PSD Analysis Procedure.
  4. Nonattainment Area Review
  5. New Source Performance Standards Source Review
  6. Visibility Review
  7. Sources under EPA Review
H. PERMIT ISSUANCE REQUIREMENTS

Section V. *AMBIENT AIR MONITORING*

A. PURPOSE
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1. Carbon Monoxide
2. Nitrogen Oxides
3. Sulfur Dioxide
4. Ozone
5. Total Suspended Particulates (TSP)
C. AIR MONITORING NETWORK
1. Network Description
2. Station Designations
3. Air Quality Monitoring Procedures
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E. ANNUAL REVIEW

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II.A. State Air Statutes, State Attorney General Opinions on Legal Authority
II.B. Municipality of Anchorage/Cook Inlet/ADEC Agreements
II.C. Fairbanks North Star Borough Ordinances/FNSB & ADEC Agreements

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

III.G. Ordinance of the City and Borough of Juneau

Section IV. *POINT SOURCE CONTROL PROGRAM*

IV.1. PSD Area Classification and Reclassifications
A. Class I Area Boundaries
B. Areas Protected form Visibility Degradation
C. Reclassification
1. Limitations on PSD Reclassification
2. PSD Reclassification Procedures
IV.2. Compliance Assurance
IV.3. Testing Procedures

Section V. *AMBIENT AIR MONITORING*

ADEC Ambient Analysis Procedures

TITLE 18. ENVIRONMENTAL CONSERVATION, *CHAPTER 50. AIR QUALITY CONTROL*, Sections 021(d), 030(g), 040(a)(2), 040(c), 050(a)(2), 050(b)(4), 085, 300(a)(1), 300(a)(7), 400(d)(6), 500(d), 500(e), 510 (Editor's Note), 520(a), 520(b), 610(a), 620, 900(15), 900(39), 900(47), and 900(48).

EPA is approving the deletion of the following appendices:

VOLUME III. APPENDICES

I–1 Summary of Public Hearings, Written Testimony, etc.
I–2 Recommendations for attainment/nonattainment designations
IV–1 Summaries of Emission Inventories
IV–2.D Permit to Operate for the Fairbanks Municipal Utilities System
V–1 Air Quality Data

EPA is taking no action on VOLUME II: Section III.B.10, Section III.C.10, Section IV.D.3 and Section V.D, and VOLUME III: Appendix II.A, Section 46.03.170 and Appendix II.C, Section 8.04.070.

EPA views as noncontroversial and routine the approval of state rules which are more stringent than required by the Act and the clarification or reorganization of provisions in the currently approved SIP. EPA today is therefore approving, without prior proposal, the above revisions to the Alaska State Air Quality Control Plan and ADEC's regulations as a revision to the Alaska SIP.

The public should be advised that this action will be effective on June 25, 1984. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on those revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on those revisions 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 of the date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under section 110 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities.

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

(Secs. 110(a) and 301(a) of the Clean Air Act (42 U.S.C. 7410(a) and 7601(a)))

List of Subjects in 40 CFR Part 52

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

Dated: April 18, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart C—Alaska

1. In § 52.70, paragraph (c)(11) is added as set forth below:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(11) Provisions of a State Air Quality Control Plan submitted by the Alaska Department of Evironmental Conservation on November 15, 1983, as follows:

VOLUME II. ANALYSIS OF PROBLEMS, CONTROL ACTIONS

Section I. *BACKGROUND*

A. INTRODUCTION
B. AIR QUALITY CONTROL REGIONS
C. ATTAINMENT/NONATTAINMENT DESIGNATIONS
D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS

Section II. *STATE AIR QUALITY CONTROL PROGRAM*

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

D. TOTAL SUSPENDED PARTICULATE MATTER
E. ICE FOG
F. OPEN BURNING
G. WOOD SMOKE POLLUTION CONTROL

Section IV. *POINT SOURCE CONTROL PROGRAM*

A. SUMMARY
1. Annual Review Report
B. STATE AIR QUALITY REGULATIONS
C. LOCAL PROGRAMS
D. DESCRIPTION OF SOURCE CATEGORIES AND POLLUTANTS
1. Typical Point Sources
2. Summary of Major Emitting Facilities
E. POINT SOURCE CONTROL
1. Introduction
F. FACILITY REVIEW PROCEDURES
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G. APPLICATION REVIEW AND PERMIT DEVELOPMENT
1. Application Review
2. Permit Development Requirement, Monitoring and Testing Requirements, Ambient Monitoring, Continuous Emissions Monitoring, Source Testing
3. Prevention of Significant Deterioration Review, Basis of Program, PSD Regulations, PSD Analysis Procedure
4. Nonattainment Area Review

5. New Source Performance Standards Source Review
6. Visibility Review
7. Sources under EPA Review

H. PERMIT ISSUANCE REQUIREMENTS

Section V. *AMBIENT AIR MONITORING*

A. PURPOSE
B. COMPLETED AIR MONITORING PROJECTS
1. Carbon Monoxide
2. Nitrogen Oxides
3. Sulfur Dioxide
4. Ozone
5. Total Suspended Particulates (TSP)
6. Lead
C. AIR MONITORING NETWORK
1. Network Description
2. Station Designations
3. Air Quality Monitoring Procedures
4. Ambient Sampling for Specific Pollutants
E. ANNUAL REVIEW

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Section II. *STATE AIR QUALITY CONTROL PROGRAM*

II.A. State Air Statutes, except section 46.03.170, State Attorney General Opinions on Legal Authority
II.B. Municipality of Anchorage/Cook Inlet/ADEC Agreements
II.C. Fairbanks North Star Borough Ordinances/FNSB & ADEC Agreements

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

III.G. Ordinance of the City and Borough of Juneau

Section IV. *POINT SOURCE CONTROL PROGRAM*

IV.1. PSD Area Classification and Reclassifications
A. Class I Area Boundaries
B. Areas Protected form Visibility Degradation
C. Reclassification
1. Limitations on PSD Reclassification
2. PSD Reclassification Procedures
IV.2. Compliance Assurance
IV.3. Testing Procedures

Section V. *AMBIENT AIR MONITORING*

ADEC Ambient Analysis Procedures

TITLE 18. ENVIRONMENTAL CONSERVATION, *CHAPTER 50. AIR QUALITY CONTROL*, Sections 021(d), 030(g), 040(a)(2), 040(c), 050(a)(2), 050(b)(4), 085, 300(a)(1), 300(a)(7), 400(d)(6), 500(d), 500(e), 510 (Editor's Note), 520(a), 520(b), 610(a), 620, 900(15), 900(39), 900(47), and 900(48).

2. Section 52.75 is revised to read as follows:

§ 52.75 Contents of the Approved State-Submitted Implementation Plan.

The following sections of the State air quality control plan (as in effect on the date indicated) have been approved and are part of the current State Implementation Plan:

VOLUME II: ANALYSIS OF PROBLEMS, CONTROL ACTIONS

Section I. *BACKGROUND*

A. INTRODUCTION (7/1/82)
B. AIR QUALITY CONTROL REGIONS (/1/82)
C. ATTAINMENT/NONATTAINMENT DESIGNATIONS (7/1/83)
D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS (7/1/83)

Section II. *STATE AIR QUALITY CONTROL PROGRAM* (11/1/83)

Section III. *AREA WIDE POLLUTANT CONTROL EFFORTS*

A. CARBON MONOXIDE, except subpart 1.c. *Other Areas* and subpart 5.h (Fairbanks Emergency Avoidance Plan) (1/18/80)

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

D. TOTAL SUSPENDED PARTICULATE MATTER (7/1/82)
E. ICE FOG (7/1/82)
F. OPEN BURNING (10/30/83)
G. WOOD SMOKE POLLUTION CONTROL (7/1/83)
H. LEAD POLLUTION CONTROL (7/1/83)

Section IV. *POINT SOURCE CONTROL PROGRAM*

A. SUMMARY (10/30/83)
1. Annual Review Report (10/30/83)
B. STATE AIR QUALITY REGULATIONS (10/30/83)
C. LOCAL PROGRAMS (10/30/83)
D. DESCRIPTION OF SOURCE CATEGORIES AND POLLUTANTS
1. Typical Point Sources (10/30/83)
2. Summary of Major Emitting Facilities (10/30/83)
E. POINT SOURCE CONTROL
1. Introduction (10/30/83)
F. FACILITY REVIEW PROCEDURES
1. Who needs a permit? (10/30/83)
2. Standard Application Procedures (10/30/83)
3. PSD Application Procedures (10/30/83), Preliminary report and meeting (10/30/83), Pre-construction monitoring (10/30/83), PSD application format (10/30/83)
4. Nonattainment Application Procedures (10/30/83)
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1. Application Review (10/30/83)
2. Permit Development Requirements (10/30/83), Monitoring and Testing Requirements (10/30/83), Ambient Monitoring (10/30/83), Continuous Emissions Monitoring (10/30/83), Source Testing (10/30/83)
3. Prevention of Significant Deterioration Review (10/30/83), Basis of Program (10/30/83), PSD Regulations (10/30/83), PSD Analysis Procedure (10/30/83).
4. Nonattainment Area Review (10/30/83)
5. New Source Performance Standards Source Review (10/30/83)
6. Visibility Review (10/30/83)
7. Sources under EPA Review (10/30/83)
H. PERMIT ISSUANCE REQUIREMENTS (10/30/83)

Section V. *AMBIENT AIR MONITORING*

A. PURPOSE (7/1/82)
B. COMPLETED AIR MONITORING PROJECTS (7/1/82)
1. Carbon Monoxide (7/1/82)
2. Nitrogen Oxides (7/1/82)
3. Sulfur Dioxide (7/1/82)
4. Ozone (7/1/82)
5. Total Suspended Particulates (TSP) (7/1/82)
6. Lead (7/1/82)
C. AIR MONITORING NETWORK (7/1/82)
1. Network Description (7/1/82)
2. Station Designations (7/1/82)
3. Air Quality Monitoring Procedures (7/1/82)
4. Ambient Sampling for Specific Pollutants (7/1/82)
E. ANNUAL REVIEW (7/1/82)

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II.A. State Air Statutes, except section 46.03.170 (11/15/83), State Attorney General Opinions on Legal Authority (2/29/72, 2/29/80)
II.B. Municipality of Anchorage/Cook Inlet/ADEC Agreements (11/15/83)
II.C. Fairbanks North Star Borough Ordinances, except section 8.04.070/FNSB & ADEC Agreements (11/15/83)

Section III. *AREA WIDE POLLUTANT CONTROL EFFORTS*

III–1 A Review of Carbon Monoxide Emissions from Motor Vehicles during Cold Temperature Operation (1/18/80)
III–2 Cold Weather Related Strategy Support Development (1/18/80)
III–3 Prelininary Assessment of Meteorological Conditions during Days of Ambient Air Quality Violations in Anchorage (1/18/80)
III–4 Summary of the 1978 Fairbanks Voluntary Vehicle Emissions Inspection Program (1/18/80)
III–5 Approach to Evaluating an Alaska I/M Program (1/18/80)
III–6 Appendices to the Anchorage Air Quality Plan (1/18/80)
III–7 Appendices to the Fairbanks Air Quality Plan (1/18/80)

Section III. *AREA WIDE POLLUTANT CONTROL PROGRAM*

III.G. Ordinance of the City and Borough of Juneau (10/6/83)
III.H. Support Documents for Lead Plan (11/15/83)

Section IV. *POINT SOURCE CONTROL PROGRAM*

IV.1. PSD Area Classification and Reclassifications (11/15/83)
A. Class I Area Boundaries (11/15/83)
B. Areas Protected from Visibility Degradation (11/15/83)
C. Reclassification (11/15/83)
1. Limitations on PSD Reclassification (11/15/83)
2. PSD Reclassification Procedures (11/15/83)
IV.2. Compliance Assurance (11/15/83)
IV.3. Testing Procedures (11/15/83)

Section V. *AMBIENT AIR MONITORING* ADEC Ambient Analysis Procedures (11/15/83)

SECTION V. *AIR EPISODE PLAN* (4/21/72)

TITLE 18. ENVIRONMENTAL CONSERVATION, *CHAPTER 50. AIR QUALITY CONTROL* (10/30/83)

3. Section 52.96(a) is revised to read as follows:

§ 52.96 Significant deterioration of air quality.

(a) The State of Alaska Department of Environmental Conservation Air Quality Control Regulations (specifically 18 AAC 50.020, 50.021, 50.300, 50.400, 50.510, 50.520, 50.530, 50.600, 50.620, and 50.900) and the State air quality control plan (specifically Section I.B. AIR QUALITY CONTROL REGIONS, Section I.C. ATTAINMENT/NONATTAINMENT DESIGNATIONS, Section I.D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS, Section IV.F. FACILITY REVIEW PROCEDURES, Section IV.G. APPLICATION REVIEW AND PERMIT DEVELOPMENT, Section IV.H. PERMIT ISSUANCE REQUIREMENTS, Appendix IV.1. PSD Area Classification and Reclassifications, and Appendix V ADEC Ambient Analysis Procedures) are approved as meeting the requirements of Part C for preventing significant deterioration of air quality.

* * * * *

[FR Doc. 84-10940 Filed 4-23-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR 6530

[OR 19228, OR 19467, OR 22084]

Oregon; Revocation of Secretarial Orders of December 13, 1887, and September 20, 1890, Partial Revocation of the Executive Order of November 13, 1889

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders in their entirety and an Executive order, in part, as they affect 1,805 acres of public land withdrawn for use by the Corps of Engineers for the Coos Bay North Jetty Project. This action will open 1,558 acres of land to surface entry and mining. Of the balance, 40 acres have been conveyed out of Federal ownership, 47 acres will be available for disposal by land exchange only, and 160 acres lie within an overlapping withdrawal, also for the Coos Bay North Jetty Project, and will not be restored to surface entry or mining. The lands containing federally owned minerals have been and remain open to mineral leasing.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. The Secretarial Orders of December 13, 1887, and September 20, 1890, which withdrew lands for use by the U.S. Army Corps of Engineers for the Coos Bay North Jetty Project are hereby revoked in their entirety.

2. The Executive Order of November 13, 1889, which withdrew lands for the Coos Bay North Jetty Project is revoked insofar as it affects the following described lands:

Willamette Meridian

T. 25 S., R. 13 W.,
- Sec. 4, fractional N½NW¼;
- Sec. 5, fractional NW¼NW¼ and NE¼SE¼;
- Sec. 6, lots 1, 2, 3, and 4, SE¼NE¼, and E½SE¼;
- Sec. 7, lots 2, 3, and 4, NE¼, SE¼NW¼, E½SW¼; fractional SW¼SW¼, N½SE¼, and SW¼SE¼;
- Sec. 18, NW¼NE¼ and E½NW¼.

T. 25 S., R. 14 W.,
- Sec. 12, lot 1;
- Sec. 13, lots 3 and 4;
- Sec. 23, lot 1;
- Sec. 24, lots 1, 2, 3, 5, 6, 7, and 8, NW¼NE¼, and NE¼SW¼;
- Sec. 25, lot 2;
- Sec. 26, lots 4, 5, and 6.

The areas described in paragraphs 1 and 2 aggregate 1,805.52 acres in Coos County.

3. The NE¼SE¼, sec. 5, T. 25 S., R. 13 W., has been conveyed out of Federal ownership, and will not be restored to operation of the public lands laws, including the mining and minerals leasing laws.

4. The following land included in paragraph 1 remains withdrawn by the Executive Order of November 13, 1889, for use by the Corps of Engineers for the Coos Bay North Jetty Project and will not be restored to operation of the public land laws, including the mining laws.

Willamette Meridian

T. 25 S., R. 14 W.,
- Sec. 13, lots 1, 2, and E½SE¼.

The area described contains 160.00 acres in Coos County.

5. Effective immediately, the following described land will be available for disposal by land exchange only. This will facilitate a proposed land exchange between the Bureau of Land Management and the Port of Coos Bay. The land remains closed to operation of the other public land laws, including the mining laws:

Willamette Meridian

T. 25 S., R. 13 W.,
- Sec. 7, those portions of the NE¼SE¼ and SW¼SE¼ lying south and east of the westerly right-of-way line of the existing Corps of Engineers road;
- Sec. 18, that portion of the NW¼NE¼ lying south and east of the westerly right-of-way line of the existing Corps of Engineers road.

The area described contains approximately 47.00 acres in Coos County.

6. At 8:30 a.m., on May 23, 1984, the lands described in paragraphs 1 and 2, except as provided in paragraphs 3, 4, and 5, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 23, 1984, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

7. At 8:30 a.m., on May 23, 1984, the lands described in paragraphs 1 and 2, except as provided in paragraphs 3, 4, and 5, will be opened to location and entry under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands described in paragraphs 1, 2, and 4 except as provided in paragraph 3 have been and remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: April 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-10899 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 81 and 83

[PR Docket No. 83-665; RM 4366; FCC 84-163]

Maritime Search and Rescue Operations by Governmental Entities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to permit state and local governments to transmit on certain maritime frequencies from mobile units and unwaterborne vessels on land when engaged in search and rescue activities. This action is in response to a request from the Commonwealth of Virginia. The intended effect is to improve communications during maritime search and rescue operations conducted by governmental entities.

EFFECTIVE DATE: May 24, 1984.

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

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Marine safety, Radio, Telephone.

47 CFR Part 83

Marine safety, Radio, Ship stations, Telephone, Vessels.

Report and Order (Proceeding Terminated)

In the matter of maritime search and rescue operations by governmental entities PR Docket No. 83-655, RM-4366.

Adopted: April 13, 1984.

Released: April 17, 1984.

By the Commission.

1. In response to a petition filed by the Commonwealth of Virginia (Commonwealth), the Commission released a Notice of Proposed Rule Making in this proceeding on July 12, 1983 (FCC 83-304, 48 FR 32607). Comments and reply comments were required to be filed by October 11 and November 10, 1983, respectively. Based on the record before us, we are adopting the rules substantially as proposed.

2. Commonwealth has over 300 rescue boats that are carried on trailers behind state cars or trucks. The petitioner operates these boats extensively as a "Shore Patrol" (Patrol) to respond to marine search and rescue calls. The vehicle-trailer-boat combination permits the Patrol to drive to a point on shore close to a boat in distress and launch the rescue boat from that point. These distress incidents may occur in rivers and lakes within the state as well as along the coast. Commonwealth also operates three VHF limited coast stations to facilitate ship-shore communications.

3. Under the Commission's current rules, the transmitter aboard the rescue boat may not be used to communicate with the vessel in distress until the rescue boat is in the water. This creates a problem whenever the Patrol, still on land, is close to the distress scene and is better equipped to respond to an incident than a waterborne craft farther away. The Patrol may still need to drive some distance to the point where the boat will be launched. However, as long as the Patrol is on land, the Commission's rules do not permit operation of the ship station transmitter. This increases the response time and could reduce the Patrol's capability to coordinate interim measures before the actual rescue is made.

4. The Notice of Proposed Rule Making in this proceeding proposed (1) to permit state or local government vessels on land involved in search and rescue emergencies to operate on maritime mobile frequencies; (2) to permit radio stations in state or local government vehicles used for towing search and rescue vessels to be operated on maritime mobile frequencies for search and rescue purposes as an associated portable ship unit subject to special provisions; (3) to permit use of two VHF frequencies for search and rescue training exercises; and (4) to permit use of two HF frequencies by coast and ship stations participating in search and rescue scene-of-action coordination.

5. Comments were filed by Commonwealth and the State of Delaware. Commonwealth is currently operating under a rule waiver issued February 18, 1983, which authorizes it to operate as proposed in this proceeding. Commonwealth officials report that the waiver has significantly reduced the workload of the Patrol while enhancing its capability to respond in rescue operations. Both commenters recommended adoption of the rules as proposed in the Notice of Proposed Rule Making.

6. The experience of Commonwealth during the past year indicates that the public interest will be served by amending our rules as proposed. The Commission has received no interference complaints concerning these operations. Therefore, we will amend paragraph 83.178(f) of our rules to permit radio stations installed in state or local government vessels on land involved in search and rescue emergencies to operate on maritime mobile frequencies.

7. Similarly we will permit radio stations installed in state or local government vehicles used for towing search and rescue vessels to operate on maritime mobile frequencies for search and rescue purposes as an associated portable ship unit. Such operations will be under the authority of the ship station license with which the towing vehicle is associated. The associated portable ship units may operate on VHF channels 6 (Intership Safety), 16 (Distress, Safety and Calling), 17 (State Control) and 22 (Liaison with the U.S. Coast Guard) with a maximum output power of 25 watts.

8. We are also amending rule 83.351, as proposed, to allow use of VHF channels 17 and 22 for search and rescue training exercises. Use of channel 22 is limited to exercises which involve U.S. Coast Guard stations and requires prior U.S. Coast Guard approval. Such use must cease immediately on U.S. Coast Guard request.

9. Finally, we are also amending rules 81.360 and 83.351 to make clear that HF frequencies 3023 kHz and 5680 kHz are available for coast station and ship station use when they are participating in search and rescue scene-of-action coordination.

10. The Notice of Proposed Rulemaking in this proceeding proposed amendments to Part 2 of the rules to allocate the use of HF frequencies 2023 kHz and 5680 kHz by stations of the maritime mobile service engaged in coordinated search and rescue operations. This was accomplished by Commission action in the Second Report and Order in General Docket No. 80-739, released December 8, 1983 (FCC 83-511, 49 FR 2358) amending the United States Table of Frequency Allocations to implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979. No further action is required here.

11. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that these rules will not have a significant economic impact on a substantial number of small entities. These rules relax an existing restriction on the use

of maritime mobile radio stations, and only affect governmental entities providing a maritime search and rescue service. There will be no economic impact on small entities.

12. Accordingly, it is ordered, that under the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the attached Appendix, effective May 24, 1984.

13. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Council for Advocacy of the Small Business Administration.

14. It is further ordered, that this proceeding is terminated.

15. Regarding questions on matters in this document, contact Robert E. Mickley, 202/632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

1. Section 81.360, is amended by revising the section heading and adding paragraphs (c) and (e) to read as follows:

§ 81.360 Frequencies available below 27.5 MHz.

* * * * *

(c) The use of frequencies 3023 kHz and 5680 kHz is limited to search and rescue scene-of-action coordination purposes. These frequencies are available to limited coast stations licensed to state or local governments for search and rescue scene-of-action coordination using a 2.8A3J emission.

* * * * *

(e) The following carrier frequencies may be authorized to limited coast stations for business and operational communications with ship stations operating on the same carrier frequency.

CARRIER FREQUENCY (KHZ)

2065.0	12429.2
2079.0	12432.3
2096.5	12435.4
4125.0	16587.1
4143.6	16590.2
4419.4	16593.3
6218.6	22124.0
6221.6	22127.1
6521.9	22130.2
8291.1	22133.3
8294.2	22136.4

Assignment and use of the frequencies and subject to the following conditions:

(1) These frequencies are available on a shared basis only and are not assigned for the exclusive use of any station licensee;

(2) No more than one frequency from each of the frequency bands will be authorized without additional justification;

(3) These frequencies are not authorized for communication with stations aboard aircraft;

(4) Transmitter peak envelope power shall not exceed 1 kW; on the frequencies 2065.0, 2079.0 and 2096.5 kHz, the maximum permitted output power is 150 watts (PEP).

(5) The class of emission shall be 2.8A3J;

(6) The frequencies 2065.0 and 2079.0 kHz may be assigned for safety, operational, or business communications. Coordination of these frequencies with Canada is required.

§ 81.361 [Removed]

2. Part 81 is amended by removing § 81.361.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. Section 83.178 is amended by revising paragraph (f) to read as follows:

§ 83.178 Unauthorized transmissions.

* * * * *

(f) Transmit while on board vessels located on land. Vessels in the following situations are not considered to be on land for the purposes of this paragraph: (1) Vessels which are aground as a result of a distress situation; (2) Vessels in drydock undergoing repairs; and (3) State or local government vessels which are involved in search and rescue operations including related training exercises.

2. Section 83.186 is revised to read as follows:

§ 83.186 Operational conditions on use of associated portable ship units.

(a) Associated portable ship units may be operated under a ship station authorization. Use of an associated portable ship unit is restricted as follows:

(1) It must only be operated on the safety and calling frequency 156.8 MHz (Channel 16), or on commercial or noncommercial VHF intership frequencies appropriate to the class of ship station with which it is associated.

(2) Except for safety purposes, it must only be used to communicate with the ship station with which it is associated or with associated portable ship units of the same ship station. Such portable units may not be used from shore.

(3) It must be equipped to transmit on Channel 16 and at least one appropriate intership frequency.

(4) Calling must occur on Channel 16 unless by prearrangement provision is made for calling and working on an intership frequency.

(5) Power is limited to one watt.

(6) The station must be identified by the call ship of the ship station with which it is associated and an appropriate unit designator.

(b) State or local government vehicles used to tow vessels involved in search and rescue operations are authorized to operate on maritime mobile frequencies as associated portable ship units. Such operations must be in accordance with paragraph (a) of this section except that the associated protable ship unit may be operated from shore; may use Distress, Safety and Calling; Intership Safety; Liaison, U.S. Coast Guard; and State Control VHF intership frequencies and may have a transmitter power of 25 watts.

3. In § 83.351, paragraph (a) is amended by revising the "conditions of use" for certain frequencies, as indicated, by revising subparagraph (b)(45), and by adding new subparagraphs (b)(49) and (b)(50) to read as follows:

§ 83.351 Frequencies available.

Carriers frequency (MHz)	Conditions of use	
	Section	Limitations
* *	*	* *
156.850	83.359	19, 20, 26, 34, and 49.
* *	*	* *
157.100	83.359	3, 19, 20, and 50.
* *	*	* *

(b) * * *

(45) The frequencies 3023 kHz and 5680 kHz may be used by aircraft and ship stations for search and rescue scene-of-action coordination, including communications between these stations and participating land stations. Ship stations communicating with aircraft stations shall employ 2.8A3J emission.

* * * * *

(49) This frequency is authorized for search and rescue training exercises conducted by state or local governments.

(50) This frequency is authorized for search and rescue training exercises by state or local governments in conjunction with U.S. Coast Guard stations. Prior U.S. Coast Guard approval is required. Use must cease

immediately on U.S. Coast Guard request.

* * * * *

[FR Doc. 84-10903 Filed 4-23-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 82-593; RM-3865; FCC 84-102]

Amendment of the Commission's Rules to Revise the Co-Channel Assignment Standards for Systems Operating in the 806-821 and 851-866 MHz Bands in Northern California

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 11, 1981, the California Trunking Interference Association filed a petition requesting that the FCC revise its co-channel separation standard for systems operating in the 806–821 and 851–866 MHz bands in Northern California. The Commission, after a re-examination of its standards, has replaced its fixed mileage standard with a table indicating permissable co-channel assignments between specific antenna sites located in Northern California. This action is intended to solve the current interference problem.

EFFECTIVE DATE: May 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kennedy or Mr. Herb Zeiler, Private Radio Bureau, (202) 634–2443.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio service, Co-channel assignment standards.

Report and Order

By the Commission:

In the matter of amendment of Subparts M and S of the Commission's rules to revise the standards for assignment of frequencies in the 806–821 and 851–866 MHz bands for co-channel trunked systems in Northern California.

Adopted: March 22, 1984.

Released: April 16, 1984.

Introduction

1. On March 11, 1981, the California Trunking Interference Association (CTIA)[1] petitioned the Commission to amend § 90.365 of its rules to revise the co-channel mileage separation standard for trunked systems located in Northern California.[2] CTIA defines Northern California as all locations within the State of California that are north of 35° North Latitude and west of 118° West Longitude. This area includes both the San Francisco Bay area and the Sacramento and San Joaquin Valleys (hereinafter referred to as the Central Valley). CTIA argues that within this specified geographic area the Commission's present frequency assignment policy of authorizing channels for reuse at a distance of 70 miles is inadequate essentially for a variety of terrain and propagation factors peculiar to this area. CTIA argues for these reasons the Commission should modify its channel re-use rules for this particular portion of the country.

2. The reason for CTIA's concern is that its members have been authorized to operate co-channel trunked mobile relay stations spaced approximately 70 miles apart. They maintain that co-channel interference occurs at these distances and is so severe that it sometimes renders their communication facilities useless.

3. CTIA proposed that the following four-part assignment plan be substituted for the 70 mile co-channel separation distance in Northern California:

(a) A table, supplied by CTIA and based on actual operating experience in Northern California, which lists all developed antenna sites in Northern California and specifies permissible co-channel assignments.

(b) An alternative whereby co-channel assignments would be permitted if the distance between the proposed station and each co-channel station is at least 90 percent of the sum of the distance from the proposed antenna site to the radio horizon and the distance from each co-channel antenna site to the radio horizon. The distance to the radio horizon in miles equals the square root of twice the antenna height above mean sea level in feet.

(c) A second alternative whereby co-channel assignments would be permitted when present co-channel licensees agree in writing to a proposed assignment.

(d) A third alternative whereby co-channel assignments would be permitted when the applicant shows by an engineering field study that the 20 dBu contour of the proposed station would not overlap the 20 dBu contour of any existing co-channel stations.

4. The Association of Maximum Service telecastors, Incorporated (AMST) filed comments in response to CTIA's petition. AMST argued that the interference experienced by CTIA members is due to their selecting very high antenna locations to serve wide geographic areas. AMST suggests that wide area service more appropriately may be provided by future satellite or cellular radio systems. CTIA responded by arguing that it is not seeking modification of any rules that would permit wide area service, such as rules that limit antenna height or effective radiated power (ERP), but that it is merely seeking relief from interference due to an inadequate co-channel separation standard in this particular geographic area.

5. On August 23, 1982, the Commission adopted a Notice of Proposed Rule Making (NPRM) seeking comments on CTIA's proposed changes to Part 90.[3] The NPRM recognized that CTIA's approach would be a departure from the channel re-use standards promulgated in Docket 18262 and requested comments evaluating both approaches. In the event that CTIA's approach is adopted, comments were also requested on whether licensees should be restricted to one trunked system in Northern California until they met the applicable loading standards for that system. The NPRM also requested comments on other approaches such as whether lower antenna sites or directional antennas could be employed to reduce the interference problem.

6. Eight parties filed comments on the NPRM.[4] They all urged the Commission to substitute the four-part CTIA proposal for the current 70 mile separation standard in Northern California. They suggested that the current standard should be regarded only as an initial estimate developed in Docket 18262 that is subject to change based on practical operating experience. The comments were unanimous in their opposition to the suggestion that licensees be restricted to a single system in Northern California until meeting the loading standards. Lower antenna sites and directional antennas were thought to be of some use in specific situations but were not regarded as a viable solution to the interference problem in

[1] CTIA is an unincorporated association of persons and companies authorized to operate trunked 800 MHz band private land mobile systems in Northern California.

[2] The rules regarding co-channel assignments in the 800 MHz band are now contained in Part 90, Subpart M, Section 90.362 and Subpart S, Section 90.621.

[3] *Notice of Proposed Rule Making*, PR Docket No. 82-593, 47 Fed. Reg. 44786 (October 12, 1982).

[4] AirCall of California, Inc., Sunset Electronics, Atcomm, Inc. CTIA, Big Rock Communications, Motorola, Inc., Land Mobile Communications Council, and National Association of Business and Educational Radio, Inc.

general. CTIA suggested in its comments that the Commission require frequency coordination for trunked Specialized Mobile Radio Systems (SMRS) in Northern California and volunteered to act as coordinator. The National Association of Business and Educational Radio, Incorporated (NABER) supported CTIA's proposed assignment plan but opposed the designation of CTIA as a local frequency coordinator.

Background

7. The technical standards applicable to trunked radio systems were developed in Docket 18262.[5] Because the Commission at that time had no practical experience with trunked radio systems operating at 800 MHz, a theoretical model of these systems was developed. We assumed that trunked systems would be used primarily in urban areas due to their increased communications capacity and higher cost relative to conventional systems. The base station (or mobile relay station) antenna site was assumed to be located in mid-city and a 20 mile service radius around that site was assumed sufficient to cover most urban areas. A signal strength of 40 dBu at the edge of the service area was allowed to ensure that the quality of communications would be sufficient to attract users from the lower private radio bands. The UHF–TV propagation curves,[6] modified to account for mobile antenna receiving heights and attenuation due to urban environments, were then used to determine the appropriate restrictions on ERP and antenna height. Trunked radio systems were allowed a maximum of one kilowatt at 1000 feet above average terrain.[7]

8. To develop a general assignment plan, appropriate interference protection parameters were considered. We concluded that adjacent channel interference and transmitter intermodulation interference would not be factors in making frequency assignments and an assignment plan based primarily on co-channel operating characteristics was developed. To provide a 10 dB margin, we determined that a station's 30 dBu interference contour should not overlap the 40 dBu service contour of any co-channel station. This equates to a co-channel separation of 70 miles and we adopted that as the minimum co-channel assignment distance.

Discussion

9. In our license assignment process, we must concern ourselves with both communications quality and spectrum efficiency. Theoretically, each new station we authorize both increases the potential for interference, thereby potentially degrading communications quality, and at the same time enhances spectrum efficiency. Fortunately, there are real limits on how far radio signals propagate so many stations can coexist in the same spectrum. The problem, then, is to develop an assignment plan that strikes the optimum balance between interference and efficiency.

10. There are two basic technical approaches available to us for assigning land mobile licenses. One is to "engineer in" each station, that is, to fit the service area of each new station in among the service areas of all existing stations. The other approach is to create a regulatory assignment plan based on a typical station and to apply this plan, in general, to all requests for station authorization.

11. In the Private Land Mobile Radio Services, in view of the large number of applicants seeking authorizations and our desire to make service available at 800 MHz quickly, we adopted the latter method. We developed a model of a typical trunked system and determined that a co-channel spacing of 70 mile should provide adequate interference protection for system users. If a proposed station is 70 miles away from all existing co-channel stations, the proposal is granted. This enables us to process applications quickly and efficiently in these services while minimizing interference potential in most cases.

12. To date, our 800 MHz assignment plan has worked well in all areas with two exceptions: Los Angeles, California and the area under consideration here, Northern California. The Los Angeles urban area extends many miles further than the 20 mile service area envisioned in Docket 18262. Most of the developed antenna sites in that area are also located on high mountain tops. Accordingly, when applicants sought to serve the Greater Los Angeles area, we authorized the use of one kilowatt ERP on certain nearby mountain peaks.[8] This had the effect of extending the area of coverage beyond 20 miles, so we altered our assignment plan in the Los Angeles area to require a co-channel separation of 105 miles from certain mountain top sites.[9]

13. We now find that a similar situation exists in Northern California. The San Francisco Bay area, like the Los Angeles area, extends many miles further than our assumed 20 mile service area. The urban area has developed around the San Francisco Bay which, in itself, is approximately 60 miles long. End users desire communications coverage throughout this area. The urban area is surrounded by mountain ranges and antenna sites have been developed on their peaks. The high antenna sites provide coverage across the Bay and minimize "dead spots" which result from the hilly terrain. Most CTIA members licensed in this area employ antenna sites on these mountains. Indeed, these mountain top sites are natural antenna locations and they are heavily used by licensees in most of the Commission's services. However, co-channel trunked 800 MHz systems authorized on these mountains cause mutually destructive interference even at separations exceeding 70 miles.

14. The Central Valley area includes hundreds of square miles of farm land and several urban centers. It is bounded by mountain ranges on both the East and the West. While most of the population is centered near the urban centers, users need communications coverage over large areas in the valley. The economy of the area is agricultural-based and most commercial activity is directly related to farming. Individual farms cover large areas and many business people need radio coverage that will support their operations over numerous farms. Antenna sites have been developed on high mountain tops to provide this type of coverage. As in the San Francisco area, however, co-channel trunked systems authorized on these sites cause mutually destructive interference even at separations exceeding 70 miles.

15. The existing systems under consideration here have been licensed by us and are operating in full accordance with our technical standards on ERP and antenna height. Indeed, in many cases authorized stations are operating with radiated powers that are substantially less than that allowed by our Rules. Our technical staff investigated the interference problem, participated in on-site tests in California, and is convinced that increased co-channel separations are

[5] *Second Report and Order*, Docket No. 18262, 46 FCC 2d 752, 774 (1974).

[6] *Development of VHF and UHF Propagation Curves for TV and FM Broadcasting*, Report No. R-6602, Federal Communications Commission, Office of Chief Engineer, Research Division, September 7, 1966.

[7] 47 CFR §§ 90.374(a) and 90.635(c).

[8] *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 979 (1975).

[9] The following mountain top sites are specified in the Rules: Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson. See 47 CFR §§ 90.362(c) and 90.621(b).

necessary. It appears that the field strength actually produced by stations operation from very high elevations there substantially exceeds the Docket No. 18262 predictions.

16. We have considered limiting trunked stations to lower elevations. We are aware and indeed concerned that increased co-channel separations limit the geographic re-use of frequencies. We could possibly maintain the 70 mile co-channel spacing if we limited all trunked systems in Northern California, including both existing and future systems, to low altitude antenna sites. However, a low antenna site limit produces additional problems. It appears that the communications needs of most users in Northern California could not be adequately served from low antenna sites. A single low site will not provide coverage over a sufficiently large area or minimize "dead spots". Licensees could employ multiple antenna sites to fill in "dead spots" and end users could obtain service from a number of licensees to obtain wide area coverage, but that would raise significantly the cost for equivalent service to end users.

17. We must also consider the impact of a low antenna site restriction on the present licensees in Northern California. If we elected to require present licenses to move their stations to lower sites, the economic burden placed on the licensees would be extreme. In many cases, it would be necessary to develop new sites. This may require the approval of local government, the construction of roads, buildings, and towers, and the expansion of public utilities. This would be an expensive and time consuming process. Of course, we could "grandfather" existing systems and only require new systems to use low antenna sites. This approach, however, would give existing systems a substantial competitive advantage over new systems. That could inhibit the introduction of additional systems in Northern California and, therefore, we are reluctant to require the use of low antenna sites.

18. On balance, we feel that in this unusual case the public interest is best served by increasing the co-channel separation distance for mountain top sites. We believe that it is in the public interest to modify our general assignment plan to meet the unique needs of this market. While we are reluctant to alter the generally suitable current standards, we find in these cases we cannot maintain them because of the unique propagation and terrain factors in Nothern California.

19. From the effective date of the attached rule amendments, we shall use CTIA's table as the basis for co-channel assignments between the specific mountain top sites noted in the table. We are adopting CTIA's three alternatives to the table. These were intended to be used in cases where a proposed antenna site is not listed in the table. We believe that most applicants will propose to use antenna sites that are included in the table.[10] Applications involving sites not in the table will be processed on a case by case basis. Commission staff will evaluate the potential interference of proposed assignments by considering relevant factors such as antenna height, effective radiated power, and terrain irregularities when processing these applications. In keeping with our general policy, we will consider a waiver of our co-channel assignment standards when present co-channel licensees agree in writing to a proposed assignment that may affect their service. This will allow the development of short spaced sites as demand increases in this area, if applicants feel that these sites are technically and economically feasible. Our case by case approach for examining applications involving sites not on CTIA's table increase our flexibility in making assignments in Northern California amd makes it unnecessary to add CTIA's three alternatives to the Rules.

20. We decline to require frequency coordination in this area or to designate CTIA a coordinator. CTIA's comments indicate that compliance with the assignment table it proposed should alleviate the problems. Trunked SMRS applicants are not required to submit frequency coordination or field studies.[11] Accordingly, there is no necessity for a coordinating committee. These applicants may request specific frequencies if they wish and in doing so are free to consult CTIA or anyone else. Upon re-examination, we conclude that our proposal to limit licensees to one system in this area until fully loaded is too restrictive. CTIA has not proposed, nor do we intend, that adoption of these new assignment standards alter the application of the loading and construction requirements to all existing licensees in this region.[12]

21. In view of the foregoing, the Commission finds that it is in the public interest to amend the Rules. Therefore, it is ordered, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective May 23, 1984, Part 90 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix.

22. It is further ordered, that this proceeding is terminated. For further information, contact Michael Kennedy or Herb Zeiler, Private Radio Bureau (202) 634–2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 90—[AMENDED]

Title 47 of the Code of Federal Regulations, Part 90, is amended as follows:

Section 90.362(c) is revised to read as follows:

[10] The geographic coordinates of the mountain top antenna sites are listed in the table. These coordinates represent an average for the site and include all locations within one mile of the coordinates.

[11] See 47 CFR 90.360(c) and 90.621(a).

[12] These requirements are specified in 47 CFR 90.366 and 90.631.

§ 90.362 Selection and assignment of frequencies.

* * * * *

(c) The ordinary separation between co-channel systems will be 112 km. (70 mi.) with the following exceptions:

(1) No trunked system will be less than 168 km. (105 mi.) distant from co-channel trunked systems authorized 1 kw. ERP on any of the following mountain top sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

(2) The separation between co-channel trunked systems in the State of California north of 35° North Latitude and west of 118° West Longitude shall be determined as follows:

(i) Required co-channel separations between common antenna sites are given by Table 1. A channel group assigned to a situation on a site listed in the vertical column may not be re-assigned to a station on a site listed in the horizontal column if there is an "X" in the box created by the intersection of the vertical and horizontal lines. The geographic coordinates listed in the table represent an average for each particular site; all locations within one mile of the coordinates will be considered to be at that site.

(ii) Required co-channel separations involving antenna sites not listed in Table 1 shall be determined by Commission staff on a case by case basis. The interference potential of proposed assignments will be evaluated considering parameters such as antenna height, effective radiated power, terrain irregularities, and market conditions.

BILLING CODE 6712-01-C

TABLE 1: CO-CHANNEL SEPARATIONS BETWEEN COMMON ANTENNA SITES IN THE STATE OF CALIFORNIA NORTH OF 35° NORTH LATITUDE AND WEST OF 118° WEST LONGITUDE

North Latitude	West Longitude	Site Name	Big Rock Ridge	Mt. Tamalpais	Wolfback Ridge	Mt. Diablo	Grizzley Peak	Vollmer Peak	Roundtop	Clay Jones Bldg	San Bruno Mtn	Skeggs Peak	Black Mountain	Mt Umunnum	Mt Chual	Loma Prieta	Toro Peak	Mission Ridge	Tuscan Buttes	Forest Ranch	Sutter Buttes	Wolf Mtn	Chantry Hill	Mt Vaca	Fowler Peak	Mt Oso	Mt Bullion	Meadow Lakes	Bear Mtn	Joaquin Ridge	Blue Ridge	Pheasant Hill	Granite Peak	Elk Hill	McKittrick Peak	McKittrick Peak
38-03-40	122-36-17	Big Rock Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-55-44	122-35-11	Mt. Tamalpais	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-50-57	122-29-56	Wolfback Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x						x												
37-52-54	121-55-05	Mt. Diablo	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x	x								
37-51-12	122-12-30	Grizzley Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-52-58	122-13-11	Vollmer Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x										
37-51-00	122-11-30	Roundtop	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x										
37-43-33	122-24-52	Clay Jones Bldg.	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x			x												
37-41-21	122-26-08	San Bruno Mtn.	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x						x												
37-24-39	122-18-20	Skeggs Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-19-13	122-08-33	Black Mountain	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-10-37	121-54-24	Mt. Umunnum	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-07-09	121-49-58	Mt. Chual	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-06-40	121-50-29	Loma Prieta	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
36-31-45	121-36-24	Toro Peak										x	x	x	x	x	x	x												x						
37-29-15	121-52-03	Mission Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x	x	x	x									
40-15-46	122-05-37	Tuscan Buttes																	x	x	x	x	x	x												
39-51-50	121-41-20	Forest Ranch				x		x	x										x	x	x	x	x	x												
39-12-17	121-49-02	Sutter Buttes	x	x		x	x	x	x	x									x	x	x	x	x	x	x	x										
39-08-01	121-05-58	Wolf Mtn	x	x		x	x	x	x										x	x	x	x	x	x	x	x										
38-52-15	121-07-39	Chantry Hill	x	x		x	x	x	x										x	x	x	x	x	x	x	x	x									
38-24-20	122-06-30	Mt. Vaca	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x									
38-01-15	120-35-06	Fowler Peak	x	x		x	x	x	x									x			x	x	x	x	x	x	x	x	x	x						
37-30-31	121-22-26	Mt. Oso	x	x		x	x	x	x			x	x	x	x	x		x			x	x	x	x	x	x	x	x	x	x						
37-32-32	120-03-45	Mt. Bullion				x		x	x									x					x	x	x	x	x	x	x	x						
37-04-10	119-25-39	Meadow Lakes				x																			x	x	x	x	x	x	x	x	x	x	x	x
36-44-38	119-16-59	Bear Mtn				x																			x	x	x	x	x	x	x	x	x	x	x	x
36-18-10	120-24-03	Joaquin Ridge															x								x	x	x	x	x	x	x	x	x	x	x	x
36-17-07	118-50-19	Blue Ridge																								x	x	x	x	x	x	x	x	x	x	x
35-38-29	118-47-08	Pheasant Hill																										x	x	x	x	x	x	x	x	x
35-33-09	118-49-20	Granite Peak																										x	x	x	x	x	x	x	x	x
35-17-17	119-30-55	Elk Hill																										x	x	x	x	x	x	x	x	x
35-17-27	119-45-48	Mc Kittrick Peak																										x	x	x	x	x	x	x	x	x
35-16-51	119-44-52	Mc Kittrick Peak																										x	x	x	x	x	x	x	x	x

* * * * *

2. Section 90.621(b) is revised to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Systems authorized on frequencies in the SMRS Category will be afforded protection solely on the basis of fixed mileage separation criteria. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account. The ordinary separation between co-channel systems will be 112 km. (70 mi.) with the following exceptions:

(1) No trunked system will be less than 168 km. (105 mi.) distant from co-channel trunked systems authorized 1 kw. ERP on any of the following mountain top sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

(2) The separation between certain co-channel trunked systems located at high antenna sites in the State of California north of 35° North Latitude and west of 118° West Longitude shall be determined as follows:

(i) Required co-channel separations between common antenna sites are given by Table 1. A channel group assigned to a station on a site listed in the vertical column may not be re-assigned to a station on a site listed in the horizontal column if there is an "X" in the box created by the intersection of the vertical and horizontal lines. The geographic coordinates listed in the table represent an average for each particular site; all locations within one mile of the coordinates will be considered to be at that site.

(ii) Required co-channel separations involving antenna sites not listed in Table 1 shall be determined by Commission staff on a case by case basis. The interference potential of proposed assignments will be evaluated considering parameters such as antenna height, effective radiated power, terrain irregularities, and market conditions.

BILLING CODE 6712-01-M

[FR Doc. 84-10438 Filed 4-23-84; 8:45 am]
BILLING CODE 6712-01-C

TABLE 1: CO-CHANNEL SEPARATIONS BETWEEN COMMON ANTENNA SITES IN THE STATE OF CALIFORNIA NORTH OF 35° NORTH LATITUDE AND WEST OF 118° WEST LONGITUDE

North Latitude	West Longitude	Site Name	Big Rock Ridge	Mt. Tamalpais	Wolfback Ridge	Mt. Diablo	Grizzley Peak	Vollmer Peak	Roundtop	Clay Jones Bldg	San Bruno Mtn	Skeggs Peak	Black Mountain	Mt Umunnum	Mt Chual	Loma Prieta	Toro Peak	Mission Ridge	Tuscan Buttes	Forest Ranch	Sutter Buttes	Wolf Mtn	Chantry Hill	Mt Vaca	Fowler Peak	Mt Oso	Mt Bullion	Meadow Lakes	Bear Mtn	Joaquin Ridge	Blue Ridge	Pheasant Hill	Granite Peak	Elk Hill	McKittrick Peak	McKittrick Peak
38-03-40	122-36-17	Big Rock Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-55-44	122-35-11	Mt. Tamalpais	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-50-57	122-29-56	Wolfback Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x						x												
37-52-54	121-55-05	Mt. Diablo	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x	x	x							
37-51-12	122-12-30	Grizzley Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-52-58	122-13-11	Vollmer Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x									
37-51-00	122-11-30	Roundtop	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x									
37-43-33	122-24-52	Clay Jones Bldg.	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x			x												
37-41-21	122-26-08	San Bruno Mtn.	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x						x												
37-24-39	122-18-20	Skeggs Peak	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-19-13	122-08-33	Black Mountain	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-10-37	121-54-24	Mt. Umunnum	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-07-09	121-49-58	Mt. Chual	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-06-40	121-50-29	Loma Prieta	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
36-31-45	121-36-24	Toro Peak										x	x	x	x	x	x	x												x						
37-29-15	121-52-03	Mission Ridge	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x	x	x	x									
40-15-46	122-05-37	Tuscan Buttes																	x	x	x	x	x	x												
39-51-50	121-41-20	Forest Ranch				x		x	x										x	x	x	x	x	x												
39-12-17	121-49-02	Sutter Buttes	x	x		x	x	x	x	x									x	x	x	x	x	x	x	x										
39-08-01	121-05-58	Wolf Mtn	x	x		x	x	x	x										x	x	x	x	x	x	x	x										
38-52-15	121-07-39	Chantry Hill	x	x		x	x	x	x										x	x	x	x	x	x	x	x										
38-24-20	122-06-30	Mt. Vaca	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x										
38-01-15	120-35-06	Fowler Peak	x	x		x	x	x	x									x			x	x	x	x	x	x	x	x	x							
37-30-31	121-22-26	Mt. Oso	x	x		x	x	x	x			x	x	x	x	x		x			x	x	x	x	x	x	x	x	x	x						
37-32-32	120-03-45	Mt. Bullion				x		x	x									x					x	x	x	x	x	x	x	x						
37-04-10	119-25-39	Meadow Lakes				x																		x	x	x	x	x	x	x	x	x	x	x	x	x
36-44-38	119-16-59	Bear Mtn				x																		x	x	x	x	x	x	x	x	x	x	x	x	x
36-18-10	120-24-03	Joaquin Ridge															x							x	x	x	x	x	x	x	x	x	x	x	x	x
36-17-07	118-50-19	Blue Ridge																							x	x	x	x	x	x	x	x	x	x	x	x
35-38-29	118-47-08	Pheasant Hill																									x	x	x	x	x	x	x	x	x	x
35-33-09	118-49-20	Granite Peak																									x	x	x	x	x	x	x	x	x	x
35-17-17	119-30-55	Elk Hill																									x	x	x	x	x	x	x	x	x	x
35-17-27	119-45-48	Mc Kittrick Peak																									x	x	x	x	x	x	x	x	x	x
35-16-51	119-44-52	Mc Kittrick Peak																									x	x	x	x	x	x	x	x	x	x

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 40211-4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries, Determination of Final Initial Annual Specifications

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

ACTION: Determination of final initial annual specification.

SUMMARY: NOAA issues this notice to provide final initial annual specifications to the Fishery Management Plan for Atlantic Mackerel, Squid and Butterfish Fisheries for the 1984–1985 fishing year. Regulations governing these fisheries require publication of final initial annual specifications for the current fishing year. This action is intended to notify users of the final initial specifications and to promote an orderly development of the fisheries.

EFFECTIVE DATE: April 19, 1984.

ADDRESS: Copies of the regulatory flexibility analysis are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19910.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, ext. 273.

SUPPLEMENTARY INFORMATION: Final regulations to implement Amendment 1 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) were published January 4, 1984 (49 FR 402). Proposed preliminary initial specifications for the 1984–1985 fishing year were published on February 10, 1984, for a 30-day comment period (49 FR 5139). Comments were received by NOAA through March 12, 1984.

The final initial annual specifications for Atlantic mackerel were effective on March 30, 1984 (49 FR 13373, April 4, 1984) and will not be published here.

Comments Received

Comments, mostly directed at the squid specifications, were submitted by the Government of Japan (GOJ), the Japan Deep Sea Trawlers (JDSTA), the International Seafood Trading Corporation (ISTC) and the National Fisheries Institute (NFI). GOJ and JDSTA were principally concerned with the derivation of IOY and with the low level of initial TALFFs for squids compared with the total TALFFs of prior years. ISTC was concerned that adequate TALFF levels be recommended for allocation to foreign countries whose nationals will participate in joint ventures. GOJ and NFI were concerned from different perspectives that DAHs be realistically based. The bycatch level TALFF for butterfish was also challenged by GOJ. Responses to these comments which bear on particular specifications are included in the sections discussing the figures selected for the various specifications. A sole procedural comment affecting publication of the document as a whole will be addressed here.

Comment: JDSTA commented that the preliminary specifications were inconsistent with 50 CFR 644.22(b) because they were not published by February 1, 1984.

Response: Technically, delay in publication of the preliminary specifications was minimal since the February 10th publication followed by three days the February 7th date on which the regulations took effect. In substance, some delay has occurred in publication of both the preliminary and the final initial specifications so that NOAA could take time to carefully consider all comments received. NOAA believes that the benefits of a thorough airing of issues raised by the comments outweighs any possible adverse effects of passing the regulatory deadlines.

Specifications

The following table lists the initial annual specifications in metric tons (mt) of the Allowable Biological Catch (ABC), Initial Optimum Yield (IOY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Reserve (if any), and Total Allowable Level of Foreign Fishing (TALFF) for squid. (*Loligo* and *Illex*), and butterfish. These annual specifications are amounts that the Regional Director, Northeast Region, has determined to be the appropriate levels of harvest for the start of the 1984–1985 fishing year. It is important to note that these initial levels of harvest of squid are not, as in the past, fixed for the entire fishing year. In fact, the IOYs for *Illex* and *Loligo* may rise to the FMP stipulated maximum OYs for the species, 30,000 mt and 44,000 mt, respectively.

The squid adjustment mechanism is intended to provide flexibility within an allocation system which had been rigid to the point of not being responsive to the competing needs of the various users groups within the fishery, both foreign and domestic. This mechanism will allow NOAA to strike the balance among the various users and to maximize the potential for achievement of optimum yield.

INITIAL SPECIFICATIONS FOR FISHING YEAR 1984–85

[In metric tons (mt)]

	Squid		Butterfish
	Loligo	Illex	
Max OY*	44,000	30,000	*16,000
ABC	44,000	30,000	16,000
IOY	21,125	15,750	*16,000
DAH	17,875	13,500	11,000
DAP	13,000	5,000	11,000
JVP[b]	4,875	8,500	
Reserve	0	0	0
TALFF	3,250	2,250	[c]571

*Up to.

[a] These are maximum OYs (as stated in the FMP) to which the IOYs may rise.

[b] Total sum of the initial over-the-side amount. Does not include 3,625 mt *Loligo* or 9,700 mt *Illex* which will be available depending upon performance of joint ventures.

[c] This amount will be increased as unallocated amounts of squid are allocated to TALFF and reserves of hakes and mackerel are allocated to TALFF.

The specifications given above reflect consideration of comments submitted in response to the publication of the preliminary initial annual specifications, review of recently submitted joint venture applications and other relevant information. Following are explanations of changes in the specifications from the published preliminary numbers and responses to comments on individual specifications.

Squid—Initial Optimum Yield

Loligo

The Regional Director, in consultation with the Councils, has determined that the IOY for *Loligo* at the beginning of the 1984–1985 fishing year is 21,125 mt. The increase from the 17,500 mt recommended in the preliminary IOY is based on increased JVP, DAH, and TALFF. The amount includes a DAH of 17,875 mt and a TALFF of 3,250 mt.

Illex

The Regional Director, in consultation with the Councils, has determined that the IOY for *Illex* at the beginning of the 1984–1985 fishing year is 15,750 mt. The increase from 12,600 mt in the preliminary IOY is based on increased JVP, DAH, and TALFF. The amount includes a DAH of 13,500 mt and TALFF of 2,250 mt.

Comments submitted by GOJ and JDSTA challenged the specifications of IOY's for squids on a number of grounds. A brief review of what the Act provides relative to the specification of OY and how that concept has been carried forward in Amendment 1 will enable the reader to better understand

the responses to the specific comments of GOJ and JDSTA.

The specification of optimum yield by definition starts with maximum sustainable yield, a long-term biological average, which may be modified by "any relevant economic, social, or ecological factor" (Section 3(18) of the Act). Under terms of Section 303(a)(3), information utilized in modification of MSY to OY must be summarized in the FMP. In the case of Amendment 1, the MSY for *Loligo*, for example, is first modified to the acceptable biological catch (ABC) based on an assessment of the condition of the stocks. Further modification of ABC is then undertaken based on economic considerations to achieve plan objectives and other descriptive goals outlined in the FMP.

The resulting level of harvest is called the initial optimum yield (IOY). The IOY may be adjusted upwards to ABC as the fishing year progresses. DAH may be increased as harvest by domestic fishermen advances. Similarly, TALFF may increase as foreign nations enter into arrangements beneficial to the U.S. fishing industry such as joint ventures or purchase of U.S. shoreside products. The flexibility enables managers continually to assess the validity of the considerations underlying initial harvest levels; and, prevents wastage of the resource by locking up amounts of squid in certain categories which go unharvested due to unforeseen circumstances.

Much of the plan is directed towards achievement of its objective (2) "(to) promote the growth of the U.S. commercial fishery, including the fishery for export". The adoption of this objective and its impact on plan structure are discussed in Amendment 1 pages 10 and 33 *et seq.* To achieve this plan goal, IOY has to be set at a level that will give domestic harvesters and processors comparative advantage over foreign harvesters so that development could occur in the U.S. commercial fishery. The concept is based on the assumption that lower foreign harvests will provide room for development of domestic fisheries and export markets. The Atlantic butterfish fishery provides evidence that a reduction in foreign direct fishing (e.g. 11,419 mt in 1976 to 794 mt in 1982) does enhance U.S. catches (e.g. 1,528 mt in 1976 to 8,905 mt in 1982). The Atlantic squid fishery (both species) demonstrates a similar trend of reduced foreign catches (e.g. 34,935 mt in 1981 to 13,807 mt in 1983) and increased U.S. catches (e.g. 2,947 mt in 1981 to 23,815 mt in 1983).

Turning to the equation used to specify numerical values that will carry out the stated goals of the FMP, the equation is used, not just once, but many times until numerical terms are selected which will achieve the stated plan objectives. Several possible specifications of IOY are used until the numerical values fall out which will permit achievement of the plan terms. The following examples of the specification of IOY for *Loligo* will illustrate the use of the equation OY−DAH=TALFF (in metric tons).

OY−DAH=TALFF

(1) 44,000−13,000=31,000

Conclusion: No relative advantage is given to domestic interests to develop the US commercial fishery. With TALFF at the 31,000 mt level, prior experience shows that a high level of TALFF frustrates the development of the US fishing industry as foreign demand for US harvested squid would remain relatively low. Past experience also shows that only a portion of the TALFF allocated was actually harvested. Both sectors would stagnate under this arrangement. This configuration of numerical values was rejected.

(2) 25,000−13,000=12,000

Conclusion: The comparative advantage for the domestic fishery is not clear and the support for development of the US commercial fishery is uncertain. Plan objectives will probably not be met. This configuration of values was rejected.

(3) 21,125−17,875=3,250

Conclusion: With this configuration of values, the plan goals can be met. All components of DAH have been analyzed and are realistic values. The resultant TALFF incorporates a bycatch level, and will accommodate additional amounts based on proposals which will result in a transfer of benefits to the US.

In prior years, benefits have been transferred to the US in consideration of allocations of TALFF. But under operation of prior management regimes, the connection between benefit conferred and the level of allocation was not clearly defined. Under Amendment 1, the same components are designated for trade, but the transaction is more tightly drawn to comport with the plan's goals of fostering development of the US commercial fishery. Under Amendment 1, TALFF may not be specified at a level which will interfere with attainment of the US development goal.

Appropriate responses may now be made to specific challenges to IOY specifications made by JDSTA and GOJ.

Comment 1: JDSTA stated that the modification of ABC to IOY for economic reasons was not proper because neither the nine reference factors cited in the FMP, nor other economic factors, had been quantified and the ABC modified by such quantified values.

Response: Neither the FMP nor the regulations require quantification of the nine economic factors which are to be considered as points of reference in deriving IOY. Analysis of the factors was made both in the Recommendations for Specifications prepared by the Mid-Atlantic Fishery Management Council (MAFMC Recommendations), and again by NOAA in setting the final initial specifications for the fishing year.

Comment 2: GOJ and JDSTA made various comments challenging the setting of IOY at a level far below ABC. Possible waste of the resource and adverse impacts in relations with foreign fishing nations were cited as potential ramifications from pursuing this course.

Response: The OY adjustment mechanism allows for an increase of the IOY up to the ABC based upon performance and a balancing of factors to determine what harvest levels confer the greatest overall benefit to the United States. NOAA believes that the flexible operation of the FMP can lead to a more efficient utilization of the resource by all user groups. The prospects for use of the resource have been discussed previously in the preamble to the final regulations implementing Amendment 1.

Similarly, the trade impacts between the US domestic squid industry and foreign nations were discussed within the preamble implementing Amendment 1. NOAA maintains that the use of a reduced TALFF to induce foreign nationals to increase fishery products trade is authorized by the rule implementing Amendment 1. The impacts on trade will largely be a product of the assistance foreign nations provide in advancing the interests of the US fishing industry. The OY setting mechanism allows for an increase in TALFF during the fishing year based upon benefits conferred by foreign nations. The IOY's were calculated in accordance with the FMP and its implementing regulations.

Comment 3: Tthe JDSTA stated that the IOYs for squids were calculated differently from the calculation method outlined in the preamble to the final rule implementing Amendment 1. JDSTA offered as evidence of this, a statement at the conclusion of the MAFMC Recommendations for *Loligo* that described IOY as the sum of DAH and TALFF.

Response: While IOY is accurately described as the sum of the components DAH and TALFF, it should be

understood that this statement does not encompass the whole IOY specification process, as discussed above.

Comment 4: The GOJ commented that there was a danger that initial specifications would become final since no fixed date had been established for revisions of the specifications.

Response: In the dynamic management of the fisheries, it is not possible to set a date for revisions to the specifications. The circumstances under which revisions may be initiated and the method for doing so are described in the FMP and implementing regulations. However, the Regional Director, in consultation with the Council, may adjust the IOY anytime during the fishing year. The adjustment may result in changes to DAH or TALFF or both. Any adjustment to the IOY must be published in the **Federal Register**.

Squid—Domestic Annual Harvest

Loligo

The final initial *Loligo* DAH (17,875 mt), includes and estimated DAP of 13,000 mt, unchanged from the preliminary specifications; and a JVP of 4,875 mt, a 1,875 mt increase over the preliminary specification to accommodate increased joint venture amounts. In view of last year's *Loligo* landings, approximately 12,000 mt, a DAP of 13,000 mt is a realistic projection of domestic processing capabilities.

Illex

The final initial *Illex* DAH (13,500 mt), includes a revised DAP of 5,000 mt. This represents a decrease from the preliminary specification of DAP of 8,000 mt. The initial DAH also includes a revised JVP of 8,500 mt. This represents an increase over the preliminary specification to accommodate increased joint venture amounts. The DAP was reduced since past domestic landings do not support a recommendation of 8,000 mt. Domestic landings for *Illex* by fishing year are as follows: 1980–1981, 422 mt; 1981–1982, 593 mt; 1982–1983, 3,434 mt; and 1983–1984, 1,416 mt. Therefore, a DAP of 5,000 mt is a realistic projection of domestic processing capabilities. This amount may be increased through adjustment of IOY to reflect a change in domestic processing needs.

Comment 5: Comments were received from the GOJ and from NFI stating that DAH figures should be realistic. The GOJ was concerned about the DAP component of DAH, and NFI about the JVP component.

Response: After review of past statistics, the Regional Director decided to reduce the *Illex* DAP to 5,000 mt. The JVP was revised to 8,500 mt after review of joint venture applications.

Squid—Joint Venture Processing

Loligo

The *Loligo* and the *Illex* JVP amounts reflect the application of a mechanism designed to facilitate the allocation of additional over-the-side amounts to individual joint ventures based upon performance. Under this mechanism an amount requested for a joint venture is divided into an initial joint venture amount (IJV) and a joint venture "cap" amount (CJV). The IJV is a percentage of the total amount requested for the joint venture and is the amount reflected in the initial specification. The CJV is the total amount, if released during the fishing year, which the joint venture may harvest.

The joint ventures are reviewed as they progress. Based upon performance, amounts up to the CJV may be released to a joint venture. This joint venture allocation mechanism provides the flexibility which this dynamic fishery demands. It prevents amounts of squid from being "locked in" the JVP category if joint ventures fail to harvest their allocation. Though the mechanism preserves the preference accorded to the domestic fishery under the Magnuson Act, it enables NOAA to implement its established "fish and chips" policy. This will permit attainment of OY to the maximum extent practicable.

The *Loligo* JVP amount of 4,875 mt represents the IJV for four approved joint ventures. An additional 3,625 mt, the difference between IJV and CJV, will be made available depending upon the actual fishing performance of each joint venture.

Illex

As with *Loligo*, the *Illex* JVP amount is now subject to the JV allocation process discussed above. The JVP amount of 8,500 mt represents the IJV for the six approved *Illex* joint ventures. An additional 9,700 mt, the difference between IJV and CJV, will be made available depending upon the actual fishing performance of each joint venture.

Squid—Total Allowable Level of Foreign Fishing

Loligo

The *Loligo* TALFF has been increased from 1,500 mt to 3,250 mt. Thia amount reflects the aggregated amount tht NOAA recommends be divided and allocated to individual foreign nations which are also participating with domestic fishermen in joint ventures.

Illex

The *Illex* TALFF has been increased from 1,600 mt to 2,250 mt. This amount reflects the aggregated amount that NOAA recommends be divided and allocated to individual foreign nations which are also participating with domestic fishermen in joint ventures.

Comment 6: GOJ, JDSTA and ISTC challenged the low squid TALFF specifications. The Japanese commenters both argued that initial TALFFs should be set at levels comparable to prior final TALFFs (e.g. 36,000 mt and 37,000 mt).

Response: The TALFF has been raised. The flexible OY method allows for further increases in TALFF should foreign nations provide a benefit to the US fishing industry and is a clear expression of the "fish and chips" policy espoused by the Magnuson Act.

Butterfish—Optimum Yield

The OY for butterfish is the amount domestic fishermen harvest plus TALFF. The maximum OY can be up to 16,000 mt.

Butterfish—Domestic Annual Harvest

The DAH and DAP specification for butterfish are maintained at 11,000 mt each. Domestic butterfish landings by fishing year are as follows: 1980–1981, 5,573 mt; 1981–1982, 5,372 mt; 1982–1983, 7,231 mt; and 1983–1984 (through February 29, 1984) 9,133 mt. Respondents to the processor survey indicated that processors will be able to handle a DAP of up to 11,000 mt.

Butterfish—Total Allowable Level of Foreign Fishing

The initial TALFF is increased from 500 mt to 571 mt. The TALFF for butterfish is the sum of fixed percentages of the allocated TALFFs of *Loligo* squid (six percent), and one percent for each of the following species: *Illex* squid, Atlantic mackerel, silver hake, and red hake. Since potential squid TALFFs could increase as unallocated amounts of squid are allocated to it, and reserves of mackerel and red hake are allocated to their respective TALFFs, the butterfish TALFF potentially ranges from 571 mt to 2,264 mt.

Comment 7: The GOJ challenged the setting of butterfish TALFFs at the bycatch level.

Response: This comment is directed towards a structural portion of the FMP that will not be changed without amendment to the FMP. The bycatch TALFF concept is consistent with the purposes of the Magnuson Act which is directed towards the development of the

US fishing industry and the phase-out of foreign interests, where appropriate. Reductions in the amount of butterfish available to foreign nations has been a positive benefit to the U.S. fishing industry. The increased levels of harvest reflect that fact.

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291. The Council prepared a regulatory flexibility analysis for the rule which authorized this action (See ADDRESS for a copy).

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

Dated: April 19, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-10997 Filed 4-19-84; 4:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 80
Tuesday, April 24, 1984

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

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, 570, and 584

Net-Worth Requirements of Insured Institutions; Extension of Comment Period

Dated: April 17, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule: Extension of comment period

SUMMARY: The Federal Home Loan Bank Board is extending the comment period on a proposed amendment to its regulation pertaining to net-worth requirements of institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The comment extension is intended to provide additional opportunity for the public to analyze the technical features of the proposal and its potential impact on insured institutions and the financial restructuring of the thrift industry.

DATE: Comments on the proposed rule (49 FR 6501) must be received by July 23, 1984.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1770 G Street, NW., Washington, D.C. 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Attorney, Office of General Counsel, (202) 377–6465, or Edward Taubert, Assistant Director, Policy and Regulations Division, Office of Examination and Supervision, (202) 377–6484, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is extending the comment period on a proposed amendment to its regulations pertaining to the minimum net-worth requirements applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions"). The proposed rule (49 FR 6501, February 22, 1984) would impose a net-worth requirement equal to at least three percent on any increase in liabilities after December 31, 1983. This would result in gradually eliminating the authority to (1) calculate net worth on a five-year average basis, and (2) phase in the requirement over a twenty-year period. Minimum net worth would continue to include two percent of recourse liabilities plus twenty percent of scheduled items. The Board is also proposing to eliminate the requirement to calculate "statutory reserves" as a percentage of insured deposits. Instead compliance with the net-worth requirement would be considered sufficient. If the proposed amendments were to be adopted, they would become effective for any fiscal year beginning after September 30, 1984.

The Board provided 60 days for public comment on the proposal, requesting that comments be received by April 23, 1984. Upon request, the Board is extending this comment period for an additional 90 days. Comments must be received by the Board on or before July 23, 1984. The Board hopes that the extended comment period will permit insured institutions to perform simulations of the proposed net-worth calculations to determine the potential impact on their operations. The extended comment period will also provide further opportunity to insured institutions and thrift industry representatives to undertake exacting scrutiny of the proposal and to suggest refinements that may achieve the Board's purposes in proposing the amendment with the minimum disruption to the restructuring plans of insured institutions and the thrift industry.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-10836 Filed 4-20-84; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

Disclosure of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Pursuant to section 3(j) of the Privacy Act, 5 U.S.C. 552a(j), SBA proposes to amend SBA regulations at 13 CFR 102.34 in order to exempt records system SBA 360, "SBA Investigation Files," maintained by the Investigations Division of the Office of Inspector General (OIG), from compliance with certain provisions of the Privacy Act, consistent with the general exemption provision of the act at 5 U.S.C. 552a(j)(2). This amendment is proposed in order to maintain the efficiency and integrity of investigaitons conducted by the OIG.

DATE: Comments are to be received on or before May 24, 1984.

ADDRESS: Send written comments to Erin McDonnell, Counsel to the Inspector General, Office of Inspector General, Small Business Administration, Room 1018, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Erin McDonnell, Counsel to the Inspector General, Office of Inspector General, Small Business Administration, Room 1018, 1441 L Street, NW., Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION: The Small Business Administration proposes to exempt, under the general exemption provisions of 5 U.S.C. 552a(j)(2), the following SBA records system: SBA 360, "SBA Investigation Files," maintained by the Investigations Division, Office of Inspector General.

The exemption is consistent with the investigation and law enforcement responsibilities of the Office of Inspector General (OIG). The OIG, a component of SBA, performs as its principal function activities pertaining to the enforcement of criminal laws under the authority of the Inspector General Act, 5 U.S.C. App. I. Exemption of this system of records pursuant to section (j)(2) of the Privacy Act would not only protect investigative information and confidential sources but also prevent the subjects of investigations from frustrating the investigative process. The exemption

would apply only to information contained in the SBA 360 system of records, which is indexed by the names of individuals who are the subjects of investigations by the OIG, and only to the extent that this system contains criminal law enforcement material.

For purposes of Executive Order 12291, SBA hereby determines that this proposed rule will not constitute a major rule, within the meaning of section 1(b) of the Executive Order. In addition, it is hereby certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in section 601(6) of the Act, 5 U.S.C. 601(6).

List of Subjects in 13 CFR Part 102

Privacy Act; Small Business Administration.

PART 102—[AMENDED]

Accordingly, pursuant to the authority of section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA proposes to amend 13 CFR Part 102 by revising § 102.34 to read as follows:

§ 102.34 General exemptions.

(a) *System of records affected.* Under the general exemption provisions of 5 U.S.C. 552a(j)(2), the Administrator of SBA is authorized to exempt the following system of records from all provisions of the Privacy Act of 1974, except subsections (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), and (11); and (i) of the Act:

SBA Investigation Files—SBA 360, a system of records maintained by the Investigations Division of the Office of Inspector General (OIG), which primarily consists of information compiled for the purpose of criminal investigations conducted by OIG and associated with identifiable individuals.

(b) *Scope of exemption.* The system of records listed in § 102.34(a) is exempt pursuant to 5 U.S.C. 552a(j)(2) to the extent that information in this system consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Reasons for exemption.* Since the Investigations Division of the Office of Inspector General is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2), the system of records described in § 102.43(a) is exempt for one or more of the following reasons:

(1) To prevent the subjects of Office of Inspector General investigations from using the Privacy Act to frustrate the investigative process.

(2) To protect the identify of Federal employees who furnish a complaint or information to the Office of Inspector General, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I.

(3) To protect the confidentiality of other sources of information.

(4) To avoid endangering confidential sources and law enforcement personnel.

(5) To prevent interference with law enforcement proceedings.

(6) To assure access to sources of confidential information, including that contained in Federal, State and local criminal law enforcement information systems.

(7) To prevent the disclosure of investigative techniques.

(8) To prevent the disclosure of classified information.

Dated: April 9, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-10985 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule Concerning Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Invitation for Rebuttal Comments on the National Automobile Dealers Association's Cost/Benefit Study.

SUMMARY: The Federal Trade Commission has decided to grant a twenty day rebuttal period in addition to the original rebuttal period that ended on March 22, 1984. The new rebuttal period is to allow time to respond to a cost/benefit study by the National Automobile Dealers Association.

DATE: Rebuttal comments must be filed by May 14, 1984.

ADDRESS: Rebuttal comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. All rebuttal comments should be labeled "Sale of Used Motor Vehicles."

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION: On December 16, 1983, the Federal Trade Commission published an invitation for public comment in the **Federal Register**, 48 FR 55874. This notice invited written public coments on whether provisions of the Used Motor Vehicle Trade Regulation Rule requiring dealers to disclose known defects (16 CFR 455.2(c) and related sections (16 CFR 455.6 and the Appendix to the rule) should be modified or eliminated. Section 455.2(c) requires that certain major defects delineated in Section 455.6 of the rule must be disclosed if known to the dealer. The Appendix to the rule provides examples to illustrate the concept of "knowledge" for the purposes of the rule. Under the rule, known defects must be disclosed on a window sticker ("Used Car Buyers Guide") which must be posted on used cars offered for sale to consumers. The comment period was originally scheduled to end on January 16, 1984. However, the Commission extended the comment period to January 31, 1984. On February 28, 1984, the Commission announced a 20 day period for rebuttal submissions which began on March 2, 1984 and ended on March 22, 1984.

On January 31, 1984, the National Automobile Dealers Association (NADA) filed a motion with the Commission requesting that the comment period ending on that day be extended for an additional 60 days to allow NADA adequate time to complete and submit a cost/benefit study. The Commission, on February 27, 1984, denied NADA's request, but stated that its decision was without prejudice to NADA's right to petition the Commission to reopen the rulemaking record and receive the study when it was completed.

On the last day of the rebuttal period, March 22, 1984, NADA submitted a cost/benefit study to the Commission and requested (1) that the Commission reopen the record to receive the study or (2) that the study be received as a rebuttal comment. On April 3, 1984, NADA submitted an eratta submission to its cost/benefit study and requested that the Commission receive this document as a record comment. The

Commission has received NADA's cost/benefit study and the errata submission as record comments. The Commission has also decided to grant a further 20 day rebuttal period for the purpose of responding to the NADA cost/benefit study.

Copies of the NADA cost/benefit study and its eratta submission may be obtained from the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

List of Subjects in 16 CFR Part 455

Trade practices, Used motor vehicles.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-10912 Filed 4-23-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Country of Origin Marking Requirements for Audio Cassette Shells

AGENCY: Customs Service, Treasury.

ACTION: Withdrawal of notice of proposed change of position.

SUMMARY: This document advises the public that Customs has decided to continue its current position of excepting imported audio cassette shells from the requirement of country of origin marking. The proposed change of position, which would have required that the merchandise be marked to identify the country of origin, has not been adopted. After analysis of the comments received in response to the notice proposing to require marking of audio cassette shells, Customs has determined to withdraw the proposal.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Harold I. Loring, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), provides that unless expressly excepted, every imported article of foreign origin (or its container), shall be legibly and conspiciously marked to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), sets forth the regulations implementing the country of origin marking requirements and the exceptions of 19 U.S.C. 1304(a).

Section 134.35, Customs Regulations (19 CFR 134.35), provides that an article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of 19 U.S.C. 1304(a), and the article shall be excepted from marking.

The "ultimate purchaser" is generally the last person in the United States who receives the article in the form in which it was imported. Under section 134.1(d)(1), Customs Regulations (19 CFR 134.1(d)(1)), if an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the article to a process which results in its substantial transformation, even though the process may not result in a new or different article.

By a decision dated June 14, 1978 (MAR-2-05-R:E:R 709123 JB), Customs ruled that audio cassette shells were not required to be individually marked with the country of origin because the addition of the magnetic tape constituted a substantial transformation within the principle of the decision in *United States v. Gibson-Thomsen Co., Inc., supra*, and under section 134.35, Customs Regulations.

On November 16, 1982, a notice was published in the Federal Register (47 FR 51586), advising the public that based upon a petition submitted on behalf of several domestic manufacturers of audio cassette shells, Customs was reviewing its position of excepting imported shells from the marking requirements. The notice invited the public to submit comments regarding the proposed change.

Analysis of Comments

Customs received 24 comments in response to our notice, 5 supporting a change of position and 19 in opposition. Of those comments received in support of the change, 4 were from Congressional sources on behalf of constituent domestic manufacturers of audio cassette shells. The fifth comment was submitted directly by a consortium of such manufacturers. The arguments submitted in favor of the proposal include that marking the shells will better inform consumers as to the origin of cassettes and that the domestic tape-loading process is an insignificant portion of the entire process and does not substantially transform the foreign shells to products of the United States.

We are of the opinion that marking a cassette shell as a foreign product might well lead to considerable consumer confusion. The single most important element for the consumer in a finished audio cassette is the magnetic tape itself, not the standardized cassette shell. Consumers of cassettes might well be misled by a foreign origin marking on the cassette and come to the understandable conclusion that the critical tape element is a product of that foreign country.

In *United States* v. *Gibson-Thomsen Co., Inc., supra*, the court held that a manufacturer or processor in the United States who converts or combines (substantially transforms) an imported article into a new article having a new name, character and use will be considered the "ultimate purchaser" of the imported article which thereby is excepted from marking under 19 U.S.C. 1304(a). In *Grafton Spools, Ltd.* v. *United States*, 45 Cust. Ct. 16, C.D. 2190 (1960), the court held that empty ribbon spools for business machines were excepted from marking because the spools were substantially transformed, *i.e.*, lost their identity as separate articles of commerce, when wrapped with inked ribbons by a process requiring technical skill and competence. Ribbon manufacturers which imported the empty spools were held to be ultimate purchasers who resold to business machine manufacturers a new and different article of commerce. As the *Grafton* court stated: "What the ribbon manufacturers sell are ribbons. True, the ribbon is wound on a spool. But it is ribbon, so wound, and not the spool as such, which the business machine manufacturers buy from the ribbon manufacturers."

In this instance, the empty cassette shells and magnetic tape are likewise physically integrated into a new and unified whole, a tape cassette, which is sold to consumers who cannot use one part of the whole without the other. Either the empty cassette shell or the tape alone cannot serve the ordinary consumer's purpose. As such, the combined tape cassette appears to pass the substantial transformation test applied by the court in *Midwood Industries, Inc.* v. *United States*, 64 Cust.

Ct. 499, C.D. 4026 (1970), which distinguished between producers' goods and consumers' goods.

However, the decision in *Uniroyal, Inc.* v. *United States*, 542 F. Supp. 1026 (C.I.T. 1982), requires us to compare more closely the cost and complexity of processing performed domestically versus processing performed abroad. If the domestic processing is minor, then physical integration alone may not satisfy the substantial transformation test. It has been shown that the foreign cassette manufacturing operation is more costly than the domestic tape-loading operation (which also requires technical equipment and skilled operation). Such cost comparisons exclude the American tape-manufacturing process as irrelevant from a legal standpoint. These cost comparisons are misleading, however, in the present case where the ordinary consumer is more interested in the tape than in the cassette shell which is merely a "housing" for the tape. Although the cost of tape-loading is small compared to the cost of shell manufacture, the tape-loading is a key operation that adds an essential part which changes the very nature of the imported article. Such processing is not minor. Furthermore, when the cost of the tape-loading is added to the cost of the domestically-added tape, the total is almost one-half the entire cost of the completed tape cassette. Customs is of the opinion that the cost of domestic processing, in view of the nature of such processing, is sufficient to satisfy the *Uniroyal* test. Unlike the *Uniroyal* case, in which the imported uppers were the essence of the shoe (that element in which the consumer was most interested) we believe the essence of the tape cassette is the magnetic tape which is added in the United States.

Action

Withdrawal of Proposal

In view of the foregoing, Customs has determined that the proposed change should not be adopted. Accordingly, the notice published in the Federal Register on November 16, 1982 (47 FR 51586), proposing to require imported audio cassette shells to be individually marked with their country of origin, is withdrawn.

Drafting Information

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

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

William von Raab,

Commissioner of Customs.

[FR Doc. 84-10965 Filed 4-23-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administation

21 CFR Part 155

[Docket No. 84N-0094]

Pickled Cucumbers; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Pickled Cucumbers (Codex Standard 115-1981) (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability of and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by June 25, 1984.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for pickled cucumbers.

As a member of the Codex Alimentarius Commission, the United States is obligated to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codes standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to appropriately revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for pickled cucumbers. There are, however, voluntary standards for grades for pickles (7 CFR 2852.1681), including indentity and quality requirements, developed by the U.S. Department of Agriculture.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment; (1) on the need for, and desirability of, a standard for this food; (2) on the specific provisions of the Codex standard and any modifications that should be included in a U.S. standard, if established; and (3) on any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and

regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for pickled cucumbers specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

The Codex standard under consideration is as follows:

Codex Stan. 115–1981—Codex Standard for Pickled Cucumbers (Cucumber Pickles)

(World-wide Standard)

1. *Scope*

This standard applies to Pickled Cucumbers (in some countries Cucumber Pickles) intended for direct consumption, which are:

(a) prepared with cucumbers as the predominant ingredient;

(b) prepared from desalted cured cucumbers, fermented naturally or by controlled fermentation, or from fresh cucumbers which are acidulated;

(c) preserved through natural or controlled fermentation or added acidulants and may be further preserved by pasteurization with heat, by other physical means or by chemical preservatives.

In some countries, the word "cucumbers" is associated with large size fruit whereas the word "gherkin" (in French "cornichons") refers to small fruit. Irrespective of customary national trade practice these products are included in this standard.

This standard does not cover finely chopped products called relish.

2. *Description*

2.1 *Product Definition*

Pickled cucumbers is the product.

(a) prepared from clean, sound cucumbers of cultivars conforming to the characteristics of *Cucumis sativus L.*;

(b) such cucumbers may or may not be peeled and may or may not have seeds removed;

(c) packed with or without a suitable liquid packing medium and seasoning ingredients appropriate to the product;

(d) is preserved in an appropriate manner before or after the container is closed—such preservation to include acidulation to a pH of 4.6 or less either by natural or controlled fermentation or addition of a vinegar or an edible acid, and may also include heat pasteurization, refrigeration or a chemical preservative.

2.2 *Types and Kinds of Pack*

2.2.1 *Fresh pack type*

Prepared from fresh, uncured and unfermented cucumbers.

2.2.2 *Cured type*

Prepared from cucumbers which have been cured in salt brine or in other suitable curing solution with or without natural or controlled fermentation. Such salt stock may be sufficiently desalted, if necessary, during preparation for processing.

2.2.3 *Sub-types*

Analytical characteristics of the sub-type are determined on the packing medium after equalization.

Sub-type	Characterizing flavour	Prepared from (type)
(a) Dill	Dill herb and/or oil of dill.	Fresh-pack or cured types.
(b) "——" (Name of herb).	Herb and oils thereof other than dill herb and/or oil of dill.	Fresh-pack or cured types.
(c) Sour	Pronounced sour	Fresh-pack or cured types.
(d) Sweet-sour	Moderately sweet-sour	Fresh-pack or cured types.
(e) Sweet	Pronounced sweet	Fresh-pack or cured types.
(f) Mustard	Mustard sauce, mustard seed and/or oil of mustard.	Fresh-pack or cured types.
(g) Salt sour	Pronounced salty	Fresh-pack type.
(h) Mild	Neither sweet nor sour.	Fresh-pack or cured types.
(i) Hot	Pronounced pepper	Fresh-pack or cured types.

Sub-type	Total acidity (as acetic acid)	Salt (NaCl)	Salt free soluble solids
(a) Dill	0.4% to 2.0%	1.0% to 4.5%	
(b) "——" (Name of herb).	0.4% to 2.0%	1.0% to 4.5%	
(c) Sour	0.7% to 3.5%	1.0% to 5.0%	
(d) Sweet-sour.	0.5% to 2.0%	0.5% to 3.0%	1.5% to less than 14%.
(e) Sweet	0.5% to 2.5%	0.5% to 3.0%	14.0% minimum.
(f) Mustard	0.5% to 3.0%	1.0% to 3.0%	
(g) Salt sour.	0.5% to 3.5%	5.0% to 1.0%	
(h) Mild	0.4% to 0.7%	1.0% to 3.5%	
(i) Hot	0.5% to 3.0%	1.0% to 3.0%	

2.3 *Styles*

The product shall be presented in one of the following styles:

(a) *Whole*—Cucumbers with a maximum diameter of 54 mm. In containers larger than 4 litres the cucumbers may have a maximum diameter of 65 mm. Whole cucumbers of this style may be designated as "gherkin" when they are not larger than 27 mm in diameter.

(b) *Whole curved*—Whole cucumbers with a maximum diameter of 54 mm and curved at least 35°.

(c) *Halves*—Cucumbers divided lengthwise into halves.

(d) *Finger cut, Sliced lengthwise of Spears*—Cucumbers cut lengthwise into sections of approximately equal size.

(e) *Ring cut or Chunks*—Cucumbers cut at right angles to the longitudinal axis having a thickness from 10 to 40 mm and a maximum diameter of 54 mm.

(f) *Slices or Cross cuts or Chips*—Cucumbers cut at right angles to the longitudinal axis having a thickness of not more than 10 mm and a maximum diameter of 54 mm.

(g) *Strips ("Asier")*—Large cucumbers, peeled, divided lengthwise. The prepared halves are cut at right angle to the longitudinal direction into strips of approximately 10 mm width.

3. *Essential Composition and Quality Factors*

3.1 *Permitted Ingredients*

Cucumbers as specified in Sections 1 and 2

Water
Vinegar
Salt (Sodium chloride)
Vegetable Oils
Nutritive carbohydrate sweeteners
Paprika
Herbs
Spices
Condiments
Vegetables—shall not exceed 5% of the total weight of the product, except for the sub-type "mustard" which may contain not more than 30%.

3.2 *Quality Criteria*

3.2.1 *Colour*

The cucumbers shall have normal colour characteristics typical of the variety, type of pack and style.

3.2.2 *Texture*

The cucumbers shall be reasonably firm, crisp and practically free from shrivelled, soft and flabby units and reasonably free from very large seeds.

3.2.3 *Flavour*

The cucumbers shall have a good flavour typical of the type of pack and in consideration of any characterizing flavouring or special ingredients used.

3.2.4 *Size Uniformity*

(a) *Whole style; Spears or Sliced lengthwise*

80% or more, by count, of the cucumbers shall meet the following requirements:

Length—the length of the longest unit shall not exceed that of the shortest unit by more than 50%.

Diameter—the diameter of the largest unit shall not exceed that of the smallest unit by more than 50%.

These requirements do not apply to cucumbers packed in containers of over 4 litres.

(b) *Ring cut; Slices; Cross cuts*

80% or more by weight of units having the most uniform size meet the following requirement for individual containers or sample units:

Diameter—the diameter of the largest unit shall not exceed that of the smallest unit by more than 50%.

3.2.5 *Definition of Defects*

(a) Curved Cucumbers—means whole cucumbers that are curved at an angle of 35° when measured as illustrated in Annex I.

(b) Misshaped Cucumbers—means whole cucumbers, nubbins, and other deformed cucumbers as illustrated in Annex I.

(c) Blemished—means affected to a degree that materially detracts from appearance and edibility by discolouration, scars, scratches, skin breaks or other similar imperfections.

(d) Mechanical damage—means crushed or broken units.

(e) Stem—means any stalk longer than 15 mm.

(f) Poor texture—excessively shrivelled, very soft or flabby or units with very large seeds.

(g) Off colour—units that vary markedly from the colour typical of the variety and type of pack.

(h) Hollow centres—whole cucumbers in which the internal cavity is large or Ring cuts and Slices in which a substantial portion of the center is missing.

(i) Grit, sand or silt—means any mineral impurities, whether in the liquid packing medium or imbedded in the skin or flesh of the cucumbers that affect the edibility.

3.2.6 *Allowances for Defects*

Whole; Whole curved; Halves; Finger Cut or Spears: Standard sample unit—20 whole cucumbers; or 40 halves, finger cut or spears.

Defect	Maximum limit (No. of units)	
	Whole curved; whole	Halves; finger cut; or spears
(a) Curved (except curved style)	3	2
(b) Misshapen	2	1
(c) Blemished	3	3
(d) Mechanical damage	2	3
(e) Stem	3	2
(f) Poor texture	1	3
(g) Off colour	1	2
(h) Hollow centre	1	.....
Maximum allowable total (a) through (h)	7	11

Ring cuts; Slices; Strips: Standard sample unit—300 g drained pickles.

Defect	Maximum limit (in grams)
(a) Blemished	15
(b) Mechanical damage	30
(c) Poor texture	10
(d) Off colour	10
(e) Hollow centre	30
(f) Stems	2 each
Maximum allowable total (a) through (e)	75

3.2.7 *Mineral Impurities*

All styles and types, except for cucumbers that are peeled not more than 0.08% m/m.

3.3 *Classification of "Defectives"*

A container that fails to meet the applicable quality requirements as set out in Section 3.2 shall be considered a "defective".

3.4 *Acceptance*

A lot will be considered as meeting requirements for *Quality Criteria* when the number of "defectives" as defined in section 3.3 does not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged foods, CAC/RM 42-1969.

4. Food Additives

4.1 Solubilizing and dispersing agents	Maximum level
Polysorbate 80 (Polyoxyethylene 20 sorbitan, monooleate) Xanthan gum Gum Arabic Alginates (Ca, NH_4, Na, K) Propylene glycol alginate Carrageenan (incl. furcellaran)	500 mg/kg singly or in combination
4.2 Firming agents	Maximum level
Calcium chloride, lactate and gluconate	250 mg/kg singly or in combination
4.3 Preservatives	Maximum level
Sulphur dioxide (as a carry-over from raw product)	50 mg/kg
Benzoic acid and its sodium and potassium salts Potassium sorbate	1,000 mg/kg singly or in combination
4.4 Colouring matters	Maximum level
Riboflavin Fast Green FCF Chlorophyll copper complex Tartrazine Annatto extract [1] Turmeric [1] Sunset Yellow FCF beta-Carotene Oleoresin of paprika Brilliant Blue FCF Carmel, plain Caramel (ammonium sulphite treated) [1]	300 mg/kg singly or in combination
4.5 Thickening agents (in mustard type only)	Maximum level
Guar gum Gum Arabic Carobbean (Locust bean) gum [1]	Limited by GMP
4.6 Acidifiers	Maximum level
Acetic acid Lactic acid Malic acid Citric acid	Limited by GMP
4.7 Flavours	Maximum level
Natural flavours and nature-identical flavours, as defined in the Codex Alimentarius list of additives (CAC/FAL 1-1973) [1]	Limited by GMP

[1] Temporarily endorsed.

5. *Contaminants*

Tin, maximum level 250 mg/kg calculated as Sn.[2]

6. *Hygiene*

6.1 It is recommended that the product covered by the provisions of this standard be prepared in accordance with the *International Code of Hygienic Practice for Canned Fruit and Vegetable Products* (Ref. No. CAC/RCP 2-1969), recommended by the Codex Alimentarius Commission.

6.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

6.3 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substance originating from microorganisms in amounts which may represent a hazard to health.

7. *Weights and Measures*

7.1 *Fill of Container*

7.1.1 *Minimum Fill* (Pickles plus Packing Medium)

The container shall be well filled with cucumbers and the product (including packing medium) shall occupy not less than 90% of the water capacity of the container. The water capacity of the container is the volume of distilled water and 20°C which the sealed container will hold when completely filled.

7.1.2 *Minimum volume fill for whole and whole curved styles*

The cucumber ingredient shall occupy not less than 55% for cured type and 53% for fresh-pack type of the total capacity (volume) of the container.

7.1.3 *Minimum volume fill for all styles except whole*

The vegetable and fruit ingredient in styles other than whole shall occupy:

(a) not less than 55% in the case of *fresh pack;* and

(b) not less than 57% in the case of *cured,* of the total capacity (volume) of the container.

7.2 *Acceptance*

The requirements for fill of container (as specified in section 7.1) shall be deemed to be complied with when the average from all containers is not less than the minimum required, provided that there is no unreasonable shortage in individual containers.

8. *Labelling*

In addition to sections 1, 2, 4, and 6 of the *General Standard for the Labelling of Prepackaged Foods* (Ref. CODEX STAN. 1-1981) the following provisions apply:

8.1 *Name of the Food*

8.1.1 The name of the product is "Pickled Cucumbers", "Cucumber Pickles", "Pickles" or "Gherkins".

8.1.2 The following shall be included in close proximity to the name of the product:

(a) the type of pack, e.g. "Fresh pack" or "Cured pack";

(b) the style of pack and the sub-type, including the name of the herb in relation to sub-type in section 2.2.3(b);

(c) the sub-type "dill" which may be declared "natural dill" or "genuine dill" when the cucumbers are fermented naturally in a low salt concentration brine;

[2] Temporarily endorsed. This limit remains under review.

(d) in whole style, the approximate count range in containers larger than 4 litres.

8.2 *List of ingredients*

A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with section 3.2(c) of the *General Standard for the Labelling of Prepackaged Foods.*

8.3 *Net Contents*

The quantity of contents shall be declared as net volume, net weight, drained weight or as any combination of these, in either the metric ("Système International" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

8.4 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

8.5 *Country of Origin*

8.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

8.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

8.6 *Lot identification*

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

9. *Methods of Analysis and Sampling*

9.1 *Sampling*

Sampling shall be in accordance with the *FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods* (AQL-6.5) (Ref. No. CAC/RM 42-1969).

9.2 *Test Procedures*

9.2.1 *Soluble solids*

Soluble solids shall be determined by the Refractometric method. Reference: Official Methods of Analysis of the Association of Official Analytical Chemists, 11th Edition, Section 31.011 except make no correction for invert sugar.

9.2.2 *Salt (NaCl)*

Salt (NaCl) shall be determined by titration with a standard $AgNO_3$ solution. Reference: Official Methods of Analysis of the Association of Official Analytical Chemists, 11th Edition, Sections 3.069 and 3.070 using a test sample (packing medium) of 10.00 grammes and expressing results as percent by weight (m/m) salt (NaCl. Each ml of N/10 $AgNO_3$ equals 0.005845 g NaCl.)

9.2.3 *Total Acidity*

Total acidity shall be determined by titration with a standard NaOH solution using phenolphthalein indicator. Reference: Official Methods of Analysis of the Association of Analytical Chemists, 11th Edition, Section 22.058. Report as percent by weight or m/m.

9.2.4 *Mineral Impurities*

According to the FAO/WHO Codex Alimentarius Method (FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables—Second Series, CAC/RM 49-1972, Determination of Mineral Impurities (sand), except that Steps 4.13, 4.14 and 4.15 relating to treatment with HCl are omitted. Results are expressed as mg/kg of total contents.)

9.2.5 *Method for Determination of Water Capacity of Containers*

In accordance with FAO/WHO Codex Alimentarius *Methods of Analysis for Processed Fruits and Vegetables* (Ref. No. CAC/RM 46-1972).

9.2.6 *Method for Determination of Volume Fill (by Displacement)*

Method 1

(1) This method may be used for all subtypes of pickles. Use a four to eight litre size can with an overflow spout constructed from 0.5 cm to 1 cm inside diameter metal tubing (see figure 1). The tubing is soldered to an opening in the side of the can 2 to 3 cm from the bottom and is bent upward parallel to sides. The tube is bent over and slightly downward from the can at the upper end to form a spout about 4 cm below the top of the can. The lower tip end of the spout is lower than the inside lower curve of the spout (point A). The upper tip end of the spout is higher than the inside lower curve of the spout (point A). The upper tip end of the spout is slightly shorter than the lower tip end of the spout. A brace near the top of the can holds the tubing firmly in place. A woven wire basket made from screen wire with about eight meshes to the inch with a handle is used for lowering the pickle ingredient into the overflow can.

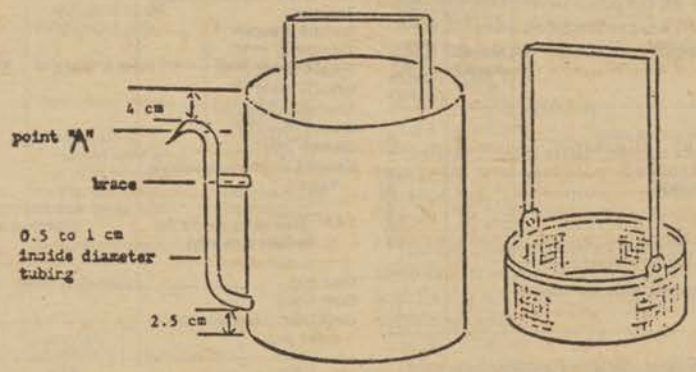
(2) Place overflow can on a level table so that overflow will discharge into a sink. Fill the overflow can with water at room temperature (approximately 20°C or 68°F). Place the empty basket into the filled overflow can.

(3) When overflow ceases, place a beaker or graduated cylinder under the spout.[3]

(4) Remove basket and place drained pickle ingredient (at room temperature) in basket and lower slowly into the overflow can. When overflow ceases, measure the volume of the fluid overflow. The percent volume of pickle ingredient (volume occupied) is calculated as follows:

$$\frac{\text{Overflow volume}}{\text{Total capacity (volume) of container (see 9.2.5)}} \times 100 = \text{percent volume of pickle ingredient}$$

FIGURE 1



OVERFLOW CAN

Method 2

(1) Use water to partially fill a graduated cylinder (or other technical measuring device) large enough so that the pickle ingredient from one container may be completely submerged.

(2) Prior to adding the pickle ingredient, record the volume of water in the partially filled cylinder.[4]

(3) Add all the drained pickle ingredient from one container so that it is entirely submerged.

(4) Measure the volume of liquid and pickle ingredient after submersion of pickle ingredient.

[3] NOTE: Prior to determining the percent volume of pickle ingredient for mustard pickles, the drained pickle ingredient is prepared as follows: Empty the contents of the container upon an ISO Recommendation R 565 or a U.S. Standard No. 8 sieve of proper diameter so as to distribute the product evenly. Wash off all adhering sauce under a spray of water at a temperature of approximately 20°C (68°F). Incline the sieve to facilitate drainage and allow to drain for two minutes. Proceed with (4) overleaf.

[4] Note.—Prior to determining the percent volume of pickle ingredient for mustard pickles, the drained pickle ingredient is prepared as follows: Empty the contents of the container upon an ISO Recommendation R 565 or a U.S. Standard No. 8 sieve of proper diameter so as to distribute the product evenly. Wash off all adhering sauce under a spray of water at a temperature of approximately 20°C (68°F). Incline the sieve to facilitate drainage and allow to drain for two minutes. Proceed with (3) above.

(5) Subtract the value in (2) from the value in (4) to obtain the pickle ingredient displacement.

(6) To determine Volume Fill, calculate:

$$\frac{\text{Pickle ingredient displacement}}{\text{Total capacity (volume) of container (see 9.2.5)}} \times \text{100 = percent volume of pickle ingredient}$$

Method 3

(1) Remove and collect the packing medium from the container for other quality determinations—2.2.3.[5]

(2) With the pickle ingredient in the container fill it to capacity (9.2.5) with water.

(3) Drain, collect and measure the water.

(4) To determine Volume Fill, calculate:

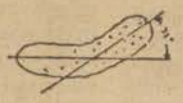
$$\frac{\text{Total capacity (volume) of container (9.2.5)} - \text{Volume of drained water from (3) above}}{\text{Total capacity (volume) of container (9.2.5)}} = \text{Percent volume of pickle ingredient}$$

9.2.7 Method for the Determination Drained Weight (To be developed.)

ANNEX I

VISUAL AID ILLUSTRATING CURVED AND MISSHAPEN CUCUMBERS

(a) Curved cucumber. A curved cucumber is one that is curved at an angle of 35 degrees or more, when measured as illustrated.



(b) Misshapen cucumbers. Misshapen cucumbers include crooked, nubbins, and otherwise misshapen cucumbers. A nubbin cucumber is one that is not cylindrical in form, is short and stubby, or is not well developed. Nubbins and otherwise misshapen cucumbers are similar to the following illustrations:

Interested persons may, on or before June 25, 1984, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: April 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–10472 Filed 4–23–84; 8:43 am]

BILLING CODE 4160–01–M

[5] Note.—Prior to determining the percent volume of pickle ingredient for mustard pickles, the drained pickle ingredient is prepared as follows: Empty the contents of the container upon an ISO Recommendation R 565 or a U.S. Standard No. 8 sieve of proper diameter so as to distribute the product evenly. Wash off all adhering sauce under a spray of water at a temperature of approximately 20°C (68° F). Incline the sieve to facilitate drainage and allow to drain for two minutes. Proceed with (2) above.

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21 CFR Part 886

[Docket No. 82N–0179]

Reclassification of Daily Wear Optically Spherical Hydrogel (Soft) Contact Lenses; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposed rule to reclassify marketed daily wear optically spherical hydrogel (soft) contact lenses from class III (premarket approval) into class I (general controls). FDA has determined, after providing two opportunities for submission of comments and evidence, after holding a public hearing followed by an additional period for submission of comments and evidence, and after reconsidering the basis for FDA's tentative conclusion that class I would provide reasonable assurance of the safety and effectiveness of the device, that there is insufficient new, publicly available, valid scientific evidence to show that the device is safe and effective, to characterize the device adequately for the purpose of reclassification, or to demonstrate that either class I or class II (performance standards) would provide reasonable assurance of the safety and effectiveness of the device. Class III is necessary to provide such assurance.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Albert Van de Griek, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the following is an index of the sections throughout this document:

I. History of the Proceedings.

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C. Inadequate Characterization of Materials.
D. Inadequacy of Class I or Class II to Provide Reasonable Assurance of Safety and Effectiveness.
E. Need for Clinical Trials.
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B. Adequacy of Safety and Effectiveness Data.
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D. Adequacy of General Controls.
E. Adequacy of Class II.
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G. Economic Impact of Reclassification.
H. Contact Lens Accessories.
I. Tinted Contact Lenses.
J. Miscellaneous Matters.
IV. References.

I. History of the Proceedings

In the **Federal Register** of November 26, 1982 (47 FR 53411), FDA published a proposed rule to reclassify certain marketed daily wear optically spherical hydrogel (soft) contact lenses consisting of any of seven types of materials identified in proposed § 886.538 (47 FR 53422) (seven types) from class III into class I. (For convenience, the lenses proposed for reclassification are referred to throughout this document as hydrogel lenses and all other references to lenses refer to contact lenses.) Interested persons were given until December 27, 1982, to comment on the proposal. In the **Federal Register** of December 10, 1982 (47 FR 55497), FDA extended the comment period to January 26, 1983. Following a review of the comments received during this period, FDA determined that resolution of complex scientific issues raised by the comments would be facilitated by reopening the comment period to receive additional information on certain specific issues. Therefore, in the **Federal Register** of April 15, 1983 (48 FR 16291), FDA reopened the comment period for 30 days. Several requests for a public hearing before the Commissioner of Food and Drugs were received. In the **Federal Register** of April 26, 1983 (48 FR 18836), FDA announced that a public hearing would be held to afford interested persons an opportunity to present information and views on the issues involved in the reclassification proceeding. The hearing, which was held on May 26, 1983, was followed by an additional 15-day comment period to allow interested persons to submit written comments on matters raised at the hearing. The comment period following the hearing closed on June 10, 1983.

II. Overview of the Basis for FDA's Decision

A. Background

Section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) authorizes FDA to reclassify a device based on "new information" respecting the device. (See the preamble to the proposed rule (47 FR 53413) for a comprehensive discussion of the meaning of the term "new information.") The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence," as defined in § 860.7 of the regulations governing medical device classification procedures (21 CFR 860.7). FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective (§ 860.7(c)(1)). As the agency explained in the preamble to the final rule establishing Part 860 (21 CFR Part 860), the purpose of the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) is to assure the safety and effectiveness of medical devices intended for human use and such assurance necessarily demands a high standard of proof (43 FR 32988; July 28, 1978).

For the purpose of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on trade secret or confidential commercial information in any premarket approval application (PMA) for a medical device or on trade secret or confidential commercial information from any investigation concerning the safety and effectiveness of a device (section 520(c) of the act (21 U.S.C. 360j(c))). Such valid scientific evidence also may not be based upon detailed summary of information respecting the safety and effectiveness of any device for which there is an approved PMA (section 520(h)(3) of the act) and which FDA is required to make available to the public upon issuance of an order approving a PMA (section 520(h)(1) of the act).

In the preamble to the proposed rule (47 FR 53413), FDA stated:

> To reclassify a device under section 513(e) of the act, the statute and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show: (1) Why the device should not remain in its present classification, and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. In the case of a device classified in class III and proposed for reclassification into class I, the statute and the regulations require such evidence of safety and effectiveness to show: (1) Why the device should not remain in class III, and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device.

The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j).

In the preamble to the proposed rule, FDA summarized the data on which the proposed reclassification was based (47 FR 53415–53421) and tentatively concluded that hydrogel lenses should be reclassified into class I, rather than into class II upon the effective date of a performance standard established under section 514 of the act (21 U.S.C. 360d) (47 FR 53415). In FDA's judgment at that time, the information discussed in the preamble showed that the device was safe and effective for its intended use. FDA also believed that the general controls provisions of the act would be sufficient to provide reasonable assurance of the safety and effectiveness of the device. The decision to propose reclassification into class I, rather than class II once a performance standard was established, was based on FDA's belief that although sufficient information existed to establish a standard to provide reasonable assurance of the safety and effectiveness of hydrogel lenses, there was no need to establish a performance standard to provide such assurance.

Issuance of a proposed rule to reclassify a device from class III into class I under section 513(e) of the act does not preclude promulgation of a final rule to reclassify the device into class II, if the evidence warrants such action, particularly where, as in this proceeding, the preamble to the proposed rule invited comments on the appropriateness of reclassification into class II, before or after the establishment of a performance standard under section 514 of the act for the device. A class II device is one for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which "it is therefore necessary to establish * * * a performance standard under section 514 to provide reasonable assurance of its safety and

effectiveness" (section 513(a)(1)(B) of the act; 21 CFR 860.3(c)(2)).

In the preamble to the proposed rule (47 FR 53421), FDA invited comments on several specific issues including the following questions:

1. Do the data presented in this proposal constitute sufficient "valid scientific evidence" of safety and effectiveness to support reclassification of each of the seven marketed hydrogel lenses identified in the proposed regulation? FDA especially is interested in the sufficiency of the clinical data presented for the lathe-cut polyHEMA [poly(2-hydroxyethyl methacrylate] lens, the ultrathin series of the polyHEMA lens, the HEMA polymer with methacrylic acid lens, the thin series of the HEMA polymer with 1-vinyl-2-pyrrolidinone lens, the HEMA polymer with 1-vinly-2-pyrrolidinone and methyl methacrylate lens, and the HEMA polymer *N*-(1,1-dimethyl-3-oxobutyl) acrylamide lens.

a. If not, what additional publicly available data are there to support reclassification?

b. If so, are general controls sufficient to provide reasonable assurance of the safety and effectiveness of the device?

c. If general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device, is there sufficent information to establish a performance standard to provide such assurance?

d. If general controls are not sufficient, and there is sufficient information to establish a performance standard to provide reasonable assurance of [the] safety and effectiveness of the device, is a performance standard necessary to assure any of the lens properties or design characteristics that FDA has identified as "clinically significant" * * * or to protect against any of the concerns raised in the 1975 notice declaring as new drugs all contact lenses consisting of polymers other than PMMA * * *

e. Should any reclassification take effect: (i) Before, or (ii) after such a standard has been established?

* * * * *

3. With respect to a number of the lenses proposed for reclassification, FDA has limited data on their use for the correction of hyperopia and in some cases aphakia. May FDA reclassify a lens for use in the correction of myopia, hyperopia, and aphakia based solely or primarily on data showing that the lens is safe and effective: (a) For the correction of myopia? (b) For the correction of myopia and aphakia?

4. Does specifying the materials of which the lenses proposed for reclassification are principally composed adequately identify the lenses for the purpose of reclassification?

5. * * *, [T]he safety or effectiveness of a specific hydrogel contract lens is affected by its specific composition, design, and various other clinically significant properties.

a. Do the data presented in this proposal provide sufficient "valid scientific evidence" of the safety and effectiveness of lenses of any specific composition, design, or other characteristic?

b. If the data do not provide this evidence, may the identified lenses be reclassified because of FDA's tentative decision that the safety and effectiveness of composition, design, and other clinically significant properties of specific lenses can be assured through premarket notification submissions and substantial equivalence determinations?

B. Insufficient Evidence of Safety and Effectiveness

In response to question 1 above, a number of comments presented cogent arguments that the data described in the preamble to the proposal do not constitute sufficient new, publicly available, valid scientific evidence (valid scientific evidence) of safety and effectiveness to support reclassification. FDA agrees in general with these comments, which are discussed in detail in section III.B. of this document. None of the published articles relied on in the preamble provides sufficient valid scientific evidence of the safety and effectiveness of any of the seven hydrogel lenses proposed for reclassification, and no additional data pertaining to the safety or effectiveness of any such lens were provided in or submitted with any comments. Moreover, because the characteristics of each of the seven types of lenses and of specific lenses within each of the seven types which affect safety and effectiveness differ from one another, valid scientific evidence of the safety and effectiveness of one hydrogel lens cannot be combined with such evidence of the safety and effectiveness of any other hydrogel lens to establish the safety and effectiveness of hydrogel lenses as a generic type of device. Absent valid scientifc evidence of the safety and effectiveness of hydrogel lenses, such lenses may not be reclassified into class I or class II. FDA notes that even if there were such data available in the public domain for one or two specific hydrogel lenses, such data would not be sufficient to justify reclassification because, among other things, the information would fail to establish the safety and effectiveness of hydrogel lenses as a generic type of device.

C. Inadequate Characterization of Materials

Materials that might be used for manufacturing hydrogel lenses can consist of innumerable formulations and have a wide variety of physical and chemical properties. Only a small percentage of such materials have the necessary combination of characteristics of nontoxicity, biocompatibility, light transmission, stability and strength when hydrated, and machinability or moldability to serve as the basis for the design and manufacture of safe and effective contact lenses. Comments from opponents of reclassification argue that minor changes in lens material formulation or manufacturing process can significantly affect the safety and effectiveness of lenses manufactured from the material. A comment opposing reclassification further argues that although controlled minor changes in a single variable by a manufacturer can result in predictable changes in safety and effectiveness, major or multiple changes, or a change from one manufacturer to another, can result in changes in the lens' clinical performance that are not easily predicted.

FDA agrees with these comments. If specific hydrogel lenses had been shown to be safe and effective by valid scientific evidence and had been characterized by polymer formulation and manufacturing processes, such information might have been sufficient to have allowed comparison, for the purpose of determining substantial equivalence, with other lenses that had been shown to be very similar in polymer formulation and manufacturing process, and, as a result to have allowed an inference of comparable safety and effectiveness of such other lenses. As one comment points out, however, none of the published articles relied on in the preamble to the proposed rule characterizes by polymer formulation or manufacturing process any of the lenses studied. Furthermore, no information about polymer formulation and no information about manufacturing processes was disclosed in or submitted with any of the comments, and FDA is prohibited by sections 301(j) and 520(c) of the act (21 U.S.C. 331(j) and 360j(c)) from disclosing such information from PMA's or files for investigational devices under development pursuant to an investigational device exemption

(IDE) because such information constitutes trade secret data. Lacking information about polymer formulation and manufacturing processes, it is not possible to compare one hydrogel lens to another for the purpose of determining substantial equivalence; neither specific hydrogel lenses of any of the seven types listed in the proposal nor specific hydrogel lenses within any of the seven types have been shown to be sufficiently similar for the fact that they are hydrogel lenses to allow an inference of comparable safety and effectiveness.

In summary, clinical evidence of the safety and effectiveness of a limited number of individual lenses, characterized only by general family of material, i.e., one of the seven types listed in the proposal, brand name, and manufacturer, would be insufficient to serve as a basis for reclassification of a generic type of device.

D. Inadequacy of Class I or Class II to Provide Reasonable Assurance of Safety and Effectiveness

Several comments argue that the general controls provisions of the act are sufficient to provide reasonable assurance of the safety and effectiveness of hydrogel lenses. These comments also argue that there is sufficient information to establish for the device under section 514 of the act a performance standard to provide such assurance, should FDA decide to reclassify hydrogel lenses into class II. Other comments argue that neither class I nor class II would provide reasonable assurance of the safety and effectiveness of the device.

To reclassify a device under section 513(e) of the act from class III into class I, or class II, the act and the regulations require valid scientific evidence of safety and effectiveness showing: (1) Why the device should not remain in class III, and (2) that class I or class II, respectively, will provide reasonable assurance of the safety and effectiveness of the device. No comments provided any valid scientific evidence of safety or effectiveness to satisfy either of these requirements, and the data summarized in the preamble to the proposed rule fail to provide sufficient such evidence to satisfy either requirement. The absence of the requisite evidence precludes reclassification of hydrogel lenses into class I or class II.

E. Need for Clinical Trials

Several comments argue that the results of nonclinical laboratory studies cannot be used to predict the clinical performance of a contact lens. Other comments argue that the clinical performance of a contact lens can be readily predicted from nonclinical laboratory studies.

None of the comments submitted any data to support their arguments. FDA is unaware of any combination of nonclinical laboratory studies capable of predicting the clinical performance of any contact lens in the human eye. Such studies serve well to screen out materials that should not go on to clinical trials. For example, in vitro or animal toxicity tests of a material or a material extract may reveal an overt cytotoxic effect to an undifferentiated cell line (the correlation of this effect to an ocular response in humans has not been established) or gross systemic or ocular toxicity. These tests are presumptive in nature and serve at best to provide reasonable assurance that subjects in a clinical trial would not be placed at undue risk from exposure to a new or modified material used to make a contact lens. However, nonclinical laboratory studies cannot provide any data on human ocular biocompatibility, or on adequacy of design (e.g., weight, thickness, geometry, centration), comfort, stability, durability, fit, and visual acuity, nor can the results of such studies be used as the sole basis from which to predict the clinical performance of an approved contact lens for which approval for a new indication is sought.

FDA believes that the safety and effectiveness of a contact lens is a function of the complex interrelationship of material, design, and manufacture that results in a unique set of physical, chemical, mechanical, and optical characteristics. When prescribed and fitted properly, a lens with this unique set of characteristics should provide safe and effective visual correction in a human eye with a specific diagnosed ametropia. FDA believes that contact lenses made from a new material, including material that has been significantly modified, contact lenses made to significantly modified designs, and contact lenses for which approval for a new indication is sought, cannot at this time be shown to be safe and effective without clinical, as well as preclinical, evaluation.

F. Conclusion

FDA has carefully reviewed and analyzed all the comments received as well as the oral and written testimony presented at the public hearing and has further reviewed the data discussed in the preamble to the proposed rule. On the basis of all this information, FDA has concluded, contrary to the tentative conclusions stated in the proposal, that there is insufficient valid scientific evidence to show that any of the hydrogel lenses proposed for reclassification is safe and effective, to characterize the device adequately for the purpose of reclassification, or to demonstrate that either class I or class II would provide reasonable assurance of the safety and effectiveness of the device. Class III is still necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses.

This document withdraws FDA's second proposal (see 48 FR 56778; December 23, 1983) to reclassify a device under section 513(e) of the act. The agency initiated this proceeding because it tentatively concluded that the new, publicly available, valid scientific evidence of safety and effectiveness it had gathered was sufficient to show that hydrogel lenses should not remain in class III and that class I would provide reasonable assurance of the safety and effectiveness of the lenses. However, as shown by the specific issues raised in the preamble to the proposed rule (47 FR 53421), the April 15, 1983 notice reopening the record, and the agency's decision to hold a public hearing on the proceeding (see 48 FR 18836), FDA was concerned about the sufficiency of the evidence it relied on in the proposal, and promulgation of a final rule reclassifying the lenses was far from certain. In response to the notice-and-comment procedures mandated by the act and the regulations, as well as the public hearing on the proposal, FDA received comments and oral and written testimony that required it to reevaluate the evidence upn which it relied in the proposal, and to evaluate additional information presented by interested persons. As a result of its evaluation and reevaluation of all the information in the record of this proceeding, FDA learned that the safety and effectiveness data summarized in the preamble to the proposal were seriously deficient in many respects, that hydrogel lenses are the products of complex polymer formulation and manufacturing processes, that the information it would have to require in a premarket notification submission to determine whether a new lens is substantially equivalent to a reclassified lens would exceed the authority of section 510(k) of the act and Subpart E of Part 807 of the regulations governing premarket notification procedures (21 CFR Part 807, Subpart E), and that there is not sufficient valid scientific evidence to develop a performance standard under section 514 of the act to provide reasonable assurance of the safety and

effectiveness of hydrogel lenses. In short, FDA learned that at this stage in their development, there is no substitute for clinical trials to provide reasonable assurance of the safety and effectiveness of hydrogel lenses.

III. Analysis of Comments

The agency received approximately 45 comments on the proposal, including written and oral testimony presented at the May 26, 1983 public hearing. Comments were received from manufacturers of contact lenses and contact lens materials, optical laboratories, clinical investigators of contact lenses, industry associations, members of Congress, a consumer organization, and other interested persons. The following is a summary of the significant comments received and FDA's responses to them.

A. Identification

1. One comment argues that hydrogel lenses constitute a generic type of device having essentially the same characteristics and that, under § 860.120(b) of the regulations governing reclassification, any reclassification should extend to all devices falling within that generic type. The comment recommends that proposed § 886.5380 (21 CFR 886.5380) be amended to provide a generic description of the device by eliminating the limitation to lenses in commercial distribution. Another comment argues that the proposed rule, which the comment characterizes as based on the composition of the device and its status as a contact lens subject to approved NDA's or PMA's, is unsound as a matter of policy and violates section 520(c) of the act. The comment points out that FDA, in the preamble to the proposed rule to classify ophthalmic devices, stated: "[i]t is not practical for FDA to publish an identification of each type of device that is so detailed as to anticipate every product feature that may be relevant in determining whether a new device is substantially equivalent to previous devices classified by regulation. * * *" (47 FR 3695; January 26, 1982). The comment claims that classification must reflect the potential risk of illness or injury and the need for varying levels of controls associated with the type or category of device rather than the specific device, and states that this focus on the type or category of device and the risks associated with such type or category has been FDA's previous approach to classification of all ophthalmic devices under the act and is required by the act. For these reasons, the comment requests that FDA withdraw proposed § 886.5380 and, if reclassification is deemed warranted, propose a classification of the category or type of device identified as "contact lenses."

FDA agrees that the identification paragraph of any classification regulation should provide a generic description of the device. As explained in section IIC. and paragraph 17 of this document, however, the lens proposed for reclassification—a daily wear optically spherical hydrogel lens consisting of any of seven types of materials identified in the proposal—has not been adequately characterized for the purpose of reclassification. Accordingly, identification of the generic type of device as "the contact lens," or even "the hydrogel lens." even broader identifications than included in the proposal, could not be adequate for that purpose. FDA notes that if the proposed rule had been revised and promulgated to identify the generic type of device as "the hydrogel lens," or as "the contact lens," and a manufacturer had submitted a premarket notification seeking to market a new lens, FDA, to determine whether the new lens was substanitially equivalent to any lens in the generic type, still would have compared the new lens to lenses already covered by the final rule (see § 807.87 (f) and (h) of the regulations governing premarket notification procedures).

FDA disagrees that identifying a device based on its composition or regulatory status violates the letter or the spirit of the act or the regulations issued under it. So long as there is sufficient valid scientific evidence showing: (1) Why a device should not remain in its present classification, and (2) that a change in its classification will provide reasonable assurance of the safety and effectivenss of the device, nothing in section 520(c) of the act or any other section of the act, or in any of the regulations implementing any section of the act, precludes identifying the device by composition and previous status under section 505 (21 U.S.C. 355) or 515 of the act. FDA notes that the proposed rule to classify ophthalmic devices includes a proposal to classify into class II a device, namely the PMMA lens, identified in part by composition (47 FR 3736).

B. Adequacy of Safety and Effectiveness Data

2. Several comments state that hydrogel lenses may not be reclassified from class III into class I or class II unless there is adequate valid scientific evidence of safety and effectiveness to support reclassification.

FDA agrees with these comments (see the preamble to the proposed rule (47 FR 53413) and section II.A. of this document). Lacking adequate valid scientific evidence that hydrogel lenses are safe and effective, and that class I would be sufficient to provide reasonable assurance of the safety and effectiveness of such lenses, FDA may not reclassify them from class III into class I or class II.

3. One comment states that the burden of proof that reclassification is appropriate is on FDA and on those who support reclassification, regardless of whether those opposing reclassification can or do submit evidence showing that reclassification is not appropriate.

FDA agrees with this comment. The legal standard for reclassification is set out in the preamble to the proposed rule (47 FR 53413) and in section II.A. of this document. FDA addressed the question of burden of proof in the April 15, 1983 notice reopening the comment period (48 FR 16293):

> FDA recognizes that to reclassify the contact lenses at issue in this rulemaking from class III into class I, it must have new, publicly available, valid scientific evidence of safety and effectiveness demonstrating why the lenses should not remain in class III and why the "general controls" authorized by the act will provide reasonable assurance of the safety and effectiveness of the lenses. * * * Although this notice requests specific evidence showing why the lenses should not be reclassified, as well as evidence showing why they should be reclassified, FDA has not shifted the burden of proof to those opposing reclassification.

4. Several comments argue that the evidence needed to reclassify a contact lens is at least equal to that which would be necessary to meet FDA's guideline concerning testing of contact lenses, "FDA Contact Lens Guidelines on Toxicology, Microbiology, Clinical Manufacturing Evaluation and Controls" (Ref. 2 of the proposal) (the contact lens guideline), and that FDA may not reclassify a lens proposed for reclassification unless the valid scientific evidence of the safety and effectiveness of that lens meets the criteria of the guideline.

FDA guidelines state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by the Commissioner (21 CFR 10.90(b)). Conformance to the contact lens guideline accordingly is not a legal prerequisite for premarket approval. It follows that conformance to the guideline is not a legal prerequisite for reclassification of contact lenses. The evidence of safety and effectiveness of the contact lenses proposed for

reclassification has been evaluated by FDA against the criteria for valid scientific evidence specified in § 860.7 of the regulations.

FDA believes that the evidence needed to show that a hydrogel lens is safe and effective for the purpose of reclassification is similar, but not necessarily identical, to the evidence suggested in the contact lens guideline to show safety and effectiveness for premarket approval. For example, for the purpose of reclassification, comprehensive clinical data combined with detailed information on polymer formulation and manufacturing processes might obviate the need for the detailed reporting of preclinical testing suggested in the guideline.

5. Several comments refer to FDA's statement in the preamble to the proposed rule that the safety of hydrogel lenses is shown by the absence of reports in the literature of serious, irreversible adverse effects on health presented by the device, and the absence of such reports in FDA's Device Experience Network (DEN). The comments argue that rather than serving as evidence for reclassification of the device, the lack of evidence of such adverse effects is evidence of the success of the present class III classification in assuring that only safe and effective lenses are marketed. The comments further argue that extrapolation from the safety record of approved devices to that of future deregulated devices is inappropriate.

The comments do not accurately restate the preamble, which cited the absence of reports in the literature as one item of evidence of the safety of hydrogel lenses and simply noted that no serious, irreversible adverse effects on health presented by the device had been reported to DEN (47 FR 53414). FDA agrees, however, that the safety record of hydrogel lenses to date represents the performance of lenses for which there are approved PMA's. The agency acknowledges that DEN is not comprehensive and advises that the mere absence of negative reports in this voluntary reporting system cannot establish the safety of a device. Before a device may be reclassified under section 513(e) of the act from class III into class I or class II, the act and the regulations require that the safety, as well as the effectiveness, of the device be established by valid scientific evidence.

6. A few comments suggest that FDA has not conducted an adequate search for evidence of serious or permanent injury from contact lens wear. One comment provided copies of published articles dealing with complications caused by certain silicone elastomer lenses marketed in Germany and Japan; other comments provided bibliographies of published articles dealing with injuries allegedly related to contact lens wear.

Before issuing the proposed rule, FDA searched diligently for evidence of serious, irreversible adverse effects presented by each of the lenses proposed for reclassification when used in accordance with its labeling and under proper professional supervision, and found no such evidence. Since then, FDA has reviewed articles cited in the comments as containing evidence of such effects. This latest review confirms FDA's earlier findings. Injuries to the eye related to use of approved contact lenses invariably are traceable to factors associated with improper lens use, care, or fitting. While such reports of injuries argue forcefully for the need for continued diligence in the regulation of contact lenses, they do not preclude reclassification if there is adequate, valid scientific evidence of the safety and effectiveness of the devices when used and fitted properly.

The silicone elastomer lenses associated with the reported complications in wearers of the lens in Germany and Japan were not, as admitted in the comment, of the type proposed for reclassification, and by definition would require premarket approval before being marketed in the United States.

7. One comment argues that safety and effectiveness data for contact lenses having different clinically significant properties and design characteristics cannot be pooled to show the safety and effectiveness of all lenses consisting of the seven types described in the proposed rule. The comment further argues that generally accepted scientific methods for use of test results would dictate that data for lenses with differing safety and effectiveness parameters not be pooled.

FDA advises that the clinical data summarized in the preamble to the proposed rule were not intended to support the safety or effectiveness of any lens other than the specific lens or lenses (or daily wear versions of such lens where extended wear lenses were studied) reported on in each of the cited studies. FDA agrees that generally accepted scientific methods for use of test results require that data for lenses with differing safety and effectiveness parameters not be pooled absent a showing that such differences are immaterial to the conclusions to be drawn from the data in the study, and also recognizes that data from clinical investigations of identical lenses cannot be pooled unless the protocols are identical in all material respects. (See also paragraph 10 of this document.) In addition, pooling of the clinical safety and effectiveness data on which the proposed rule was based would be inappropriate because of the deficiencies in the data (see paragraph 9 of this document.)

8. In response to question 3 in the preamble to the proposed rule, two comments argue that any reclassification of hydrogel lenses should include indications for the correction of hyperopia and aphakia as well as myopia because there appears to be no basis upon which to limit to specific refractive corrections the significance of the data presented in the preamble. Five comments argue on the contrary that data showing that a lens is safe and effective for myopia cannot be used to support the safety and effectiveness of the lens for the correction of hyperopia and aphakia. These comments state that lenses indicated for the correction of hyperopia and aphakia are of necessity significantly different in design and geometry from lenses indicated for the correction of myopia. These comments also state that lenses for the correction of hyperopia and aphakia generally require an increased lens center thickness compared to lenses for the correction of myopia. Increased lens center thickness results in a reduction in the oxygen permeability of the lens and concomitant safety and effectiveness concerns unique to these lenses, according to the comments. Therefore, the comments opposing reclassification conclude that only clinical trials can provide reasonable assurance of safety and effectiveness of a contact lens indicated for the correction of hyperopia or aphakia.

Because FDA is withdrawing the proposed rule, the question whether FDA may reclassify hydrogel lenses for myopia, hyperopia, and aphakia based solely or primarily on data showing that the device is safe and effective for the correction of myopia, or myopia and aphakia, is moot. FDA advises, however, that none of the comments provides any evidence to support the contention that reclassification of hydrogel lenses indicated for the correction of myopia, hyperopia, and aphakia could be based solely or primarily on data demonstrating that the lenses are safe and effective for the correction of myopia or for the correction of myopia and aphakia.

FDA agrees with the comments that argue that the lens characteristics required to provide safe and effective correction of hyperopia or aphakia are

significantly different from the lens characteristics required to provide safe and effective correction of myopia. However, lenses indicated for the correction of hyperopia and aphakia may be identical in design and concomitant safety and effectiveness characteristics where the range of magnification for the two indications overlap. The aphakic eye is a worst case for both safety and effectiveness considerations for a contact lens because of physiological changes to the cornea from the insult of surgery. Among other things, these changes could result in alterations in corneal oxygen requirements. Consequently, FDA advises that for lenses identical in material, design, and magnification range, the safety and effectiveness of a lens for the correction of hyperopia may, in large measure, be inferred from evidence of the safety and effectiveness of a lens for the correction of aphakia. Similarly, if the safety and effectiveness concerns that are unique to a lens intended for the aphakic eye are adequately addressed by clinical trials of the lens in aphakic eyes, the safety and effectiveness of that lens may, in large measure, be inferred from evidence of its safety and effectiveness for the correction of hyperopia. FDA advises, however, that it has not been demonstrated by valid scientific evidence that the safety and effectiveness of a lens for the correction of hyperopia can be inferred solely from evidence of the safety and effectiveness of a lens for the correction of aphakia, or that the safety and effectiveness of a lens for the correction of aphakia can be inferred solely from evidence of the safety and effectiveness of a lens for the correction of hyperopia.

9. Many comments argue that the data discussed in the preamble to the proposed rule do not constitute sufficient valid scientific evidence of the safety and effectiveness of hydrogel lenses to support reclassification. The comments also argue that there is insufficient such evidence to support reclassification of any of the hydrogel lenses proposed for reclassification. Several of these comments generally criticize the published articles (Refs. 22–34 (see 47 FR 53422)) relied on in the preamble to the proposed rule as valid scientific evidence of the safety and effectiveness of hydrogel lenses. The comments state that the articles are deficient in that they do not consistently state clear objectives, that they do not have an adequate method of subject selection, that they do not include sufficient information to allow comparisons between test and control groups, and that most of the articles are based on retrospective clinical evaluations, and therefore suffer from the bias of evaluating successful patients. The comments further state that none of the articles includes complete ocular data, and that in most cases the number of patients studied is too small to generalize in a meaningful way, the study results based on retrospective reviews of patient records or the patient selection criteria inadequately described to allow extrapolation of study results to the population-at-large, and the study period either not specified or too short to provide valid scientific evidence of safety or effectiveness. The comments claim that only 1 study of 10 patients (Ref. 23) was cited in support of reclassification of lathe-cut polyHEMA lenses, and that the purpose of the study was not to evaluate the safety or effectiveness of such lenses but to compare their reproducibility to that of spin cast polyHEMA lenses. The comments further claim that according to Ref. 24, 31 percent of the 22 eyes studied were unable to wear the HEMA with methacrylic acid lens during the 2- to 3-week evaluation, and that FDA should not have summarily dismissed what the comments characterize as "a high incidence of corneal staining" in Ref. 30, which is cited by FDA in support of reclassification of the HEMA polymer with 1-vinyl-2-pyrrolidinone lens.

FDA acknowledges that the articles criticized by the comments have some deficiencies or inadequacies in study protocols, in patient selection criteria, in the number of patients studied, or in reporting of important clinical results. Four of the articles (Ref. 29, 31, 32, and 34) reported on studies of extended wear hydrogel lenses. The results of these studies are of limited applicability to the safety and effectiveness of daily wear hydrogel lenses (see paragraph 10 of this document). FDA notes that no evidence of the safety or effectiveness of any hydrogel lens was included in or submitted with any comment on the proposed rule. Consequently, the deficiencies and inadequacies noted in the comments and which, as discussed below, show that the articles do not constitute valid scientific evidence of safety and effectiveness, preclude reclassification of hydrogel lenses.

a. Poly (2-Hydroxyethyl Methacrylate) (The Polymer Made From Monomeric HEMA)

Although the study reported by Knoll and Clements (Ref. 22) includes a substantial study population, FDA agrees with the comments that the article does not contain sufficient clinical data to demonstrate the safety and effectiveness of this lens, which is identified as "SOFLENS" Contact Lens "(polymacon)" manufactured by Bausch and Lomb. (The lens material is identified as "poly(2-hydroxyethyl methacrylate) or HEMA.") This study covered a period during which the lens design was being modified to optimize its clinical performance. There are not any specific data on the number of patients wearing the lens ultimately marketed as "SOFLENS" ™ or the time period during which "SOFLENS" ™ was studied.

Slit lamp findings, though reported in detail by percent of patients, are reported for only the last examination of each patient remaining in the study, and after an unspecified and apparently variable period of wear by successful patients. There are not any reports of slit lamp findings by time in study, nor are there any such reports for discontinued patients. Without these reports, particularly for the first few months of wear when ocular adaptation to a lens occurs, the safety of the lens cannot be evaluated much less demonstrated. Visual acuity data are even less specific. The article contains a table of visual acuities achieved at an unspecified point in time, but not any reports of best corrected visual acuity, visual acuity by time in study, loss of visual acuity, or visual acuity of discontinued patients. The specific reasons for patient discontinuation are not included in the article, nor are other important effectiveness data, e.g., lens replacement, lens wear time, patient subjective symptoms. This lack of data precludes reaching any scientific conclusions concerning the effectiveness of the lens.

FDA disagrees that the 10 patient study reported by Hill (Ref. 23) is the only study upon which the agency based its proposed reclassification of the lathe-cut lens made of polyHEMA. Studies reported by Harris, et al. (Ref. 24), and Josephson and Caffery (Ref. 26) included 11 and 57 patients, respectively, who wore this lens. The study reported by Thompson (Ref. 25) includes 36 aphakic patient eyes studied using the lathe-cut lens made of polyHEMA. FDA agrees, however, that the studies by Harris, et al. (Ref. 24), Thompson (Ref. 25), and Josephson and Caffrey (Ref. 26) do not include enough patients to meet the criteria of valid scientific evidence. These small study populations are insufficient to extrapolate risks or benefits of the device to the general population. Each of the four studies also is deficient because none of them contains any visual acuity data or data

on the results of any slit lamp examinations. As claimed in the comments, the purpose of the 10 patient study reported by Hill (Ref. 23) was not to show the safety or effectiveness of lenses of a polyHEMA material but to compare the reproducibility of lenses purportedly made of the same material, i.e., polymacon, but produced by two different methods, lathe cutting and spin casting. Furthermore, each patient wore each lens only for a matter of minutes, an insufficient period to establish safety or effectiveness. Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 22, 24, 25, and 26 cannot be pooled.

b. HEMA Polymer With Methacrylic Acid

FDA agrees that the study reported by Jackson (Ref. 27) of a lens identified as "Truflex" consisting, when hydrated, of a "40% copolymer of 2-hydroxyethyl methacrylate (HEMA) and Methacrylic acid (MA), cross linked with ethylene glycol dimethacrylate, and 60% water by weight" does not include any visual acuity data or the results of any slit lamp examinations and therefore cannot constitute valid scientific evidence. The article merely asserts that visual acuity results were similar to those found with other daily wear soft contact lenses, which it does not identify.

The study reported by Harris, et al. (Ref. 24) and also cited in support of reclassification of this lens, is deficient for the same reasons that the study is insufficient to establish, by valid scienfic evidence, the safety or effectiveness of the lens made of polyHEMA and proposed for reclassification (see paragraph 9.a of this document). Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 24 and 27 cannot be pooled.

c. HEMA Polymer with 1-Vinyl-2-Pyrrolidinone

The study reported by Espy (Ref. 28) discusses a trial lens made of "helicon A," a "hydrophilic random copolymer of 2-hydroxy-ethyl methacrylate and *N*-vinyl-2-pyrrolidone." The article describes the geometry of the lens, the methods used to fit the lens, and the results of 100 patients fitted successfully with the lens. The article merely states that 88 percent of the patients achieved visual acuity of 20/25 or better. No other visual acuity data are reported, nor is the followup period. Further, the article does not contain any data or other information with respect to slit lamp findings. Absent such data, the study cannot be regarded as valid scientific evidence to show safety or effectivenss because the study "lack[s] sufficient details to permit scientific evaluation" (see § 860.7(c)(2)).

The study reported by Binder (Ref. 29) contains more complete data than any of the other references cited in the preamble to the proposed rule in support of reclassification of hydrogel lenses. The lens is identified as "Hydrocurve" with a central thickness of 0.09 millimeter (mm) and a power range of −0.75 to +0.75 diopter. However, the study, which includes only 20 patients followed for no more than 12 weeks, is nothing more than a preliminary evaluation of an extended wear lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone. (See paragraph 10 of this document for a discussion of the limited applicability of extended wear data to the safety and effectiveness of a daily wear lens). Because of the effect of increased thickness in oxygen transmissivity; because the number of patients is so small and the study period is so short, the results of the study do not and cannot provide valid scientific evidence of the safety or effectiveness of the daily wear lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone.

FDA does not agree that the results of the study reported by Kline and Deluca (Ref. 30) were summarily dismissed. The possibly excessive staining noted in the study was seen in wearers of a lens of one specific design and made of the HEMA polymer with 1-vinyl-2-pyrrolidinone. The study concludes that the staining is related to lens design as opposed to material. If there had been sufficient valid scientific evidence of safety and effectiveness to support reclassification of this lens, the results of the Kline and Deluca study would not have precluded reclassification.

Because of these deficiencies and for other reasons explained in paragraph 7 of this document, the data from Refs. 28, 29, and 30 cannot be pooled.

d. HEMA Polymer With 1-Vinyl-2-Pyrrolidinone and Methacrylic Acid

The study reported by Stark and Martin (Ref. 31) is a biased, retrospective review of the records of 346 patients who had been fitted for extended wear 4 to 8 years earlier with a lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid. The study lens is identified as a "myopic extended wear lens" made of perfilcon A. One hundred six patients of 172 known successful wearers from the original group of 346 patients were available for followup examinations by the investigators. The only slit lamp findings reported are those from these 106 examinations. There are no reports of the population of patients who discontinued use of the lenses or of any patients during the initial year of use when safety and effectiveness of a lens normally are assessed. The only visual acuities reported are from the same examinations. No visual acuity data were provided for the previous 4- to 8-year period of wear. Without such data, meaningful conclusions about the safety and effectiveness of the lens for daily wear cannot be made. The stated purpose of the study was to assess the effects of long-term wear by successful wearers, in the correction of myopia and to allow comparison with the results of radial keratotomy surgery for the correction of myopia. Although this study indicates that the lens may be safe and effective for a population subgroup, the retrospective nature of the study, the limited reported data, and the limited applicability of extended wear data to the safety and effectiveness of a daily wear lens (see paragraph 10 of this document) preclude an inference that a daily wear lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid is safe or effective.

The study reported by Cavanagh, et al. (Ref. 32), includes only 54 successful patients. The lens is identified as "Permalens" (Cooper Laboratories)". The study population is too small to generalize in a meaningful way, and no data on visual acuity, slit lamp findings, or any other clinical data are reported. Because the study contains none of the data required to permit scientific evaluation, the study is "not regarded as valid scientific evidence to show safety or effectiveness" (§ 860.7(c)(2)). In addition, the purpose of the study was to compare the long-term cost-effectiveness of extended wear contact lenses versus intraocular lenses for aphakic patients. Thus, whatever their value, the results of this study are of limited applicability to conclusions concerning the safety and effectiveness of the daily wear lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid (see paragraph 10 of this document).

Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 31 and 32 cannot be pooled.

e. HEMA Polymer With 1-Vinyl-2-Pyrrolidinone and Methyl Methacrylate

The study reported by Koeting (Ref. 33) of a lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate involves only 57 patients and includes none of the clinical data

needed to establish the safety and effectiveness of a contact lens. For example, the report does not contain any visual acuity data or the results of any slit lamp examinations. Because the study contains none of the data required to permit scientific evaluation, the study is "not regarded as valid scientific evidence to show safety or effectiveness" (§ 860.7(c)(2)).

The study reported by Harris, et al. (Ref. 24) and also cited in support of reclassification of this lens, is deficient for the same reasons that the study is insufficient to establish, by valid scientific evidence, the safety or effectiveness of the lens made of polyHEMA and proposed for reclassification (see paragraph 9.a. of this document).

Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 24 and 33 cannot be pooled.

f. HEMA Polymer With N-(1,1-Dimethyl-3-Oxobutyl)-Acrylamide

The study reported by Binder and Woodward (Ref. 34), which involves 32 patients using a lens made of the HEMA polymer with *N*-(1,1-dimethyl-3-oxobutyl)-acrylamide, was conducted to compare the use of moderately and highly hydrophilic lenses for extended wear. The only clinical data reported are: (1) A summary compilation of the best visual acuities achieved and an accompanying statement that numerous lens changes were needed to maintain these acuities, and (2) a summary compilation of complications without the results of any slit lamp examinations. Further, the study population is too small to generalize in a meaningful way. In addition, whatever their value, the results of this study are of limited applicability to conclusions concerning the safety and effectiveness of the daily wear lens made of the HEMA polymer with *N*-(1,1-dimethyl-3-oxobutyl)-acrylamide (see paragraph 10 of this document).

The study by Harris, et al. (Ref. 24) and also cited in support of reclassification of this lens, is deficient for the same reasons that the study is insufficient to establish, by valid scientific evidence, the safety or effectiveness of the lens made of polyHEMA and proposed for reclassification (see paragraph 9.a. of this document).

Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 24 and 34 cannot be pooled.

g. 1-Vinyl-2-Pyrrolidinone Polymer With Methyl Methacrylate and Allyl Methacrylate

The study reported by Cavanagh, et al. (Ref. 32), includes 182 patients fitted with an extended wear lens made of the 1-vinyl-2-pyrrolidinone polymer with methyl methacrylate and allyl methacrylate of which 154 were successful wearers. However, the study is deficient for the same reasons cited to show that the study was insufficient to establish, by valid scientific evidence, the safety or effectiveness of the daily wear lens made of the HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid and proposed for reclassification (see paragraph 9.d. of this document).

The study reported by Binder and Woodward (Ref. 34), which included 14 eyes fitted with an extended wear lens made of 1-vinyl-2-pyrrolidinone polymer with methyl methacrylate and allyl methacrylate and which also is cited in support of reclassification of this lens, is deficient for the same reasons that the study is insufficient to establish, by valid scientific evidence, the safety or effectiveness of the daily wear lens made of the HEMA polymer with *N*-(1,1-dimethyl-3-oxobutyl)-acrylamide and proposed for reclassification (see paragraph 9.f. of this document).

Because of these deficiencies and for the other reasons explained in paragraph 7 of this document, the data from Refs. 32 and 34 cannot be pooled.

In conclusion, FDA agrees with the comments that Refs. 22 through 34 are inadequate to establish the safety and effectiveness of any of the hydrogel lenses proposed for reclassification.

10. One comment disputes the statement in the preamble to the proposed rule that the results of a study that show that an extended wear lens is safe and effective support the conclusion that daily wear use of the lens is safe and effective. The comment argues that this conclusion is unsound because extended wear and daily wear lenses are subject to different handling, cleaning, and storage procedures. The comment further argues that FDA cites no data to show that these differences are immaterial.

FDA is aware of the effects of additional handling, cleaning, and storage procedures on spherical hydrogel lenses for daily, as opposed to extended, wear, and believes that this additional handling does not significantly affect the safety of such daily wear lenses. FDA believes that the safety of a daily wear spherical hydrogel lens may be inferred from evidence of the safety of an identical lens indicated for extended wear, for which lens disinfection and cleaning is less frequently performed by the user, provided these differences in handling are taken into account. (See also paragraph 7 of this document.) FDA advises, however, that extended wear lenses typically are thinner than daily wear lenses and may otherwise differ in design or formulation. Oxygen transmissivity is inversely proportional to lens thickness for a lens with any given oxygen permeability, and lens thickness therefore directly affects lens safety and effectiveness. Unless the differences between extended and daily wear lenses are identified and their effects fully assessed, the results of extended wear studies cannot serve as the principal or sole evidence of the safety and effectiveness of daily wear lenses. Thus, extended wear studies alone, absent data to demonstrate their materiality to daily wear lenses, are not sufficient to demonstrate the safety and effectiveness of daily wear lenses, particularly if the objective of the extended wear study is to demonstrate something other than the safety and effectiveness of the extended wear lens. For example, the objective in one study of lenses for extended wear (see paragraph 9.d. of this document) was to compare cost-effectiveness and other considerations of the use of extended wear contact lenses to those of the use of intraocular lenses in the treatment of aphakia. No safety or effectiveness data other than "success" rate were reported. No scientifically defensible conclusion about the safety or effectiveness of the same lens for daily wear can be inferred from such a study.

11. Approximately 10 comments were received from professionals in the contact lens industry who regularly prescribe, fill prescriptions for, and fit approved contact lenses. Most of these comments favor reclassification of hydrogel lenses from class III into class I.

FDA responds to these comments in paragraphs 12 to 15 of this document.

12. The comments from the eye care professionals argue that data gathered as a result of clinical investigation of hydrogel lenses provide more than ample valid scientific evidence of the safety and effectiveness of such lenses for the purpose of reclassification.

FDA disagrees with these comments. None of the data referred to in the comments was made public by the sponsors of the investigations in question, and FDA is prohibited by section 520(c) of the act from using as the basis for the reclassification of a device trade secret or confidential

commercial information obtained under section 520(g) of the act (exemption for devices for investigational use). Consequently, data gathered as a result of clinical investigations are not available to FDA for the purpose of reclassification.

13. As evidence of safety, several eye care professionals state that in their use of hydrogel lenses, they have observed no adverse reactions.

Statements by individual professionals that no adverse reactions were found do not constitute valid scientific evidence within the meaning of § 860.7 of the regulations. Section 860.7(c)(2) states in part "* * * reports lacking sufficient details to permit scientific evaluation * * * are not regarded as valid scientific evidence to show safety or effectiveness." To meet the test of valid scientific evidence and permit scientific evaluation such reports need to include, at a minimum, a uniform scientifically acceptable definition of adverse reaction, the number of patients studied, and comprehensive summaries of the results of examinations for edema and staining as well as slit lamp examinations, and of all reports of discomfort, blurred vision, and of patients who discontinued use of the lenses or were otherwise lost to followup.

14. Several comments from eye care professionals argue that when all other things are equal, hydrogel lenses are superior to PMMA lenses because the former have been shown to be gas permeable and, thus, provide better oxygenization of the cornea. These comments state that this increase in oxygenization results in reduced edema and greater wearer comfort, and allows the lens to be tolerated by the wearer for a longer period of time than PMMA lenses. Consequently, the comments argue that hydrogel lenses should not be classified into a higher class than lenses made of PMMA, which FDA has proposed to classify into class II.

FDA disagrees with these comments. The classification of contact lenses made of PMMA is not legally relevant to the classification of hydrogel lenses. As discussed in a notice published in the **Federal Register** of September 30, 1975 (40 FR 44845), contact lenses made of PMMA have been marketed in the United States since the early 1950's. Due to their extensive history of safe and effective human use, PMMA lenses were regulated as devices prior to the enactment of the amendments and thus never required administrative approval for marketing. In contrast, hydrogel lenses were first marketed in the United States in the early 1970's and always have required premarket approval. Indeed, since the introduction of hydrogel lenses, FDA has regarded all contact lenses other than those made of PMMA as new drugs requiring premarketing clearance (see the preamble to the proposed rule; 47 FR 53412, 53413). The September 30, 1975 notice explains that the agency's decision to require such clearance for all contact lenses made from non-PMMA materials "* * * was based on a recognition that new plastic materials that had not been shown to be safe and effective [for use] were being introduced for use in the manufacture of contact lenses. The introduction of these new materials led to new lens design and use, new manufacturing methods, and new methods for lens care. [FDA] is concerned that the use of these contact lenses may result in serious eye damage if the new material of which they are composed is unsafe for use in the eye, if the user cannot feasibly care for the lenses, or if the highly complex procedures for the manufacture of these lenses are not carefully controlled to assure a product of uniform quality" (40 FR 44845).

As explained in paragraph 32 of this document, hydrogel lenses were automatically classified into class III on the enactment date of the amendments in accordance with section 520(l)(1) (A), (B) (C), and (E) of the act. Such lenses may only be reclassified into class I or class II in accordance with the provisions of the act and the regulations as discussed in the preamble to the proposed rule (47 FR 53413) and in section II.A. of this document. Neither the safety nor the effectiveness of hydrogel lenses has been established by valid scientific evidence other than in PMA's.

15. A few comments from eye care professionals argue that FDA should not regulate prescribing and fitting of hydrogel lenses by limiting reclassification to spherical lens designs. According to these comments, prescribing and fitting are best left to the experts in the practice of optometry and opthalmology. These comments further argue that competition among laboratories that make lens blanks into finished lenses and between fitters or prescribers of lenses will rapidly force off the market those members of each group who provide lenses that are either uncomfortable or do not provide adequate visual acuity. These comments also point out that FDA approval of a contact lens does not prevent poor fitting or prescribing and claim that because the choice of designs in off-the-shelf lenses is limited, the problem of poor fitting or prescribing is exacerbated.

FDA limited the proposed rule to reclassify hydrogel lenses to spherical designs because of a complete lack of valid scientific evidence of safety and effectiveness of lenses of other than spherical designs. No such evidence of the safety and effectiveness of lenses of other than spherical designs was submitted during the comment periods or at the public hearing on the proposal. FDA recognizes that its approval of a PMA for a contact lens will not prevent practitioners from erring when fitting or prescribing the lens; however, the inability of the agency to prevent such errors in no way justifies the reclassification of a lens into class I or class II.

16. Several comments state that nonspherical lenses, including toric, bitoric, and bifocal lenses, should have been included in the proposed reclassification of hydrogel lenses. The comments argue that any hydrogel lens material that is suitable for spherical contact lenses will be equally suitable for nonspherical lens designs. Other comments argue that nonspherical hydrogel lenses were correctly excluded from the proposed rule because there is insufficient valid scientific evidence of the safety and effectiveness of such lenses for any indication.

Because FDA is withdrawing the proposed reclassification of hydrogel lenses, the question whether nonspherical lens designs should have been included in the proposal is moot. FDA advises, however, that spherical, toric, bitoric, and bifocal lenses are indicated for different ametropias and that there is no valid scientific evidence, other than in PMA's, that any nonspherical hydrogel lens is safe and effective for any indication. FDA recognizes that many characteristics of contact lenses which affect safety are material-specific and that these characteristics, e.g., toxicity and oxygen permeability, will not be altered by changes from spherical to nonspherical lens design. Other characteristics affecting effectiveness, as well as safety, are functions of design and material in combination. Thus, for example, valid scientific evidence that spherical and toric lenses made of the same material are safe and effective for the correction of hyperopia, myopia, and astigmatism do not constitute such evidence that a bifocal lens that: (1) Is also made of that material, and (2) combines design elements of the spherical and toric lenses is effective or safe for the correction of presbyopia (see *United States* v. *Wesley-Jessen, Inc.*, Civil No. 82C874 (N.D. Ill., March 11, 1982) (transcript of proceedings)).

C. Adequacy of Characterization

17. A few comments discuss the relationship of lens safety and effectiveness to lens polymer formulation and manufacturing process. The comments state that the safety and effectiveness of hydrogel contact lenses are a complex function of numerous variables including polymer formulation, manufacturing process and controls, and lens design. Another comment states that lenses made of apparently identical materials produced by different manufacturers may be different in ways that can only be detected by clinical evaluation. The comments argue that changes in or differences in polymer constituents, polymerization process or conditions, lens design, or manufacturing can result in differences in lens safety and effectiveness which preclude predicting the performance of one lens from the performance of another without having complete details of lens polymer formulation, manufacturing process and controls, and design. The comments conclude that whether a contact lens made from a particular hydrogel material is safe and effective can only be determined by conducting nonclinical laboratory studies and clinical investigations of the type identified in FDA's contact lens guideline. Consequently, the comments state that evidence of the safety and effectiveness of a specific lens of a unique material, i.e., of a particular polymer formulation, and manufacturing process can only serve as evidence of safety and effectiveness of that lens. Such evidence fails to demonstrate the safety and effectiveness of a generic type of device.

FDA agrees with the comments. A safe and effective contact lens is the result of a unique combination of carefully purified raw materials, manufacturing processes and process controls, including polymerization and machining or molding, lens design, fitting, and care regimen. The number of such combinations suitable for the manufacture of contact lenses, albeit perhaps finite, is unknown, as is the range of variation of ingredient ratios, polymerization processes, and resultant material characteristics. (Much of this information may be known to manufacturers of contact lenses, but none of it was included in or submitted with any of the comments, and FDA is prohibited by sections 301(j) and 520(c) of the act from disclosing such information from PMA's or files for investigational devices under development pursuant to IDE's because such information constitutes trade secret data.)

As discussed in section II.C. of this document, the existence of a predictable relationship between a lens polymer formulation, manufacturing process, physical and other quantifiable parameters, and its safety and effectiveness has not been demonstrated by any valid scientific evidence. Lacking knowledge of such a relationship one cannot infer from evidence that any hydrogel lens of unique polymer formulation, produced by a unique process, and having unique properties is safe and effective, that any other hydrogel lens also is safe and effective unless both lenses are sufficiently characterized to demonstrate that they are virtually identical.

Any effort to use evidence of safety and effectiveness of a specific hydrogel lens or lenses as a basis for reclassification of a generic type of lens, regardless of how narrowly or broadly that generic type of lens is identified, requires detailed characterization of the lens or lenses from which the evidence is drawn and the lenses to which it is to be applied. This characterization necessarily includes details of raw materials, polymer constituents and ratios, and manufacturing information. Without such characterization there is no basis for extrapolation of evidence of safety and effectiveness from one lens to any other.

18. One comment states that none of the articles relied on in the preamble to the proposed rule completely describes the composition of the lens studied. Therefore, the comment argues that there is no publicly available information to determine whether "a proposed new lens" is sufficiently like a "tested lens" so that the data for the "tested lens" are applicable to the "proposed new lens." The comment concludes that until such characterizing information is available in the public domain, there are insufficient data to reclassify any lens.

For the reasons discussed in section II.C. and paragraph 17 of this document, FDA agrees with the comment which, by the term "proposed new lens," FDA takes to mean a lens whose substantial equivalence to a reclassified lens would be determined under section 510(k) of the act and Subpart E of Part 807 of the regulations.

D. Adequacy of General Controls

Several comments argue for and several comments argue against the adquacy of class I to provide reasonable assurance of the safety and effectiveness of hydrogel lenses. These arguments center around the adequacy of two principal provisions of the general controls, premarket notification under section 510(k) of the act and current good manufacturing practice requirements under section 520(f) of the act and the current good manufacturing practice (CGMP) regulations (21 CFR Part 820).

19. One comment argues that the premarket approval process does not ensure safe and effective contact lenses of their accessories. The comment cites examples of how the marketplace allegedly has exposed flaws in or led t: improvements of lenses and lens accessories that had received FDA approval, and concludes that introduction of new daily-wear contact lenses by the premarket notification process would be as safe as, and more efficient than, introduction of such lenses under the premarket approval process. The comment argues, therefore, that the lenses should be reclassified into class I.

FDA disagrees with this comment. The legal standard governing reclassification under section 513(e) of the act is discussed in the preamble to the proposed rule (47 FR 53413) and in section II.A. of this document. FDA recognizes that approval of a PMA for a contact lens or a contact lens accessory does not always ensure that the device will perform flawlessly in the marketplace. In addition, approval of a PMA does not protect or prevent a device from being rapidly replaced by a new or improved device as a result of needs expressed by consumers and practitioners. This is especially true in the contact lens industry, where the state-of-the-art is one of rapid and continued innovation and refinement. Nonetheless, opinions about the adequacy of premarket approval to ensure safe and effective contact lenses cannot justify reclassification and do not add to the body of valid scientific evidence that is required to establish the safety and effectiveness of the lenses proposed for reclassification.

20. Several comments object to the statement in the preamble to the proposal concerning the information that FDA would require to be included in a premarket notification submission under section 510(k) of the act for a contact lens. The comments argue that requiring all this information would exceed FDA's authority under section 510(k) of the act and would amount to a "mini-premarket approval" requirement.

FDA agrees in part with these comments. In the preamble to the proposal, FDA stated that the manufacturer of a contact lens should be prepared to demonstrate substantial equivalence in terms including but not limited to, design; composition; optical

transmission and homogeneity, and index of refraction; and other physical properties including oxygen permeability, chemical and physical stability, tensile and flexural strength; biocompatibility, including cytoxicity, eye irritation and nonsupport of bacterial growth; impurities, leachables; heavy metal levels; preservative uptake and release; and lens care/cleaning regimen compatibility as well as compliance with the CGMP regulations. All this information concerns the basic characteristics of contact lenses. If FDA had reclassified the lenses, such information would have been needed by FDA in a premarket notification submission to determine whether a new contact lens was substantially equivalent to a reclassified lens in terms of safety and effectiveness.

Section 807.87(h) of the regulations governing premarket notification procedures provides that FDA may require the submission of any information that is necessary for FDA to determine whether a device is substantially equivalent in terms of safety and effectiveness to a preamendments device or to a transitional or postamendments device reclassified into class I or class II. For a contact lens, this information may include any or all of the information cited above, and may also include, where necessary to determine comparability of safety and effectiveness, limited data from nonclinical laboratory studies and clinical investigations.

As discussed in sections II.C. and E. and paragraphs 9, 17, and 26a. of this document, extensive data from studies and investigations are necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses. FDA recognizes that requiring so much information would result in the submission of data so complete as to be indistinguishable from the data needed to determine the safety and effectiveness of a device in the first instance rather than on a comparison basis. The data required in a premarket notification submission would then be indistringuishable from the data required in a PMA. FDA agrees that imposing such a requirement as an *a priori* condition for determining substantial equivalence would exceed the authority of section 510(k) of the act and Subpart E of Part 807. If such extensive submissions would be necessary to determine substantial equivalence in terms of safety and effectiveness of the device, it follows that class I controls would be inadequate to provide reasonable assurance of safety and effectiveness of the device.

21. One comment argues that if the testing of lenses that is necessary to show that lens is substantially equivalent to a reclassified lens approximates that which would be necessary for a premarket approval application, "such expension of the 510(k) concept would not be justified."

FDA agrees with the comment. Where, as in this case, the type and amount of information that would be required to show substantial equivalence in terms of safety and effectiveness would approximate the type and amount of information required to obtain approval of a PMA for a device, reclassification of the device based on reliance on the process under section 510(k) of the act would not be justified.

22. One comment argues that if FDA requires lenses of new mateials to be virtually identical to lenses of reclassified materials, it will be impossible to market alternate contact lens materials under section 510(k) of the act. The comment claims that such an interpretation of the substantial equivalence requirement would hinder the marketing of improved hydrogel materials.

FDA agrees that if it had reclassified any of the lenses proposed for reclassification and required that any new lens be virtually identical to a reclassified lens, it would not have been possible to market under section 510(k) of the act lenses made of alternate materials. Whether such a requirement would have hindered the marketing of "improved" hydrogel lenses is unknown. FDA advises, however, that any postamendments device, including any contact lens, that is not substantially equivalent to a preamendments device or a postamendments device that has been reclassified is automatically classified into class III under section 513(f) of the act and cannot legally be marketed unless it is the subject of an approved PMA or has been reclassified.

23. One comment states that all hydrogel materials that are "equally suitable for their intended use, as compared to already approved lens materials, should be recognized as substantially equivalent to those materials * * *".

FDA disagrees with the comment. The act applies to devices as defined in section 201(h) of the act (21 U.S.C. 321(h)), rather than raw materials. If, however, the act applied to raw materials, any postamendments raw material, including any contact lens raw material, that was not substantially equivalent to a preamendments raw material or a postamendments raw material that had been reclassified would be automatically classified into class III under section 513(f) of the act and could not legally be marketed unless it were the subject of an approved PMA or had been reclassified. FDA notes that the comment provides no definition of the concept of "equal suitability."

24. Several comments state that enforcement of the CGMP regulations is essential to ensure adequate quality control of contact lens manufacture and to prevent the distribution of unsafe or ineffective lenses. Some of these comments point out that according to the preamble to the proposed rule (47 FR 53415), manufacturers would be required to demonstrate compliance with the CGMP regulations to establish substantial equivalence. Some of these comments argue that to ensure such compliance, FDA would have to inspect the manufacturing sites identified in premarket notification submissions and that such inspections could not be scheduled and completed in the 90 days allowed for review by FDA of such submissions. In such case, the comments note, the person submitting the premarket notification could market lenses without an inspection by FDA of the person's manufacturing facility. Some of these comments also note that FDA has no requirements for mandatory CGMP inspections of facilities in which class I devices are manufactured and that the lack of such regular inspections could result in the marketing of unsafe or ineffective contact lenses, if the lenses ere reclassified into class I.

FDA agrees that compliance with the CGMP regulations is essential to ensure the manufacture of safe and effective contact lenses because of the need for consistency in formulating, processing, and finishing these devices. Because FDA is withdrawing the proposed rule, the question whether FDA may require the inclusion in a premarket notification submission of sufficient information to determine whether a manufacturer's facility is in compliance with the CGMP regulations as part of the premarket notification review is moot. FDA, of course, has the authority to conduct CGMP inspections of any device establishment, including any device manufacturing facility, regardless of the classification of a device, to determine whether the facility is in compliance with the regulations.

E. Adequacy of Class II

25. Several comments, including those that responded explicitly to questions

1.d. and e. of the preamble to the proposed rule, argue that class II would be the most appropriate regulatory class for hydrogel lenses. Most of these comments also argue that any reclassification of hydrogel lensed into class II should not take effect before a performance standard under section 514 of the act is established for such lenses. Some comments argue that there is, while others argue that there is not, sufficient valid scientific evidence to establish such a standard. A number of comments state that a performance standard covering lens properties or design characteristics, such as the clinically significant properties and design characteristics cited in the preamble to the proposd rule (47 FR 53414), would be sufficient to provide reasonable assurance of safety and effectiveness of the lenses. Several other comments argue that any such standard needs to include a requirement for clinical investigation of the lenses.

FDA stated in the preamble to the proposed rule (47 FR 53415):

> This proposal to reclassify daily wear optically spherical hydrogel (soft) contact lenses into class I, rather than into class II upon the effective date of a performance standard promulgated in accordance with section 514 of the act, is based on FDA's tentative conclusion that general controls are sufficent to provide reasonable assurance of the safety and effectiveness of such lenses. FDA believes that sufficient information exists to establish a section 514 standard to provide reasonable assurance of the safety and effectiveness of the device; however, FDA does not believe it is necessary to establish such a standard to provide such assurance.

FDA has determined that its tentative conclusion about the adequacy of general controls was in error and that sufficient information does not exist to establish a performance standard under section 514 of th act. The requirement that reclassification of a device be based on valid scientific evidence of safety and effectiveness applies to reclassification from class III into class II, as well as to reclassification from class III into. I. As discussed in sections II.B. and III.B. of this document, FDA has concluded that there is insufficient valid scientific evidence to show that hydrogel lenses are safe and effective. For this reason, FDA cannot conclude that such lenses should not remain in class III, or determine whether reclassification into class II, as opposed to class I, would provide reasonable assurance of their safety and effectiveness. Furthermore, any performance standard that addressed and set parametric limits on lens properties or design characteristics, such as the clinically significant properties and design characteristics cited in the preamble to the proposed rule, would have to be based on valid scientific evidence that the standard would provide reasonable assurance of the safety and effectiveness of the lenses covered by the standard. FDA has concluded that no such evidence is publicly available. Absent sufficient information to establish a performance standard to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class II, because under section 513 (a)(1)(B) of the act, a class II device is a device for which, among other things, "there is sufficient information to establish a performance standard to provide" reasonable assurance of safety and effectiveness.

FDA believes that in lieu of standard under section 514 of the act prescribing performance criteria, a standard under that section prescribing testing and evaluation criteria to provide reasonable assurance of the safety and effectivensss of hydrogel lenses might be feasible. At this time, however such a standard could not be developed based on information available in the public domain. FDA notes that in there were sufficient valid scientific evidence to develop a testing and evaluation standard, its existence would serve as a principle part of the basis for the reclassification into class II of any hydrogel lens to be covered by the standard. Consequently, any resulting reclassification could not become effective prior to the effective date of such standard.

F. Need for Clinical Trials

26a. Several comments state that clinical trials are necesssary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses. Some of the comments state that if such lenses were reclassified, at least limited clinical trials would be necessary to establish the safety and effectiveness of lenses made of a new or modified material or lenses made by a new manufacturer. The comments argue that differences in lens polymer formulation, changes in manufacturing process or process control, or changes from one manufacturer to another can result in changes in the lens' clinical performance that can only be adequately evaluated in a clinical trial.

Each of these comments and related arguments are summarized and addressed in section II.C. and E. and paragraphs 9 and 17 of this document. FDA has regulated contact lenses as new drugs or class III devices for more than a decade, and is unaware of any combination of nonclinical laboratory studies capable of predicting the performance of any contact lens in the human eye. Nothing in any of the comments establishes that clinical trials are not necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses.

As stated in section II.E. of this document, FDA believes that the safety and effectiveness of a contact lens is a function of the complex interrelationship of material, design, and manufacture that results in a unique set of physical, chemical, mechanical, and optical characteristics. When prescribed and fitted properly, a lens with this unique set of characteristics should provide safe and effective visual correction in a human eye with a specific diagnosed ametropia. FDA believes that contact lenses made from a new material, including material that has been significantly modified, contact lenses made to significantly modified designs, and contact lenses for which approval for a new indication is sought, cannot at this time be shown to be safe and effective without clinical, as well as preclinical, evaluation.

26b. A comment states that the persons who claim that clinical trials are necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses have failed to provide any valid scientific evidence that such trials are necessary.

FDA agrees that none of the comments provided any valid scientific evidence that clinical trials are necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses. As explained in paragraph 3 of this document, however, the burden of proof in this proceeding requires FDA (or the proponents of reclassification) to establish, by valid scientific evidence of safety and effectiveness, that hydrogel lenses should not remain in class III and that class I (or class II) will provide reasonable assurance of the safety and effectiveness of such lenses. The opponents of reclassification are not required to provide any evidence to establish that reclassification is inappropriate.

G. Economic Impact of Reclassification

27. Many comments support reclassification from class III into class I on economic grounds.

FDA notes that only that only a few of the comments contain any economic data to support their claims, and that none of these data was substantiated by accompanying documentation. In any

event, even if the claims were substantiated, FDA could not have legally reclassified any hydrogel lens, nor could the agency legally reclassify any other class III device into class I or class II, absent the requisite valid scientific evidence of safety and effectiveness (see the preamble to the proposed rule (47 FR 53413) and section II.A. of this document).

28. Many comments cite the current classification of hydrogel lenses as "a completely unnecessary barrier to competition" that threatens the viability and welfare of small businesses. The comments, citing recent poor business and layoffs, attribute the hardship of the small contact lens manufacturer to the current classification.

As explained in the preamble to the proposed rule (47 FR 53412, 53413), all hydrogel lenses are class III devices as a result of, among other things, (1) the September 30, 1975 notice and (2) section 520(l)(1)(E) and (1)(3)(D)(i) of the act. The 1975 notice was based on concerns about the safety and effectiveness of lenses consisting of polymers other than PMMA (see paragraph 14 of this document). These concerns continue to justify classification of such lenses into class III, as discussed more fully in section II.B. and paragraphs 9, 17, and 26a. of this document. Thus, classification into class III is not "unnecessary." Furthermore, a number of small companies hold approved PMA's for non-PMMA lenses, including hydrogel lenses. FDA has received no evidence of the cause of the poor business and resultant layoffs cited in the comments.

29. Several comments complain of the "de facto monopoly" held by large manufacturers that hold approved PMA's. One of these comments complains that the requirements associated with securing premarket approval cost "in the neighborhood of $1 million."

FDA does not agree with the comments. Small companies can and do obtain approved PMA's. Although the figure of $1 million is unsubstantiated, FDA is aware that the requirements for premarket approval are stringent. The agency advised, however, that Congress chose to protect the data in PMA's from use by others seeking premarket approval and from use by others and by FDA for the purpose of reclassification (see the preamble to the proposed rule (47 FR 53413) and section II.A. of this document).

30. One comment argues that the economic benefits claimed by FDA for reclassification can be obtained without reclassification of hydrogel lenses. The comment notes that since 1971 the number of manufacturers holding approved PMA's for such lenses has increased from 1 to approximately 30, with many small manufacturers obtaining approved PMA's. The comment also claims that the price of hydorgel lenses has declined significantly over the years.

FDA partially agrees with this comment. FDA has noted the increase in the number of approvals of PMA's for hydrogel lenses, but FDA is unaware of any data to support the claims regarding costs.

31. One comment claims that the marginal economic benefits to late market entrants resulting from reclassification would be offset by increased risks to the consumer, and that reclassification would have an adverse impact on innovation.

FDA does not agree with this comment, which was not supported by any valid economic data. FDA therefore rejects this comment as speculative.

H. Contact Lens Accessories

32. One comment argues that hydrogel lens accessories are not class III devices under section 520(l)(1)(E) of the act because such accessories are not devices which FDA, by a notice published in the **Federal Register** before enactment of the amendments, declared to be new drugs subject to section 505 of the act. Several comments argue that regardless of the classification or regulatory status of hydrogel lenses, acessories for use with such lenses should be subject to the same level of regulatory control as the lense because the accessories are an integral part of the safety and effectiveness of the lenses.

FDA advises that the term "device" includes "any * * * accessory" (section 201(h) of the act). Thus, accessories for use with hydrogel lenses are class III devices under section 520(l)(1)(E) of the act because hydrogel lenses are class III devices under that section (see the preamble to the proposed rule (47 FR 53412, 53413). Similarly, any accessory for use with a hydrogel lens for which a new drug application (NDA) was in effect on the enactment date of the amendments, e.g., Soflens® Contact Lens is a class III device under section 520(l)(1)(A) of the act, any accessory for use with a hydrogel lens for which an NDA was pending on the enactment date, e.g., SOFTCON® Bandgage Therapeutic Contact Lens, SOFTCON® Corrective Contact Lens, is a Class III device under section 520(l)(1)(B) of the act, and any accessory for use with a hydrogel lens for which a notice of claimed investigational exemption for a new drug (IND) was in effect on the enactment date, e.g., Durasoft® Hydrophilic Contact Lens, Flexlens™ Contact Lens, is a class III device under section 520(l)(1)(C) of the act. Furthermore, any hydrogel lens accessory that is substantially equivalent to an accessory for use with a hydrogel lens for which an NDA was in effect or pending or for which an IND was in effect on the enactment date is a class III device under section 520(l)(1)(D) of the act.

FDA also advises that any hydrogel lens accessory for which an NDA was in effect on the enactment date, e.g., Soflens® Enzymatic Contact Lens Cleaner, is a class III device under section 520(l)(1)(A) of the act; that any hydrogel lens accessory for which an NDA was pending on the enactment date, e.g., Lensrins®, is a class III device under section 520(l)(1)(B) of the act; that any hydrogel lens accessory for which an NDA was in effect on the enactment date, e.g., FLEXSOL®, is a class III device under section 520(l)(1)(C) of the act; and that any hydrogel lens accessory that is substantially equivalent to such an accessory covered by section 520(l)(1)(A), (B), or (C) is a class III device under section 520(l)(1)(D) of the act.

FDA is withdrawing the proposed rule, and as discussed in paragraph 33 of this document, has concluded that there is insufficient valid scientific evidence of the safety and effectiveness of hydrogel lens accessories to initiate proceedings to reclassify these devices. Accordingly, the question whether the lenses and the accessories should be subject to the same level of regulatory control regardless of the classification or the regulatory status of the lenses is moot.

33. One comment argues that although there are no well-controlled clinical studies addressing the safety and effectiveness of accessories used with hydrogel lenses, reclassification of the accessories can be supported by the lack of significant reports of adverse effects associated with their use and by the substantial marketing experience associated with these devices. Another comment argues that the ingredients used in accessory solutions for hydrogel lenses are generally recognized by FDA as safe and effective, as evidenced by the existence of approved PMA's for five lubricating/rewetting solutions that are similar in composition or that contain similar ingredients. The comment also cites as evidence of the safety and effectiveness of hydrogel lens accessories the detailed summaries of information respecting the safety and effectiveness of four lubricating/wetting

solutions for which there are approved PMA's and which FDA made available to the public upon issuance of orders approving the applications. Comments opposed to the reclassification of hydrogel lens accessories argue that clinical trials and class III controls are necessary to provide reasonable assurance of the safety and effectiveness of such accessories. These comments argue that there are numerous reports in the scientific literature of adverse reactions associated with contact lens accessories, such as bacterial infections, corneal ulcers, giant papillary conjunctivitis, eye irritation and discomfort, as well as allergic and sensitivity reactions. These comments also argue that contact lens solutions may cause temporary or permanent damage to lenses, e.g., changes in lens parameters, distortion, gummy deposits, or discoloration. These comments conclude that there is insufficient valid scientific evidence to demonstrate the safety and effectiveness of hydrogel lens accessories, and, therefore, that FDA does not have a sufficient basis on which to reclassify such accessories.

The legal standard for reclassification set out in the preamble to the proposed rule (47 FR 53413), and reiterated in section II.A. of this document, applies to the issue of reclassification of hydrogel lens accessories. To reclassify hydrogel lens accessories, the act and the regulations require valid scientific evidence of safety and effectiveness to demonstrate why the accessories should not remain in class III and why class I or class II would provide reasonable assurance of their safety and effectiveness. As explained in the preamble to the proposed rule (47 FR 53413) and section II.A. of this document, under section 520(h)(3) of the act, such evidence may not be based upon the detailed summary of information respecting the safety and effectiveness of any device for which there is an approved PMA and which, under section 520(h)(1) of the act, FDA is required to make available to the public upon the issuance of an order approving a PMA.

The concepts of general recognition of safety and effectiveness, which are relevant to whether a drug product is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321 (p)), are irrelevant to whether a device has been shown to be safe and effective. Even if they were relevant, however, the existence of an approved PMA for a device could not legally establish its safety or effectiveness for the purpose of reclassification. FDA is prohibited by section 520(c) of the act from using as the basis for the reclassification of a device safety or effectiveness data in any PMA because such information constitutes trade secret or confidential commercial information. The fact that a device is the subject of an approved PMA cannot be divorced from the safety and effectiveness data on the basis of which FDA approved the application for the device. Accordingly, section 520(c) and (h) (3) of the act prohibits FDA from reclassifying a device from class III into class I or class II based on the fact that FDA has approved a PMA for the device. Any other interpretation of the provisions of section 520 (c) and (h)(3) would render them meaningless.

FDA recognizes that under § 860.7(c)(2), reports of significant human experience with a market device can constitute valid scientific evidence of safety and effectiveness. None of the comments, however, submitted any such reports, and the mere absence of reports of adverse effects or of ineffectiveness does not establish the safety or effectiveness or hydrogel lens accessories.

For these reasons, FDA has concluded that there is insufficient valid scientific evidence of the safety and effectiveness of hydrogel contact lens accessories for the purpose of reclassification. FDA, therefore, cannot determine whether class I or class II controls would provide reasonable assurance of the safety and effectiveness of hydrogel lens accessories and may not at this time initiate proceedings to reclassify these devices.

I. Tinted Contact Lenses

34. One comment states that in amending section 706 of the act (21 U.S.C. 376), Congress could not have intended that devices already on the market, including tinted contact lenses, would be deemed to be adulterated on the date of enactment of the amendments.

FDA agrees in part, and disagrees in part, with the comment. FDA's responsibility for regulating color additives used in or on devices began on May 28, 1976, when the amendments became law. Among other things, the amendments expanded the coverage of the color additive provisions of the act, so that a color additive that is used in or on a device and that comes in direct contact with the body of man or other animals for a significant period of time is subject to regulation under section 706 of the act. Section 706(a) provides that a color additive shall be deemed unsafe within the meaning of section 501(a)(4) of the act for any particular use, unless that use is "listed" (approved) pursuant to a regulation issued under section 706(b) of the act.

Congress did not provide in the amendments for a transition or phase-in period for the agency's new regulatory authority over color additives used in devices. For this reason, on the date of enactment of the amendments, any device in commercial distribution that contained an unlisted color additive that came in direct contact with the body for a significant period of time was technically adulterated within the meaning of section 501(a)(4) of the act. Although the act authorizes regulatory action against adulterated devices, FDA does not believe that Congress intended FDA to take enforcement action against devices containing an unlisted color additive immediately upon enactment of the amendments. In deciding whether to approve or deny approval of a PMA for a device that contains a color additive that is subject to section 706 of the act, however, FDA believes that it cannot ignore the requirement in section 706 of the act that an unlisted color additive used in or on the device be deemed unsafe. Furthermore, approval of such a PMA without regard to the requirements of section 706 would frustrate the intent of section 515(d)(2)(A) of the act, which requires FDA to deny approval of a PMA if "there is a lack of showing of reasonable assurance that [the] device is safe * * *."

35. One comment states that FDA approved PMA's for at least two tinted contact lenses, even though the color additive used to color the lenses had not been listed for that use before the applications were approved. The comment argues that FDA's subsequent decision to subject color additives in class III contact lenses to the color additive, as well as the premarket approval, provisions of the act was unfair and raised very serious constitutional due process questions.

FDA notes that the color additive in question was listed for use to color contact lenses by a final rule published in the **Federal Register** of March 29, 1983 (48 FR 13020). As noted in paragraph 41 of this document, several other color additives have been listed for use to color contact lenses.

FDA acknowledges that it approved PMS's for two contact lenses tinted with a color additive that was not listed for use to color a contact lens when the applications were approved. After the first approval but before the second approval, FDA concluded that it could not refrain from applying the color additive provisions of the act to tinted contact lenses (see paragraph 34 of this document). In this circumstance, it was

decided that the least unfair method of proceeding would be to complete action on the pending PMA without listing the color additive for use in the lens, and to enforce the color additive provisions with respect to future PMA's. FDA realized then, and realizes now, that subjecting different manufacturers of similar lenses to different requirements is undesirable. The agency chose that course as the lesser of two evils, believing then, as it does now, that it could not defend the continued processing of PMA's without regard to the legal requirements of the act.

FDA advises that it is developing a policy for implementing the color additive provisions of the act with respect to preamendments devices that contain color additives that come in direct contact with the body for a significant period of time. FDA also is developing proposed changes in the procedural regulations for color additives to govern regulation of color additives in devices. Appropriate opportunity for comment will be given interested persons when the agency proposes the policy and the procedures. FDA fully intends to ensure consistent regulatory treatment of all devices that contain color additives that are subject to section 706 of the act.

36. One comment points out that the definition of color additive in section 210(t) of the act does not include dyes or pigments "added to a device." The comment then argues that FDA views the Congress' failure to amend the definition to include a reference to devices as an error that the agency may ignore in the interest of avoiding what it deems to be an illogical result. Another comment argues that colorants in tinted contact lenses are not color additives within the meaning of section 201(t) of the act because the colorants are not capable to imparting color to the human body

FDA disagrees with the comments. Section 201(t) defines a "color additive" as a substance "capable * * * of" imparting color "when added or applied to a food, drug, or cosmetic, or to the human body." A colorant used to tint a device satisfies the "capable of" test if it can impart color when it is added or applied to the human body, whether or not it can impart color to the body when it is used in a device. The second comment did not provide any evidence that colorants used to tint contact lenses are not capable of imparting color to the human body.

37. One comment argues that a colorant used in or on a device is not a "color additive" unless the colorant is capable of migrating from the device in such a manner and in such quantity to give rise to a toxicological concern.

FDA disagrees with the comment. The definition of "color additive" in section 201(t) of the act, which is discussed in paragraph 36 of this document, does not distinguish between (1) substances that meet the definition and migrate in such a manner and in such quantity to give rise to a toxicological concern and (2) substances that meet the definition and do not migrate in such a manner and in such quantity to give rise to a toxicological concern. A colorant used to tint a device is a color additive if the colorant can impart color when it is added or applied to the human body.

38. One comment states that colorants used in tinted contact lenses facilitate finding a dislodged or decentered lens, thus contributing to its medical function. The comment argues that colorants used in contact lenses should therefore be excluded from the definition of color additive in section 201(t) of the act.

FDA advises that a substance that meets the definition of color additive in section 201(t) of the act is a color additive unless FDA determines, by regulation, that the substance "is used (or intended to be used) solely for a purpose or purposes other than coloring." Thus, the fact that a substance used to color a contact lens also contributes to its medical function does not provide any basis for FDA to determine that the substance is not a color additive within the meaning of section 201(t) of the act.

39. One comment claims that FDA's interpretation of the term "direct contact" in section 706(a) of the act leads to an absurd, unjust, or unintended result, namely, the regulation under section 706 of color additives used to tint contact lenses and other devices. The comment argues that the phrase "direct contact for a significant period of time" does not contemplate situations in which a colorant, as used in a device, cannot come in contact with the body in any physiologically or toxicologically significant sense.

FDA disagrees with the comment. The plain language of section 706(a) of the act requires the agency to subject to the requirements of section 706 any color additive that is used in or on a device and that comes in "direct contact" with the body for a significant period of time, and nothing in section 706(a) or its legislative history suggests that Congress intended the term "direct contact" or "significant period of time" to comprehend physiological or toxicological significance.

FDA's interpretation does not imply a belief that color additives used to tint contact lenses and other devices necessarily pose a health problem. The color additive provisions of the act are not intended to deal only with additives known to present a risk, but also are designed to allow the agency to evaluate the safety of additives used in regulated products in a systematic way.

In FDA's view, tinted contact lenses involve the sort of use of a color additive in a device that was meant to be evaluated in accordance with the color additive provisions of the act. Contact lenses come in direct contact with the eye and are worn for prolonged periods of time every day. Whether and to what extent a lens' tint leaches out of the lens material in these circumstances is a matter of legitimate regulatory inquiry. Becuase the tint is a color additive, this inquiry is properly conducted under the color additive provisions of the act.

40. One comment argues that the phrase "significant period of time" in section 706(a) of the act must be interpreted logically to avoid an absurd result, namely the regulation under section 706 of color additives in contact lenses and other devices, unintended by Congress. The comment claims that in the case of a device from which a colorant readily migrates, a significant period of time might be measured in minutes, whereas in the case of contact lenses and other devices (e.g., dentures) from which a colorant cannot migrate in significant amounts, the length of time during which the device may safely be placed in contact with the body may be practically limitless.

FDA agrees that a color additive used in or on a contact lens or any other device is not subject to section 706 of the act unless the color additive "comes in direct contact with the body of man * * * for a significant period of time" (section 706(a) of the act). For the reasons given in paragraphs 39 and 41 of this document, FDA has concluded that color additives used to tint contact lenses come in contact with the body in the manner and for the period of time contemplated by the statute, and, therefore, that the safety of such additives for use in such lenses is required to be established in accordance with section 706 of the act and Part 70 of the regulations governing color additives (21 CFR Part 70). As explained in paragraph 42 of this document, however, a color additive used to tint a contact lens is not subject to the requirements of section 706 if there is a nontinted barrier impermeable to the color additive between the "colored" portion of the

lens and every surface of the lens that comes in direct contact with the body, or the color additive is otherwise imprisoned within the lens in such manner that all of the color additive is and remains below every surface of the lens that comes in such contact.

FDA notes that no data concerning the migration or safety of colorants used to tint contact lesnses or any other devices were included in or submitted with the comment.

41. Many comments state that color additives have been used in contact lenses for many years without any known adverse effects and that FDA therefore should have included tinted lenses in the proposed rule.

Because FDA is withdrawing the proposed rule, the question whether to include tinted lenses in any reclassification is moot. FDA advises, however, that regardless of the classification or regulatory status of tinted contact lenses, FDA believes that as such lenses are currently fabricated, the color additives used to tint the lenses are added to the lenses in such a way that at least some of each color additive will come in direct contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours each day for 1 year or more. Thus, the color additives come in direct contact with the body for a significant period of time and, therefore, are subject to section 706 of the act. FDA notes that since publication of the proposed rule, several color aditives have been listed for use in contact lenses (see, e.g., 48 FR 31374 (July 8, 1983); 48 FR 22705 (May 20, 1983); 48 FR 13020 (March 29, 1983); 49 FR 372 (January 4, 1984)). FDA emphasizes, however, that as discussed in paragraph 42 of this document, any person submitting a PMA for a tinted lens may demonstrate in the application that the dye or pigment used to tint the lens does not come in direct contact with the body for a significant period of time and, thus, is not subject to section 706 of the act.

FDA agrees that tinted contact lenses have been marketed for many years. The lack of reports of adverse effects associated with such lenses does not, however, show that color additives are safe for use in tinting contact lenses. Indeed, because DEN is not comprehensive (see paragraph 5 of this document) and there currently are no reporting requirements applicable to all tinted lenses, the lack of reports of adverse effects does not and cannot establish that color additives are safe for tinting contact lenses.

Under section 706(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive may not be listed for a particular use unless the data presented to FDA establish that the color additive is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See. H.R. Rep. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states that although proof of safety beyond any reasonable doubt is not possible, safety does require "proof of a reasonable certainty that no harm will result from the proposed use of an additive." S. Rep. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under § 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Under this standard, the lack of reports of adverse effects associated with tinted contact lenses could not establish the safety of the color additives used to tint the lenses, even if, as is not the case, DEN were comprehensive or reports of such effects associated with all tinted contact lenses were required to be submitted to the agency.

42. One comment argues that the agency has no information that would indicate any significant leaching, migration, or elution of color additives from tinted contact lenses. Another comment claims to have evidence from leaching studies of a number of color additives used to tint contact lenses which demonstrates that an insignificant amount of the colors leaches from the lenses. The latter comment concludes, therefore, that a color additive in a tinted contact lens does not come in direct contact with the body for a significant period of time. Still another comment states that FDA advised Congress that it did not intend to apply section 706 to a color additive used in or on a device if, even though the device comes in direct contact with the body for a significant period of time, there is a barrier impermeable to the color between the "colored" components of the device and the surface of the device that comes in direct contact with the body. The comment argues that the mechanism by which a colorant used to tint a contact lens is prevented from having such contact with the body—whether by imprisonment within a polymeric matrix or by virtue of a barrier—should not give rise to different regulatory consequences.

FDA's statutory responsibility for regulating color additives used in or on devices, including tinted contact lenses, is discussed in paragraphs 34 through 41 of this document. FDA notes that none of the comments provides any evidence to support the contention that, as tinted contact lenses are currently fabricated, the color additives used to tint the lenses do not come in direct contact with the body (e.g., ocular tissues, tears, eyelids) for a significant period of time within the meaning of section 706(a) of the act. FDA advises, however, that even if a color additive does not migrate or elute from a contact lens in a "significant" amount, the color is nonetheless subject to section 706 of the act so long as the color additive comes in direct contact with the body for a significant period of time. In addition, the fact that a color additive is bound to a surface of a contact lens that comes in such direct contact does not mean that the color additive is not subject to the requirements of section 706 of the act. FDA has concluded that a color additive used to tint a contact lens is subject to the requirements of section 706 of the act unless there is a nontinted barrier impermeable to the color additive between the "colored" portion of the lens and every surface of the lens that comes in direct contact with the body, or the color additive is otherwise imprisoned within the lens in such manner that all of the color additive is and remains below every surface of the lens that comes in such contact. If a person submitting a PMA for a tinted contact lens demonstrates that such a barrier or other mechanism of imprisonment exists for the lens, the color additive is not subject to the requirements of section 706 of the act.

FDA advises that elution and migration studies may be used to support the safe use of a color additive in a tinted contact lens that contains no nontinted barrier impermeable to color or within which the color additive is not otherwise imprisoned and that is, therefore, subject to the requirements of section 706 of the act.

43. One comment states that FDA should hold a public proceeding on the legal conclusion stated in the preamble to the proposed rule (47 FR 53414) that the color additive provisions of the act apply to tinted contact lenses.

FDA disagrees with the comment. The agency already has provided several opportunities for all interested persons to present their views concerning the application of sections 201(t) and 706(a) of the act to color additives used in or

on contact lenses (see section I. of this document), and in paragraphs 34 to 42 of this document, has summarized and responded to every significant comment received on tinted contact lenses.

J. Miscellaneous Matters

44. One comment suggests that contact lenses should be considered custom devices because lenses are ordered specifically for the patient named on the prescription. In addition, the lenses may need to be further modified by the practitioner to meet the individual needs of the patient and to perform to the satisfaction of the patient and practitioner.

Under section 520(b) of the act and § 812.3(b) of the regulations governing investigational use of devices, a custom device is a device that:

(1) Necessarily deviates from devices generally available or from an applicable performance standard or premarket approval requirement in order to comply with the order of an individual physician or dentist;

(2) Is not generally available to, or generally used by, physicians or dentists;

(3) Is not generally available in finished form for purchase or for dispending upon prescription;

(4) Is not offered for commercial distribution through labeling or advertising; and

(5) Is intended for use by an individual patient named in the order of a physician or dentist, and is to be made in a specific form for that patient, or is intended to meet the special needs of the physician or dentist in the course of professional practice.

For contact lenses to meet the custom device exemption, they are required to satisfy each of these requirements. Contact lenses do not meet the definition of a custom device because they fail to satisfy four and possibly five of the five requirements.

First, contact lenses do not qualify for the custom device exemption because they do not "necessarily deviate" from an appropriate premarket approval requirement or from devices generally available in order to comply with the order of an individual physician. FDA interprets the necessary deviation requirement to require that a device be sufficiently unique that clinical investigations would be impracticable. Such investigations using contact lenses are anything but impracticable; scores of clinical investigations have been conducted by firms large and small, and FDA has approved dozens of contact lenses through the NDA and PMA processes.

Second, contact lenses are generally available to physicians.

Third, contact lenses are generally available in finished form for purchase or dispensing upon prescription.

Fourth, contact lenses are offered for commercial distribution through labeling or advertising.

Fifth, even so-called "custom fitted" contact lenses, which are intended for use by an individual patient named in the order of a physician, and are to be made in a specific form for that patient, are merely variations within an approved range of powers and anterior and posterior surface contours and are to be fitted to a virtually unlimited number of patients in the course of professional practice.

For all these reasons, FDA has determined that contact lenses do not qualify for the custom device exemption. FDA advises, however, that nothing in the act or the regulations forbids optical laboratories from modifying approved lenses to meet the needs of specific patients so long as the specifications of the lenses, as modified, remain within the specifications of the PMA's for the approved lenses.

45. Three comments submitted data showing that product liability claims and losses against contact lens manufacturers have been minimal and argue that these data demonstrate the safety of contact lenses. The data include summaries of three surveys of contact lens manufacturers. One survey covers about 50 manufacturers over a 5-year period and the other two surveys appear to cover approximately 100 manufacturers for an indefinite period. The survey summaries indicate that total claims paid on behalf of the manufacturers surveyed were less than $20 thousand, over an indefinite period apparently spanning several years.

FDA believes that such information might suggest a history of apparent safety but does not constitute valid scientific evidence of the safety of hydrogel lenses. The comments provide no information on the surveyed manufacturers' experience with any of the lenses proposed for reclassification or the number of the surveyed manufacturers' hydrogel lenses in use; indeed, nothing in the comments reveals whether any experience with approved hydrogel lenses is captured by the surveys.

FDA notes that the relatively small amount of money paid does not lead to the conclusion that contact lenses are safe. There is no way of determining from the surveys what percentage of users who could have filed claims did or did not do so. The reasons for not filing claims may be many and varied including the short-term, reversible nature of the injury, ignorance of user rights, ignorance of the cause of the injury, ignorance of the identity of the responsible person, or the cost of filing or prosecuting a claim.

Contact lens related injuries do occur with some frequency. For example, the U.S. Consumer Product Safety Commission National Electronic Injury Surveillance System (NEISS) (Ref. 1) estimates that approximately 20,000 contact lens related injuries were treated in emergency care facilities in the United States in 1981. This estimate is projected from a statistically representative sampling of institutions with emergency treatment departments. The sample includes approximately 500 documented admissions to such facilities for contact lens related injuries.

For all these reasons, no definitive conclusions can be drawn from the surveys.

46. One comment states that FDA should have referred the proposed reclassification to the Ophthalmic Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (the Section), an FDA advisory committee, for a recommendation respecting the proposed change in classification. The comment argues that the proposal should have been referred in the exercise of sound regulatory discretion as well as a matter of law under section 513(e) of the act. The comment further argues that section 513(e) permits a limited exception to the requirement of advisory committee review only in situations in which the committee has previously reviewed the classification and its report has been subject to publication and public comment.

FDA disagrees with this comment. Section 513(e) of the act provides that FDA "may secure from the panel to which the device was last referred pursuant to [section 513(c) of the act] a recommendation respecting the proposed change in the device's classification." The plain language of section 513(e) of the act thus authorizes, but does not require, the referral requested by the comment, and nothing in the act or its legislative history suggests that FDA's discretion in determining whether to seek a recommendation from any of its advisory committees is limited to situations in which the committee has made a previous recommendation concerning the classification of the device. In any event, on April 14, 1981, the Section tentatively recommended that FDA reclassify soft contact lenses

consisting principally of 2-hydroxyethyl methacrylate (HEMA) from class IIII into class II, as requested by the Contact Lens Manufacturers Association (CLMA), in its reclassification petition dated January 16, 1981. Accordingly, no purpose would have been served by securing a recommendation from the Section respecting the proposed rule.

47. One comment disagrees with FDA's conclusion that CLMA's petition to reclassify soft contact lenses consisting principally of HEMA from class III into class II was mooted by the agency's decision to initiate this rulemaking proceeding.

If FDA had decided to grant CLMA's petition, the agency would have been required under § 860.130(d) to publish in the **Federal Register** an order announcing FDA's intent to initiate a change in the classification of the device. Subsequently, the agency would have been required to proceed by informal rulemaking in accordance with section 513(e) of the act and § 860.130(c), as well as Part 10 of its administrative practices and procedures regulations (21 CFR Part 10). FDA did not initiate this reclassification proceeding on the basis of CLMA's petition because the petition did not contain sufficient information. FDA tentatively concluded, however, that there was adequate information outside the petition to justify initiating a reclassification proceeding. Because FDA issued on its own initiative the notice of intent that FDA would have been required to issue had CLMA's petition not been inadequate, the agency reaffirms its conclusion, stated in the November 24, 1981 notice of intent and in the preamble to the proposed rule (47 FR 53412), that the petition was moot.

48. A comment characterizes as unnecessarily and inappropriately inflexible the statement in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63474) (the transitional notice) that "until a performance standard applicable to any [transitional] product listed above [including 'soft contact lenses'] is established and becomes effective, that product will continue to be subject to premarket approval." The comment states that the rationale for the statement in the transitional notice is not clear and points out that section 513(e) of the act provides that a regulation issued under that section changing the classification of a device from class III into class II may provide that such reclassification not take effect until the effective date of a performance standard established under section 514 of the act for the device. The comment argues that the statement is not applicable to the proposed rule to reclassify hydrogel lenses because the proposal would have reclassified these devices from class III into class I.

For the reasons explained in sections III and III of this document, FDA has concluded that premarket approval is still necessary to provide reasonable assurance of the safety and effectiveness of hydrogel lenses, and that FDA may not reclassify them into either class I or class II. Accordingly, there is no need to reexamine the transitional notice in the context of this rulemaking proceeding. FDA agrees that section 513(e) of the act permits, but does not require, that a regulation issued under that section take effect on the effective date of a performance standard established for the device that is the subject of the regulation.

49. One comment states that FDA should have prepared a regulatory impact analysis under Executive Order 12291 for the proposed rule and must prepare one for any final rule that the agency might issue.

FDA disagrees with this comment. Under Executive Order 12291, an agency is required to prepare a preliminary regulatory impact analysis if a proposed rule is determined to be a "major rule" as defined in the Order. Section 1(b) of Executive Order 12291 defines a "major rule" as any regulation that is likely to result in:

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

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

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

As stated in the preamble to the proposed rule (47 FR 53421), reclassification of hydrogel lenses would have resulted in increased competition, decreased costs, and an increase in employment and also would have allowed small contact lens firms to compete in the world market. Therefore, the agency concluded that the proposed rule would not be a major rule within the meaning of the Order and that a regulatory impact analysis was not required to be prepared. Because there is no final rule in this proceeding, the requirements of the Order do not apply.

IV. References

The following references have been placed on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Electronic Injury Surveillance System, U.S. Consumer Product Safety Commission, National Injury Information Clearinghouse: Product Code 1676—Contact lenses, not specified, 1981; Product Code 1675—Contact lenses, soft, 1981; Product Code 1674—Contact lenses, hard, 1981.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic devices.

PART 886—OPHTHALMIC DEVICES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the proposed rule on reclassification of daily wear optically spherical hydrogel (soft) contact lenses, which was published in the **Federal Register** of November 26, 1982 (47 FR 53411), is withdrawn and the rulemaking proceeding initiated by that proposal is terminated.

Dated: April 17, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-10892 Filed 4-23-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-058]

General Environmental Controls: Accident Prevention Tags.

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this notice the Occupational Safety and Health Administration (OSHA) proposes to amend the standards in § 1910.145(f) to require that accident prevention tags be capable of being read from a minimum distance of five feet (1.52 m), and to allow the use of symbols or pictographs on such tags. The purpose of paragraph (f) is to establish performance criteria for tag design and construction. OSHA is also proposing color criteria for certain types of tags to assure compatibility with existing sign criteria and color coding requirements found

elsewhere in § 1910.145. This standard addresses the temporary marking of hazardous conditions. The proposed amendments are presented as part of OSHA's continuing effort to review and, as necessary, amend existing standards.

DATES: Comments on the proposal must be received by June 8, 1984. Hearing requests must be received by June 8, 1984.

ADDRESSES: Comments and hearing requests should be sent to the Docket Officer, Docket No. S-058, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. All materials received will be available for public inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Foster, Occupational Safety and Health Administration, Room N-3627, 200 Constitution Avenue, NW., U.S. Department of Labor, Washington, D.C. 20210, (202) 52815.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (f) of § 1910.145 contains specific requirements for accident prevention tags used to provide a temporary means of warning of a hazardous condition, of defective equipment, of radiation hazards, or of similar hazardous exposures to employees. Tags are not to be considered a permanent warning method, but are to be used temporarily until a hazardous operation is completed or until a positive means can be taken to eliminate a specific hazard. For example, a tag may be used to identify a defective ladder temporarily until the ladder can be removed from service and properly repaired. Tags may also be used to isolate and to assure that a piece of equipment or an electrical circuit is not operated or energized while an employee is working on the equipment or circuit (the "tagout" portion of the "lockout/tagout" process).

The existing standards in § 1910.145(f) contain specific requirements for the design and use of certain types of tags. However, OSHA believes that limiting employers and employees to the use of specific types of tags may result in less effective communication concerning hazardous working conditions. This is particularly true in workplaces where language barriers may hinder an employee's ability to comprehend a written legend on a warning tag. OSHA anticipates that this proposal would help eliminate that problem by providing performance criteria for tag design and use.

One purpose of this proposal is to amend the existing standards to reflect public acceptability of the use of symbols or pictographs, rather than only written legends, and to ensure that tags are designed and used properly to enhance their function in identifying hazards to employees. OSHA is proposing, through the use of performance-oriented language, that accident prevention tags be designed and used in such a manner that they provide, in an understandable way, instruction to employees about hazards involving equipment or processes that the employees may use.

The portions of § 1910.145 that specifically address signs rather than tags are not a part of this rulemaking. The National Bureau of Standards (NBS) is currently conducting research on signs and color coding for OSHA. Therefore OSHA is holding its revision of the sign criteria in abeyance until NBS concludes its research.

The proposal also contains various editorial changes to § 1910.145. These non-substantive amendments are intended to streamline and clarify the existing requirements of that section.

II. Agency action.

In paragraph (f)(3)(ii) of § 1910.145, OSHA proposes that accident prevention tags be capable of being read from a distance of at least five feet (1.52 m). OSHA's proposal is based on the need for employees to be able to read a tag from a distance adequate to permit them to take action to avoid exposure to the tagged hazard. In most cases, a tag instructs an employee to modify what he had originally intended to do. For example, a tag may instruct an employee not to use a ladder, start a machine, or energize an electrical circuit that the employee intended to use. In these cases, a five foot (1.52 m) distance appears acceptable since the ladder, machine or electrical circuit would be out of the employee's reach if it were five feet (1.52 m) away. In other cases, such as where the employee is approaching a hazardous operation or object, the tag is intended to warn the employee to take some sort of evasive action, such as a change in direction, to avoid the tagged hazard. OSHA believes that the five foot (1.52 m) distance is the minimum distance needed for such evasive action to be taken if one considers the average pace at which an employee may walk toward the tagged hazard. OSHA recognizes, however, that factors such as the employee's speed, the walking surface condition, or the type of footwear being worn by the employee may adversely affect the ability of an employee to react in sufficient time to avoid the hazard once the tag has been seen. Therefore, the Agency solicits comments on what the appropriate viewing distance should be in order to account for these variables. In addition, OSHA requests that commenters include any available accident data or studies which may assist that Agency in this determination. (An ergonomic study done for OSHA by the National Bureau of Standards (NBS) addresses the issue of viewing distance (Reference 1), but does not deal directly with the question of hazard avoidance.)

OSHA is also proposing, in paragraph (f) (3) (iii), to recognize the use of pictographs as an acceptable means for identifying hazardous operations or equipment (References 3, 4). The purpose of this proposal is to assure that those employees who have difficulty reading or understanding English or any other language can receive the same message as those employees who have no difficulty in reading.

In addition to the minimum readability distance and the allowance of pictographs, OSHA is proposing to clarify the criteria for selection of the appropriate color to be used on tags for different hazards.

First, OSHA is proposing two new definitions in paragraph (f) (2) to define new terms introduced in the proposal. In paragraph (f) (2) (ii), OSHA proposes to define the term "major message" as that portion of a tag's legend that is intended to capture the employee's attention. Examples of a major message would include "Danger," "Do Not Start," "Warning," etc. In paragraph (f) (2) (iii), OSHA proposes to define the term "Pictograph" as a pictorial representation on a tag used to identify a hazardous condition or to convey a safety instrucion. Both definitions are necessary to assure an understanding of the proposed requirements.

Second, OSHA is proposing color criteria for danger and caution tags in paragraph (f) (4) (ii) and (f) (5) (ii), respectively. Danger tags are used to identify situations where there is an immediate hazard to an employee's well being. For example, situations where there is an immediate hazard to an employee's well being would include, but not be limited to, temporarily unguarded power transmission equipment such as gears, in-running rollers, belts and pulleys, etc.; ladders that have been broken or that have deteriorated to the point that use would result in failure of the unit; exposed *and* energized electrical power transmission lines or conductors; or other similar exposures that could result in severe employee injury or death. Caution tags

are used to warn employees of potential hazards or unsafe practices that may affect their well being. For example, situations where there is a potential hazard or unsafe practice that may affect an employee's well-being would include, but not be limited to, containers of hazardous materials that need special handling to prevent breakage or leakage; hand tools or other equipment that are damaged but that still could mistakenly be used without complete inspection (i.e.: frayed electrical cords, split or cracked handles on hand tools, "mushroomed" chisel heads, loose hammere heads, etc.); or other similar exposures that most likely would result in injuries less severe than those that could result from a "dangerous" situation. OSHA proposes that the predominant color of danger tags or of the tag's major message be red, and that the predominant color of caution tags or their major message be yellow, with contrasitng backgrounds or legends as appropriate. OSHA is proposing the criteria for tags to assure color consistency between tags and signs expressing the same message. Existing paragraph (d) of § 1910.145 requires that certain colors be used for certain signs. OSHA's proposal for tags is consistent with those requirements.

Third, OSHA proposes criteria in paragraphs (f) (6) (ii) and (iii) for the design and color of biological hazard tags. In paragraph (f) (6) (ii), OSHA proposes that the biological hazard symbol on biological hazard tags be fluorescent orange or orange-red. The background color can be any color, provided that it contrasts with the symbol. In paragraph (f) (6) (iii) OSHA proposes that the biological hazard symbol conform to ANSI Z35.2–1968 (R 1974). As before, OSHA is proposing the criteria to assure consistency with existing sign criteria. Because the criteria proposed in paragraph (f) (6) are consistent with those established by the American National Standards Institute (ANSI), they would be consistent with current accepted industrial practice.

In addition to the substantive provisions discussed above, this proposal would make various editorial changes in § 1910.145. These editorial amendments are primarily designed to eliminate the many "reserved" paragraphs that have appeared in the standard as a result of past rulemakings involving § 1910.145. They are intended to eliminate non-regulatory language, and do not change the existing requirements of the standard.

III. General Issues

In developing these proposed amendments to § 1910.145(f), OSHA has identified three issues on which comment is specifically requested. Interested parties are asked to submit views and supporting data on these issues, relating to the proposed amendments.

A. *Ability to read and understand.* Should OSHA continue to require that accident prevention tags contain a specific written legend, or should OSHA also recognize and require the use of symbols or pictographs? In many workplaces, the use of symbols or pictographs can eliminate the problems of hazard identification and safety instruction to employees who can not read or understand English or any other language. Should OSHA adopt a specific pictograph standard for the design and selection of symbols and pictographs and, if so, what should it be? If not, what type of standard should be used? Would this proposal affect the cost of tags?

B. *Viewing distance.* Assuming the tag face is in the viewing angle and the reader has normal visual acuity, at what distance should a tag be readable? OSHA is proposing a five foot (1.52 m) readability distance. Is this distance too long, too short, or appropriate? How would a specific viewing distance requirement affect the cost of tags?

C. *"Warning" vs. "caution."* Is there a difference in degree of meaning or in interpretation of the terms "warning" and "caution?" If so, which term should OSHA require to be used on tags and under what circumstances is one or the other term appropriate? Should OSHA recognize the terms as different in degree and designate different conditions for the use of tags for each term?

IV. Regulatory Assessment

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed revision. Based on the Executive Order criteria, OSHA has determined that this proposed revision is a "minor" action as there will likely be cost savings to the economy as a consequence of its adoption. In line with that determination, OSHA has performed a Preliminary Regulatory Impact Analysis (PRIA), which is in the OSHA Docket Office and available for public scrutiny.

This revision is technologically feasible. The change in language from specification to performance clearly enhances the feasibility of the revised standard. The revised standard's explicit requirement that the employee be able, at a distance of at least five feet, to understand the tag's intent would permit the continuing usage of existing standard-sized tags.

OSHA expects that this language revision would likely reduce costs by some small amount by allowing greater flexibility in complying with the standard. The requirement that the employee understand the tag's intent at a distance of five feet is already implicitly required in the specifications of the current standard. Thus, OSHA expects that there will be no increase in costs due to this revision.

There are two areas in which the revised standard is expected to increase benefits. The first area of benefits is that of permitting greater flexibility for tags. As long as the purpose of the tag is clear, a wide variety of job-made tags that would have been in violation of the current standard would be acceptable under the revised standard. The second area of benefits is that the revised standard allows the use of pictographs, language other than English, or other legends. For employers who hire non-English speaking or illiterate workers, occupational safety will likely be increased as a consequence of using tags that are more readily understood by that particular work force. OSHA is unable to quantify these likely benefits.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164 [5 U.S.C. 601 et seq.]), OSHA has assessed the impact of the proposed standard upon small entities and concludes that it is unlikely that it would affect a substantial number of small entities. The revised standard allows employers to use available on-site materials to identify hazardous conditions, which implies that small business employers would not have to stock specific tags for this purpose.

These conclusions are based on the evidence currently available to OSHA. Any additional public comment submitted to OSHA will be carefully considered and incorporated into the final Regulatory Impact Assessment and Regulatory Flexibility Certification.

Copies of OSHA's Regulatory Impact an Regulatory Flexibility Assessments are available for inspection and copying at the OSHA Docket Office. Comments from interested parties on either of these documents are solicited during the course of this rulemaking.

V. References

1. Fattal, S.G. et al., *Personnel Guardrails for the Prevention of Occupational Accidents*, NBSIR 76–1132. Washington, D.C.: National Bureau of Standards (NBS), July 1976.

2. Howett, Gerald L., *Size of Letters Required for Visibility as a Function of Viewing Distance and Observer Visual Acuity*, NBS Technical Note 1180.

Washington, D.C.: National Bureau of Standards (NBS), July 1983.

3. Collings, Belinda L. et al., *Symbols for Industrial Safety*, NBSIR 82-2485. Washington, D.C.: National Bureau of Standards (NBS), April 1982.

4. *Symbol Signs*, DOT-OS-40192., Washington, D.C.: U.S. Department of Transportation (DOT), November 1974.

5. Lerner, N.D. and Collins, B.L., *Workplace Safety Symbols: Current Status and Research Needs*, NBSIR 80-2003. Washington, D.C.: National Bureau of Standards (NBS), March 1980.

VI. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by June 8, 1984, and submitted in quadruplicate to the Docket Officer, Docket S-058, Room S-6212, U.S. Department of Labor, Washington, D.C. 20210. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the positions taken with respect to the issues.

The data, views and arguments that are submitted will be available for public inspection and copying at the above Docket Office address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the Occupational Safety and Health Act [the Act], and 29 CFR § 1911.11, interested persons may file objections to the proposal and request an informal hearing. Requests for an informal hearing should also be submitted in quadruplicate to the Docket Office at the above address. The hearing requests should be filed in accordance with the following provisions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked by: June 8, 1984.

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the ground therefor;

4. Each objection must be separately stated and numbered;

5. The objection must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VII. List of Subjects in 29 CFR Part 1910

Occupational Safety and Health, Pictograph, Safety, Signs, Symbols, and Tags.

VIII State Plan Standards

The 24 states with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of OSHA's final rule. These states are: Alaska Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

IX. Authority

For the reasons set forth in the preamble and pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend paragraph (f) of § 1910.145 in 29 CFR Part 1910 as set forth below.

Signed in Washington, D.C. this 12th day of April, 1984.

Patrick R. Tyson,

Deputy Assistant Secretary.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended by revising paragraph (f) of § 1910.145 to read as follows:

§ 1910.145 Specification for accident prevention signs and tags

* * * * *

(f) *Accident prevention tags.*)(1) *Scope and application.* (i) This paragraph (f) applies to all accident prevention tags used to provide injury prevention instruction to employees or to meet the specific requirements of other OSHA standards.

(ii) This paragraph does not apply to the construction, maritime or agricultural industries.

(2) *Definitions.* (i) "Biological hazard" means those infectious agents presenting a risk of death or injury to employees.

(ii) "Major message" means that portion of a tag's legend that is intended to capture the employee's attention. Examples include: "Danger," "Do Not Remove," "Caution," "Warning," etc. It may also include pictographic symbols.

(iii) "Pictograph" means a pictorial representation on a tag to identify a hazardous condition or to convey a safety instruction.

(iv) "Tag" means a device to convey information (usually made of card, paper, pasteboard, plastic or some other material) on which letters, markings, pictographs, or any combination of these appear. The purpose of the letters, markings, pictographs, or combinations thereof on the tag is to provide warning, caution, or safety instruction. Tags are affixed by string, wire, adhesive, or similar connecting means.

(3) *General tag criteria.* (i)(*a*) Tags shall be used wherever they can help prevent accidental injury to employees who may be exposed to hazardous conditions, equipment, or operations.

(*b*) Tags shall be used as a temporary means until such time as the identified hazard is eliminated or a hazardous operation is completed.

(ii) The major message of all tags used to meet the requirements of this section shall be readable at a distance of five feet (1.52 m) at a minimum.

(iii) The warning or instruction given by a tag shall be presented in either pictographs, written text, or both, and shall be understandable to all employees who may be exposed to the identified hazard.

(iv) All employees shall be instructed about the meaning of the various tags used throughout the workplace and what special precautions are necessary.

(4) *Danger tags.* (i) Danger tags may only be used where an immediate hazard exists.

(ii) The predominant color for "Danger" tags or for the major message of the tag shall be red, and the lettering or pictograph shall contrast with the tag's background color to result in easy readability.

(5) *Caution tags.* (i) Caution tags may only be used where caution is necessary, to warn against potential hazards or unsafe practices.

(ii) The predominant color for "Caution" tags or for the major message of the tag shall be yellow, and the lettering or pictograph shall contrast with the tag's background color to result in easy readability.

(6) *Biological hazard tags.* (i) Biological hazard tags shall be used to signify the actual or potential presence of a biohazard; or to identify equipment, containers, rooms, materials, experimental animals, or combinations thereof, which contain or are contaminated with hazardous biological agents.

(ii) The color of the biological hazard symbol on biological hazard tags shall be fluorescent orange or orange-red. The background color may be any color that contrasts with the symbol and provides easy recognition.

(iii) The symbol design for biological hazard tags shall conform to the design shown in ANSI Z35.2–1968 (R 1974).

(Sec. 6(b), 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order 9–83 (48 FR 35736); 29 CFR Part 1911)

[FR Doc. 84–10407 Filed 4–23–84; 8:45 am]
BILLING CODE 4510–26–M

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29 CFR Part 1910

[Docket No. H–004G]

Occupational Exposure to Lead; Effective Date of Compliance Plan Requirements for Certain Industries

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Pursuant to court order, OSHA's administrative stay of paragraphs (e)(3)(ii) (B) and (E) of the lead standard (§ 1910.1025) for the primary and secondary smelting and battery manufacturing industries is vacated as of June 1, 1984. These provisions require employers to develop detailed written compliance plans to achieve the lead standard's permissible exposure limit through engineering and work practice controls. OSHA hereby proposes that employers in the primary and secondary smelting and battery manufacturing industries develop compliance plans containing all available information by July 1, 1984 and that they come into full compliance with paragraphs (e)(3)(ii) (B) and (E) by August 1, 1984.

DATES: Data, views and arguments regarding this proposal must be received by May 21, 1984.

ADDRESS: Comments should be sent to Docket Office, Docket H–004G, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION: The lead standard (29 CFR 1910.1025) requires that employers reduce employee exposures to lead to the permissible exposure limit (PEL) of 50 $\mu g/m^3$, or to the lowest level feasible, through the use of engineering and work practice controls. The standard also requires that employers establish and implement a written compliance program to reduce employee exposures in accordance with the implementation schedule found in paragraph (e)(1) of the standard. Under the provisions of paragraphs (e)(3)(ii) (B) and (E), the plan must include a description of the specific means to be used to achieve compliance and a detailed schedule of implementation of the program.

On June 18, 1982, pursuant to industry petitions, OSHA proposed to stay the requirements of (e)(3)(ii) (B) and (E) for employers in the primary and secondary smelting and battery industries (47 FR 26960). Simultaneous with that proposal, OSHA issued an interim stay deferring the effective date of the requirements of paragraphs (e)(3)(ii) (B) and (E) for these industries. The interim stay subsequently was renewed to allow completion of the rulemaking on the stay (47 FR 26557, June 18, 1982; 47 FR 40410 September 14, 1982). On December 3, 1982, OSHA issued a final stay suspending the obligations of employers in the lead smelting and battery industries to comply with the requirements of paragraphs (e)(3)(ii) (B) and (E), pending completion of the reconsideration of the lead standard which was then underway (47 FR 54433).

After proposing to stay the compliance plan provisions, the Agency was sued by the United Steelworkers of America (USWA), which challenged on procedural and substantive grounds the authority of the Assistant Secretary to issue the interim and final stays. That suit, filed in the U.S. Court of Appeals for the District of Columbia Circuit (Nos. 83–1022 and 83–1126), has now resulted in a court order vacating the Agency's stay of the requirements of paragraphs (e)(3)(ii) (B) and (E) as of June 1, 1984.

OSHA believes that it is necessary to allow the employers a period of time after that date to come into full compliance with their requirements. The nature of the obligations imposed by these provisions precludes immediate compliance. OSHA invites comment and supporting information concerning the amount of time required for full compliance, including a discussion of the status of the development of employers' compliance plans, and the impact of such related matters as participation in the cooperative assessment program and other proceedings.

OSHA therefore proposes that, by July 1, 1984, employers in the primary and secondary smelting and battery manufcturing industries complete compliance plans under § 1910.1025(e)(3) that include all information in the possession of the employer as of July 1, 1984. Under paragraph (e)(3)(iii), these compliance plans would have to be available to OSHA and affected employees and their representatives. By August 1, 1984, these compliance plans would have to be updated to include all the information required by paragraphs (e)(3)(ii) (B) and (E).

Regulatory Impact and Regulatory Flexibility Assessments

OSHA hereby finds that this proposal is not "major" within the meaning of E.O. 12291 and that it does not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Public Participation

Interested parties are invited to submit written data, views, and arguments with respect to this proposal. These comments must be received on or before [insert date 25 days after publication in the **Federal Register**], and must be submitted in quadruplicate to the Docket Office, Docket H–004G, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

All data, views and arguments that are received will be available for public inspection and copying at the above address. All timely submissions received will be made part of the record of this proceeding and will be considered in making a determination on this proposal.

List of Subjects in 29 CFR Part 1910

Occupational safety and health.

This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. 20210. It is issued pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act [84 Stat. 1593, 1599; 29 U.S.C. 655, 657], 5 U.S.C. 553, Secretary's Order No. 9–83 [48 FR 35736], and 29 CFR Part 1911.

Signed at Washington, D.C., this 18th day of April, 1984.

Gary Alan Strobel,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 84–11000 Filed 4–23–84; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Amendment to or Clarification of Certain Provisions Relating To Direct Deposit Payments by Means Other Than Check

AGENCY: Bureau of Government Financial Operations, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury proposes to clarify the effect of 31 CFR Part 210 on the relationship between financial organizations that receive recurring Federal benefit payments on behalf of customers and those financial organizations' customers. These regulations relate only to Direct Deposit payments made by means other than check. The proposed regulations clarify that the Government does not authorize or direct financial organizations to recover from any party amounts owed the Government because payments are received after deaths of beneficiaries. This clarification is proposed in part because of a number of recent lawsuits arising from a misunderstanding of this liability.

Treasury also proposes to allow recipients and financial organizations to change types of accounts into which benefits are deposited and account numbers without execution of new Direct Deposit Standard Authorization Forms. There is no need for the new form provided that the recipient's interest in the account is unchanged. This change is necessary to save processing costs for both the Government and participting financial organizations.

DATES: Comments on this proposed rule must be submitted on or before June 25, 1984.

ADDRESSES: Comments may be mailed to: Patricia J. Tinker, Assistant Director, EFT Program Management Branch, Division of Banking & Cash Management, Bureau of Government Financial Operations, U.S. Department of the Treasury, Room 222, Annex, Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT: James R. Finegan (202) 535–6331.

SUPPLEMENTARY INFORMATION: Parts 209 and 210 of Title 31 of the Code of Federal Regulations, set forth the rights and liabilities of the Government, the financial organization and the recipient where a recipient of Federal recurring benefits authorizes direct deposit of recurring benefit payments. Parts 209 and 210 embody the contract to which financial organizations agree to be bound in executing the Direct Deposit Standard Authorization Form (SF 1199) or by crediting any Direct Deposit payment. Part 210 governs Direct Deposit by Means Other than Check, *i.e.*, payment by electronic funds transfer (EFT).

Section 210.9 sets forth the liability of financial organizations which credit benefit payments after the death or legal incapacity of a recipient or the death of a beneficiary. Subsection 210.9(a) sets forth the circumstances under which a financial organization can limit its liability to the amount of payments made within 45 days after an event of death or legal incapacity. The financial organization is liable to Treasury in accordance with § 210.9 without regard to the financial organization's ability to recover this amount from any other party. The proposed change to § 210.9(a) explicitly states that Treasury does not authorize or direct the financial organization to debit the account of any customer under this Part. Any right a financial organization may have to debit a customer's account in this situation would be based on State law or the financial organization's contract of deposit with the customer.

This clarification is necessary in part because of several recent lawsuits brought by recipients' joint account holders who allege that the Govermment directed financial organizations under this Part to debit their accounts. *See e.g., Dockstader* v. *Miller*, App. No. 82–1199 (10th Cir., decided Oct. 7, 1983), affirming judgment for defendants. *Cf., Powderly* v. *Schweiker*, 704 F.2d 1092 (9th Cir., 1983), affirming judgment for defendants in a check payment situation.

An amendment to § 210.4(h) and a definition addition in § 210.2(k) are proposed in order that recipients may change the type of account or number of the account to which benefit payments are being credited without execution of a new Standard Authorization Form (SF 1199). Similarly, financial organizations may make changes to their account numbering system or routing number without execution of new forms. However, under proposed § 210.11(d), the financial organization would be liable to the recipient for any lost or late payment attributable to the change. This revision is proposed to reduce costs for processing new forms incurred by both the Government and financial organization.

Special Analyses: The Treasury Department has determined that this proposal is not a major rule for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

It has been certified that the rulemaking proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 210

Banks, banking, Electronic funds transfer.

PART 210—FEDERAL RECURRING PAYMENTS THROUGH FINANCIAL ORGANIZATION BY MEAN OTHER THAN BY CHECK

Accordingly, it is proposed that 31 CFR Part 210 be amended as follows:

1. By adding paragraph (k) to § 210.2:

§ 210.2 Definitions.

* * * * *

(k) "Account," "recipient's account," "designated account" and "appropriate account" mean the account specified on the Standard Authorization Form into which any credit payments shalll be deposited. These definitions also include an account on which the financial organization has, after execution of a Standard Authorization Form, changed the type of account at the request of the recipient, or has changed the account numbers, at the request of the recipient or otherwise, without any change to the title of the account or the interest of the beneficiary or recipient in the account.

2. By adding the following sentence flush with the margin at the end of § 210.4(h):

§ 210.4 Recipients.

* * * * *

(h) * * *

A financial organization may change the account numbers or, at the request of the recipient, the type of the recipient's account without submitting a new Standard Authorization Form provided no change is made to the title or interest of the recipient or beneficiary in the account. These changes must be communicated to the Government in accordance with implementing instructions issued by the Government.

3. By revising § 210.9(a) to read as follows:

§ 210.9 Death or legal incapacity of recipients or death of beneficiaries.

(a) When, because of the death or legal incapacity of a recipient or the death of a beneficiary, one or more credit payments should have been returned to the Government, a financial organization shall be accountable to the Government for the total amount of any such credit payments: Provided, however, That if: (1) Such amount, or

any part thereof, is not available in the recipient's account; and (2) The financial organization did not have, at the time of the deposit and withdrawal, knowledge of the recipient's death or legal incapacity, or the beneficiary's death, and (3) The financial organization has made every practicable administrative effort to recover the amount which is not available in the recipient's account;

the financial organization shall be accountable only for: (i) The amount available in the recipient's account and the amount recovered by it, plus (ii) The amount not recovered by it, or an amount equal to the credit payments received by it within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary, whichever is the lesser amount.

Note.—The amount available in the recipient's account is only a measure of the financial organization's liability. A financial organization is not authorized by this Part to debit the account of any customer, living or deceased, for its liability to the Government under this part.

* * * * *

4. By adding a paragraph (d) to § 210.11 as follows:

§ 210.11 Liability of, and acquittance to the United States.

* * * * *

(d) If any change in account numbers permitted by § 210.4(h) is made by the financial organization, the financial organization will be responsible to the recipient for any lost or late payment attributable to the financial organization's change.

(5 U.S.C. 301; 12 U.S.C. 391; Title 31, U.S.C., and other provisions of law)

Dated: December 12, 1983.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-10763 Filed 4-23-84; 8:45 am]

BILLING CODE 4810-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 2571-2]

Approval and Promulgation of State Implementation Plan: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With this notice, EPA is proposing to approve the Tacoma, Washington, Carbon Monoxide (CO) Attainment Plan revision that was submitted to EPA on June 11, 1983. On December 18, 1981, Tacoma was designated a newly discovered nonattainment area for CO (46 FR 61655). State and local officials have determined that the City of Tacoma can meet the CO standard by early 1987 through the implementation of several transportation control measures and the completion of highway I-705 as a bypass to the nonattainment area. Upon final approval by EPA, the CO plan will become a federally enforceable part of the SIP as required by the Clean Air Act.

DATE: Comments will be accepted May 24, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch, M/S 532 (10A-83-5), Environmental Protection Agency, 1200 Sixth Avenue Seattle, Washington 98101.

State of Washington, Department of Ecology, 4224 Sixth Avenue SE, Lacey, Washington 98503.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren M. McPhillips, Air Program Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-7369, (FTS) 399-7369.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1979, the Washington State Department of Ecology (DOE) began operation of a new carbon monoxide (CO) monitor on Pacific Avenue between 9th and 11th Streets in downtown Tacoma. Monitoring data collected since then clearly shows that violations of the CO standards do exist. Additional saturation monitoring has been conducted to determine the geographical extent of the CO nonattainment area. Based upon the results of this study and new monitoring results, on December 18, 1981, EPA formally designated a small 3 block by 6 block area as nonattainment for CO (46 FR 61655).

State and local officials then developed a CO attainment strategy and submitted the plan as an official SIP submittal to EPA on June 11, 1983. The plan is comprehensive and demonstrates attainment in early 1987.

II. EPA Policy

Since Tacoma was designated as nonattainment after July 1, 1979, guidance on how to treat newly discovered nonattainment areas had to be generated before the SIP could be processed. This policy and guidance has been recently developed and is contained in EPA's Policy Statement on post-1982 attainment areas, November 2, 1983 (48 FR 50686), and in the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas" published by EPA on January 27, 1984. In essence, newly designated nonattainment areas must meet requirements for 1979 SIP's as described in the General Preamble for SIP Approval of Part D SIP's (April 4, 1979, 44 FR 20372, as amended). These areas must also demonstrate attainment of the standards within five years after the area is designated as nonattainment unless they can obtain an extension for attaining the ozone or carbon monoxide standard under Section 172(a)(2).

III. Plan Review

The Tacoma SIP revision was reviewed in accordance with the policy and guidance referenced in Section II (EPA Policy). The following discussion will briefly describe the SIP in terms of its content.

A. *Technical Data and Modeling Results.* Numerous violations of the 8-hour CO standard of 9 parts per million (ppm) have been recorded in the Tacoma nonattainment area. Based upon normalized monitoring data for the three year period 1980 through 1982, the CO design concentration was determined to be 15 ppm. A rollback model was then used to determine that a 41 percent emission reduction in 1981 baseline emissions is needed in order to meet the 9 ppm standard.

The 1981 emissions inventory shows a total of 830 kilograms per day (kg/day) being emitted in the nonattainment area. The identified emission inventory target for reaching attainment is 490 kg/day. Using the mobile source control measures described in the following section, the required emission reduction is expected to be achieved by early 1987. Further reductions are expected to take place in 1987 bringing total daily emissions down to 453 kg/day by the end of that year.

B. *Control Strategy.* The emission inventory indicates that there are no major stationary CO sources in the Tacoma nonattainment area greater than 1,000 tons per year. In light of the dominant motor vehicle contribution to the CO nonattainment problem, the control strategy focuses on transportation measures.

The following is a list of measures contained in the SIP with commitments for implementation or continued implementation:

1. Continuation of the Federal Motor Vehicle Control Porgram to minimize emissions from new cars;

2. Completion of the inbound (northbound) and outbound (southbound) segments of I–705 from Schuster Parkway to 21st Street, as a bypass to the nonattainment area;

3. Implementation of transportation control measures to encourage the use of high occupancy vehicles and to keep traffic flowing smoothly; and

4. Maintenance of a 17 mph average speed through the nonattainment area.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized.

C. *Generic SIP Elements.* Certain SIP elements have already been addressed in the February 28, 1983 **Federal Register** (48 FR 8273) which approved the ozone plan for the Puget Sound area (including Tacoma). A brief description is as follows:

1. Monitoring Reasonable Further Progress (RFP):

A monitoring plan has been established to periodically assess the extent to which the transportation measures actually result in meeting the RFP requirement. Although emphasis will be placed on monitoring emission reductions each year, ambient air quality monitoring data will also be examined. To the extent possible, other reasonable indicators will also be used to monitor RFP such as monitoring vehicle miles traveled and vehicle speeds. The Washington State Department of Ecology (DOE) and the Puget Sound Air Pollution Control Agency (PSAPCA) will jointly submit a RFP progress report each July 1 for the preceding calendar year.

If ambient air quality data or other indicators suggest that RFP is not being maintained, PSAPCA and DOE will examine the emission inventories and CO concentrations to determine if a problem exists. If it is determined that RFP is not being maintained, the contingency plan contained in the Puget Sound SIP, which sets out a methodology to revise the control measures as necessary, will be implemented.

Additionally, the Tacoma Department of Public Works will monitor vehicle speeds and implement necessary control measures (area specific contingency plan) to ensure that an average speed of 17 mph is maintained. These measures include the following:

(1) Improved traffic signal timing and coordination, including special progression for streets in the nonattainment area if necessary.

(2) Ridesharing, including ride matching, vanpools, park-and-pool lots, parking management strategies and incentives.

(3) Flextime.

(4) Transit enhancements, transfer center, subsidized transit passes, park-and-ride lots, fare free zone in CBD.

(5) Parking and lange priorities for multiple occupant and transit vehicles.

(6) Education, including public information to promote walking and bicycling.

(7) Parking prohibitions during peak volume time.

2. Conformity of Federal Actions with the SIP:

Existing state rules already ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 **Federal Register** (45 FR 21590). Procedures for specifically evaluating Department of Transportation plans, programs and projects were developed by a work group with representation from EPA, DOE, PSAPCA, the Puget Sound Council of Governments (PSCOG), and the Washington State Department of Transportation and have been adopted by PSAPCA and DOE. Criteria have been developed against which individual projects will be evaluated for conformance with all provisions and requirements of the SIP. Specifically, this includes the provision that the project must not cause new violations or delay attainment of the NAAQS.

3. Planning Process and Public Participation:

The bulk of this strategy was prepared following the planning process described in the 1982 SIP for the Puget Sound region (48 FR 8273). This process included a Transportation Technical Committee (TTC), a Citizens Committee and elected official involvement through the PSCOG, PSAPCA and affected jurisdictions. As the Tacoma work plan was developed and implemented, a special subcommittee was formed from the original TTC. This subcommittee included representatives from the DOE, the State Department of Transportation, PSAPCA, PSCOG, the Tacoma Engineering Department, the Tacoma Department of Public Works, the Tacoma Planning Department, Pierce County and Pierce Transit.

These committees interacted over a period of two years to develop recommendations on control strategies which were eventually acted upon by the lead agency's Board of Directors. Joint state-local public hearings were held on March 10 and April 14, 1983 and the plan was adopted. It was then submitted to EPA on June 11, 1983.

IV. Proposed Rulemaking Action

EPA is proposing to approve the Tacoma CO attainment plan and establish a new attainment date of February 28, 1987. This proposed approval is based on the June 11, 1983 SIP submittal in combination with the already approved July 16, 1982 Ozone SIP for the Puget Sound area.

Interested parties are invited to comment on all aspects of this proposed approval of the Washington SIP revision. Comments should be submitted preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked May 24, 1984 will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. section 605(b), I certify that this SIP approval does 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.

(Sections 110 and 172 of the Clean Air Act (42 U.S.C. 7410(b) and 7502))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relation; Incorporation by reference.

Dated: February 23, 1984.

Ernesta B. Barnes.

Regional Administrator.

[FR Doc. 84–10944 Filed 4–23–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Erigeron Rhizomatus (Rhizome Fleabane) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Erigeron rhizomatus* (rhizome fleabane), as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Approximately 20 populations are know, all of which are in New Mexico. The total number of individual plants is only about 200. This species' survival is threatened due to the

low number of plants, its restricted distribution, and the potential for habitat loss if inactive uranimum mining in the area is ever reactivated. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1984. Public hearing requests must be received by June 8, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species Staff (see Addresses above) (505/766–3972), or Mr. John L. Spinks, Jr., Chief, Office of Endagnered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Erigeron rhizomatus is in the aster family. The species was first collected in McKinley County, New Mexico, by R. C. Barneby in 1943 and was described by A. Cronquist in 1947. Approximately 20 populations are now known from 2 counties in New Mexico. Populations are known on the Cibola National Forest, in areas south of Fort Wingate in McKinley County, and from northwest of Datil in Catron County. These are the only areas in which this *Erigeron* has been found.

Erigeron rhizomatus is a perennial herb arising from horizontal underground stem, or rhizome. The leaves are narrow and oblong to linear, up to 1 centimeter long and 3 millimeters wide, and dark green in color. The flower heads are single, 13–16 millimeters wide, and blue or white in color. The stems are in clumps 25–45 centimeters high, and up to 30 centimeters across (Martin and Hutchins, 1981).

Erigeron rhizomatus grows in a zone of Chinle shale and associated soils in the pinyon-juniper association at 2,190 to 2,400 meters elevation. Most plants are found on loose, decaying slopes of the Chinle shale formation.

Flowering is from May to June. The species appears to be reproducing well, and individuals of all age classes are present. The clumps of plants are all clones. Establishment of new plants by seed is rare, although a large volume of seed is produced (Fletcher, 1978; Sabo, 1981).

Most of the populations are in close proximity to inactive uranium claims. If exploration or mining is reactivated, there may be adverse impacts to the plants.

Federal action affecting this 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 Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of its intention thereby to review the status of the plant taxa named therein. 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 species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94–51 and the July 1, 1975, **Federal Register** publication. *Erigeron rhizomatus* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978 **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** publication (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with 4 other proposals that had expired. *Erigeron rhizomatus* was included in category 1 on the list of plants under review for threatened or endangered classification in the December 15, 1980, **Federal Register** (42 FR 82480). Category 1 refers to taxa for which the Service presently has sufficient information to support the biological appropriateness of their being listed as endangered or threatened species.

For *Erigeron rhizomatus*, the petition finding was made on October 13, 1983, that listing was warranted but precluded by pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(C)(i) of the Act. This proposed rule constitutes the new required finding that the petitioned action is warranted, and the proposed rule is hereby published to implement the action in accordance with section 4(b)(3)(B)(iii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accomodate the 1982 Amendments) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Erigeron rhizomatus* Cronquist are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The main threats to *Erigeron rhizomatus* are from habitat disturbance, especially if there is ever a resumption of uranium mining. Most of the populations in the Datil and Sawtooth Mountains occur within or very close to extensive, currently inactive uranium claims and could be destroyed or severly damaged if the claim are ever reactivated and developed without planning for the species' protection. Road construction and resulting erosion also could have adverse impacts on *Erigeron rhizomatus* (Fletcher, 1978; Sabo, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Erigeron rhizomatus* is not presently desired by plant collectors. Collection for scientific study and threats from overutilization are small (Sabo, 1981). However, plants are more vulnerable than animals to taking pressures and because of its very low numbers, and restricted ranged, vandalism poses a threat to the survival of this species.

C. *Disease or predation.* Because the numbers of plants are so low, and the range very restricted, any disease could quickly eliminate this species.

D. *The inadequacy of existing regulatory mechanisms.* There are no State laws offering protection for

Erigeron rhizomatus. U.S. Forest Service regulations prohibit taking of plants on USFS lands (36 CFR 261.9(b)). These regulations are difficult to enforce in backcountry situations.

E. *Other natural or manmade factors affecting its continued existence.* The limited distribution (two New Mexico counties) and low number of plants (fewer than 200) make *Erigeron rhizomatus* especially vulnerable to habitat disturbances or other stresses.

Critical Habitat

No critical habitat is being proposed for *Erigeron rhizomatus* at this time. The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable the Secretary shall designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. 50 CFR 424.12 states that designation of critical habitat is not prudent if the designation will increase taking threats or would not otherwise be beneficial to the species. *Erigeron rhizomatus* occurs only on U.S. Forest Service land. The Act requires all Federal agencies to carry out programs for the conservation of listed species. The U.S. Forest Service is aware of where *Erigeron rhizomatus* occurs, and will need to continue to take steps to protect its essential habitat once the species is listed. Also, all Federal agencies, including the U.S. Forest Service, are bound to avoid any actions which would jeopardize any listed species. Therefore, the determination of critical habitat would not provide any additional benefits for the plants. Critical habitat determinations, and publication of detailed maps, have the potential of creating taking pressures or encouraging vandalism by the public on any plant. Publication of critical habitat maps for *Erigeron rhizomatus* would enable the public to locate precisely where plants occur, and might lead to vandalism which could further threaten the species. Because the U.S. Forest Service knows where *Erigeron rhizomatus* occurs, and will need to continue to protect its habitat when the species is listed, and because a determination of critical habitat might impose a further threat to the plants, a determination of critical habitat is not considered prudent.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. Provisions for Interagency Cooperation which implement section 7 of the Act are codified at 50 CFR Part 402 (now under revision, see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. This protection will now accrue to *Erigeron rhizomatus*. When a species is actually listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species. If an agency determines that its actions may affect a listed species, the Federal agency must enter into formal consultation with the Service. *Erigeron rhizomatus* is known only from U.S. Forest Service lands. There are uranium mining claims in the vicinity of the majority of the populations in both the Datil and Sawtooth Mountains. The claims are presently inactive. If exploration or a resumption of mining were to occur, there is potential for much damage to the plants and habitat.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions which apply to all threatened plant species. With respect to *Erigeron rhizomatus* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species, under certain circumstances. International and interstate commercial trade in *Erigeron rhizomatus* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

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. Section 4(d) provides for the provision of such protection to threatened plant species through regulations. This new protection would accrue to *Erigeron rhizomatus* when revised regulations have been promulgated. Permits for exceptions to this prohibition would be available. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and these would be finalized following public comment. *Erigeron rhizomatus* is known only from Federal lands.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule 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 this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) biological or other relevant date concerning any threat (or the lack thereof) to *Erigeron rhizomatus;*

(2) the location of any additional populations of *Erigeron rhizomatus* and the reasons why any habitat of this

species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities within the range of *Erigeron rhizomatus* and their possible impacts on the species.

Final promulgation of the regulation on *Erigeron rhizomatus* will take into consideration the comments and any additonal information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

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

References

Cronquist, A. 1947. A revision of the North American species of *Erigeron* north of Mexico. *Brittonia* 6:121–302.

Fletcher, R. 1978. Status report: *Erigeron rhizomatus*. U.S. Forest Service, Region 3. Albuquerque, New Mexico. 5 pp.

Martin, W.C. and Hutchings, C.R. 1981. A Flora of New Mexico. J. Cramer, Germany, xiii + 2591 pp.

Sabo, D.G. 1981. Status report: *Erigeron rhizomatus*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 16 pp.

Authors

The primary author of this proposed rule is Sandra Limerick, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972). Status information and a preliminary listing package were provided by D. G. Sabo, P.O. Box 2267, Albuquerque, New Mexico 87103. E. LaVerne Smith and John Paradiso of the Office of Endangered Species served as editors.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

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

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order under Asteraceae, the following to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened Plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
Erigeron rhizomatus	Rhizome fleabane	U.S.A. (NM)	T		NA	NA

Dated: April 13, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–10883 Filed 4–23–84; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Mammillaria Thornberi (Thornber's Fishhook Cactus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Mammillaria thornberi* (Thornber's fishhook cactus) as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Populations of this plant are known to occur in Pinal and Pima Counties, Arizona, on Federal, private, and Indian Reservation lands. There are unconfirmed reports of populations in Sonora, Mexico. The U.S. populations are threatened with habitat destruction from urban expansion, a proposed Central Arizona Project aqueduct and possible reservoir, grazing, collection, and ground water depletion. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Mammillaria thornberi*. Critical habitat is not being proposed at this time because informing the public of specific areas where specimens of this plant occur could pose an additional threat to the species' survival. The Service seeks data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1984. Public hearing requests must be received by June 8, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972).

SUPPLEMENTARY INFORMATION:

Background

Mammillaria thornberi was initially collected by Professor J. J. Thornber and planted in the University of Arizona cactus garden in 1902. Subsequently, C. R. Orcutt collected the type specimen and published the description (Orcutt, 1902). In general appearance, *Mammillaria thornberi* is very similar to other fishhock cacti. This cactus generally grows as a number of individual plants in clumps of up to 100. The stems are small, narrow cylinders, 5 to 10 (up to 25) centimeters long and up to 5 centimeters wide. The spines are moderately dense and partly cover the stem. There is one reddish-brown central spine per areole, with an apical hook, which spreads out at a right angle to the stem. The radial spines spread parallel to the stem, 15 to 20 per areole, and are straw colored with reddish-brown tips. The flowers are small. The petals and sepals are lavender, the stigma and fruit are red, and the seeds are shiny and black. Flowering and fruit set are in May and June.

Mammillaria thornberi is historically known to occur in Sonoran Desert Communities in Pima and Pinal Counties, Arizona. There are also unconfirmed reports from Sonora, Mexico. At present, there are two major population areas. The first population area is located in the Avra Valley and Saguaro National Monument-West. The healthiest and most abundant populations were observed at these localities. The plants in this population area occur on the Saquaro National Monument, Bureau of Land Management (BLM), and private lands. The second known population area is located on the Papago Indian Reservation. The plants in this area were occasional to rare and the populations were smaller in size of clumps and in number of individuals per clump than those in Avra Valley and Saguaro National Monument.

Mammillaria thornberi occurs in the Arizona Upland Subdivision of the Desertscrub Formation, at elevations of 240–720 meters, in deep, hot, arid, gravelly soils on flood plains, alluvial fans, and deeply dissected uplands. The vegetation is palo-verde/cactus shrub and creosote bush/bur-sage. Dominant associated species are creosote bush (*Larrea tridentata*), chain fruit cholla (*Opuntia fulgida*), palo-verde (*Cercidium microphyllum*), and triangle leaf bur-sage (*Ambrosia deltoidea*). *Mammillaria thornberi* is found under the canopy of shrubs and in their debris. The main nurse plants (which provide shade and protection) for *Mammillaria thornberi* are *Ambrosia deltoidea, Cercidium microphyllum, Larrea tridentata,* and *Opuntia fulgida.*

The first Federal action involving this 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 Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act (now Section 4(b)(3)(A)), and of its intention thereby to review the status of the plant taxa named therein. *Mammillaria thornberi* was included in the July 1, 1975, notice of review.

Mammillari thornberi was included as a category 1 species in a list of plants under review for threatened and endangered classification in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 is comprised of taxa for which the Service presently has sufficient biological information to support listing as endangered or threatened. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be threated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review are considered to be petitioned, and the deadline for a finding on those species, including *Mammillaria thornberi,* was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Mammillaria thornberi* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to Section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

A status report compiled in 1981 (Phillips *et al.*) and investigations carried out by Service botanists and others have provided new biological data which are included in this proposal. These new data include recent documentation of low numbers of plants and threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Mammillaria thornberi* Orcutt (Thornber's fishhook cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Almost all known locations of *Mammillaria thornberi* are threatened with habitat alteration or loss. There are two known population areas for this species. These are the Saguaro National Monument, Avra Valley, and the Papago Indian Reservation. In the Saguaro National Monument, there are about 73 plants in an area of approximately 1,250 square meters; in the Avra Valley, about 332 plants occur over some 400 square meters of habitat. The Papago Indian Reservation contains about 195 plants at 24 scattered localities. In the Saguaro National Monument and Avra Valley, the plants appear to be healthy; on the Papago Indian Reservation, they occur in smaller clumps with fewer individuals per clump, and there is a high percentage of dead plants.

There is evidence that cacti have already been lost to habitat destruction. Historic locations in the northern Avra Valley are now cleared agricultural lands, and in the southern Avra Valley, *Mammillaria thornberi* habitat is found immediately adjacent to irrigated fields, suggesting that habitat there for the cactus has also been lost to agricultural development.

The Avra Valley is undergoing rapid development as Tucson expands westward. This relatively flat valley is considered desirable not only for agricultural use, but also for homes, trailer courts, business development, and the accompanying roads, powerlines, pipelines, canals, etc. In addition, the increased withdrawal of underground water for urban and agricultural use is lowering the water table, thus detrimentally affecting native vegetation along with the development. Long-term survival of those cacti found on private lands in the Avra Valley in unlikely (Phillips *et al.*, 1981).

On Federal lands, administered by BLM, in the Avra Valley, the cactus currently receives some protection; however, the State of Arizona has applied for transfer of 6,274 acres of the lands administered by BLM in the area to State ownership. Portions of three

Avra Valley sections of this land contain several populations of *Mammillaria thornberi*, one of which is extensive. Other lands administered by BLM in the area have also been identified for possible sale to private ownership, and may contain this species. These lands, once transferred to State or private ownership, are expected to undergo development (Ramsbacher, pers. comm., 1983).

An additional threat to *Mammillaria thornberi* and its habitat is the proposed construction of a Central Arizona Project aqueduct and possibly a reservoir through areas containing populations of the cactus. One of the prime aqueduct routes under consideration cuts directly through an area populated by *Mammillaria thornberi* for several kilometers, and all alternate routes could affect one or more populations.

On the Papago Indian Reservation, habitat is also being lost to agricultural and housing development, although to a much smaller degree. A portion of the Central Arizona Project includes the allocation of enough water to the Reservation to farm an additional 3,000 acres. This will quite likely cause further loss of habitat to *Mammillaria thornberi*.

Presently, *Mammillaria thornberi* habitat located on the Saguaro National Monument is believed to be safe from threats.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Mammillaria thornberi* has been of some interest to collectors of rare cacti in the past, and collecting will prove to be an even greater threat to the species now unless precise localities where it occurs are kept secret.

C. *Disease or predation* (including grazing). The population on the Papago Indian Reservation is in a heavily grazed area. Grazing is creating a negative impact on the cacti through trampling of vegetation and destruction and degradation of the habitat (Phillips *et. al.*, 1981).

D. *The inadequacy of existing regulatory mechanisms.* The arizona Native Plant law protects all cacti from collection without permission of the landowner and a State permit. Violation is a misdemeaner punished by a small fine, however, and habitat is not protected. Department of the Interior regulations protect plants on National Park Service lands. The Endangered Species Act will provide additional protection for this plant through Section 7 (Interagency Cooperation) requirements and through Section 9 which prohibits taking with intent to reduce to possession on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* The small population size and limited distribution of *Mammillaria thornberi* (about 600 plants in two population areas) increase the species' vulnerability to natural or man-caused stresses.

The proposed action has been arrived at through the careful assessment of the best scientific and commercial information available, as well as the best assessment of threats faced by this species. Based on the above assessments, the proposed action is to list *Mammillaria thornberi* as threatened without critical habitat. Threatened status seems appropriate because one of the populations is located on the Saguaro National Monument, because the Avra Valley population, while facing iminent threat, is presently in good condition, and because the Papago Indian Reservation population, while not nearly as large or healthy, is not under as much threat as the Avra Valley population. Thus *Mammillaria thornberi* is not in danger of extinction throughout all or a significant part of its range, but is likely, unless appropriate protections are extended, to become so within the foreseeable future.

Critical Habitat

Section 4(a)(3) of the Endangered Species, Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Mammillaria thornberi* because its restricted distribution and accessibility make it vulnerable to threats from collection. The cactus may be sought as a curiosity by collectors of rare cacti if critical habitat maps are published in the **Federal Register** as is required by the Endangered Species Act. Publication of such maps would call attention to this species, make specimens easy to locate, and make it more vulnerable to taking. Therefore, it would not be prudent to determine critical habitat for *Mammillaria thornberi* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States. Following listing, the Service must initiate and carry out recovery actions for all listed species. The protection required by Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402 (see proposal at 48 FR 29989; June 29, 1983) now under revision.

Agencies are required under Section 7(a)(4) to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. This protection would not accrue to *Mammillaria thornberi*. If this proposal is made final, Section 7(a)(2) will require Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Mammillaria thornberi*. If a proposed action may affect a listed species, the Federal agency must enter into consultation with the Service. The usual results of Section 7 consultation, if jeopardy is found, is modification and not cancellation of the proposed action. All of the routes for the proposed Central Arizona Project aqueduct and the site for the proposed reservoir would affect one or more of the Avra Valley *Mammillaria thornberi* populations. However, the Bureau of Reclamation has informally indicated its intent to set aside land as a sanctuary for this cactus, which will mitigate impact upon it. Measures such as this, combined with the presence of stable populations outside the project area, will serve to permit the project to proceed without jeopardy to this species. Any other Federal activities that would affect this species would have to include consideration of the impact on this cactus.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Mammillaria thornberi*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a

commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation, or in the wild.

Section 9(a)(2)(B) of the Act, is amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the provision of such protection to threatened plant species through regulations. This new protection will accrue to *Mammillaria thornberi* once revised regulations are promulgated. Proposed regulations implementing this new prohibition were published in the July 8, 1983, **Federal Register** (48 FR 31417) and these will be made final following public comment. For purposes of this taking prohibition, *Mammillaria thornberi* occurs on Federal (BLM and Saguaro National Monument), and Indian (Papago Indian Reservation) lands.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20204 (703/235–1903).

Mammillaria thornberi is on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Service will review this species to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as 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, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to *Mammillaria thornberi:*

(2) the location of any additional populations of *Mammillaria thornberi* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities in the subject area and their possible impacts on *Mammillaria thornberi.*

Final promulgation of the regulation on *Mammillaria thornberi* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressd to the Regional Director (see ADDRESSES section)

National Environmental Policy Act

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

References

Johnson, R. Roy, R.L. Hall, and B.T. Brown. 1982. *Mammillaria thornberi* in the Saguaro National Monument, Tucson Mountain Unit. Draft Report, Cooperative National Park Resources Study Unit, University of Arizona, Tucson. 7 pp.

Ocutt, C.R. 1902. Cactus Notes. The West American Scientist 12:161–164.

Phillips, A.M., III, B.G. Phillips, N. Brian, L.T. Green, III, and J. Mazzoni. 1981. Status report on *Mamillaria thornberi.* U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM.

Authors

The authors of this proposed rule are Sandra Limerick and Margaret Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (703/235–3972). The editor is John L. Paradiso, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). Status information was provided by Dr. Arthur M. Phillips, III; Dr. Barbara G. Phillips; Nancy Brian; L. T. Green, III; and Jill Mazzoni, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001 (602/774–5211).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

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

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order, under the family Cactaceae, the following to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plant.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Cactaceae—Cactus family						
*	*					
*	*					
*	*					
*	*					
Mammillaria thornberi	Thornber's fishhook cactus	U.S.A. (AZ)	T		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
•	•					
•	•					
•	•					
•	•					

Dated: April 12, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-10884 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Proposed Rule To Delist the Red, Eastern Gray, and Western Gray Kangaroos

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Service hereby withdraws its April 8, 1983, proposed rule to delist the red kangaroo *(Macropus rufus)*, the eastern gray kangaroo *(Macropus giganteus)*, and the western gray kangaroo *(Macropus fuliginosus)* from any classification pursuant to the Endangered Species Act of 1973, as amended. The decision to withdraw the proposed rule is based on new data from the Australian Government that indicate that these kangaroo populations have declined as a result of severe and wide-spread drought during the Australian summer (December–January) of 1982–83.

DATE: The withdrawal is effective on April 18, 1984.

ADDRESS: The complete file for this notice is available for inspection by appointment during usual business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATON CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1983, the Fish and Wildlife Service (the Service) proposed to remove the red, eastern gray, and western gray kangaroos from any classification pursuant to the Endangered Species Act of 1973, as amended. This action was taken as a result of a petition from the Australian Government, dated November 10, 1982, which presented data that the total number of kangaroos was over 32 million animals (this figure was later revised by the Australian Government to 19 million animals based on improved and expanded censusing). The petition also demonstrated the management capabilities of the various Australian States for kangaroo conservation. These three kangaroos were listed as threatened species on December 30, 1974.

In the Australian summer (December-January) of 1982–3, Australia experienced the worst recorded drought in its history. This drought was particularly severe in the eastern and southern parts of the continent, but was also widespread elsewhere. In time of drought, kangaroos cease to breed and numbers decline. Aerial surveys conducted in the Australian winter (July-August) of 1983 in New South Wales and South Australia demonstrated that the drought had caused reductions in kangaroo populations in those States. New South Wales reported declines of 11 percent for red kangaroos, and 26 percent for gray kangaroos; South Australia reported declines of 33 percent for reds, and 39 percent for grays. Although no aerial surveys were conducted in Queensland and Western Australia, other evidence indicated that declines occurred in both of those States, although perhaps less substantially than in New South Wales and South Australia. In the Australian Fall and Winter of 1983, the drought was broken and reports from Australia indicate that kangaroos are breeding again. The degree to which the drought has affected kangaroo numbers is a consideration unforeseen at the time this rule was proposed. While populations still number in the millions and the Australian states have demonstrated efficient conservation programs, this unforeseen occurrence has brought about a situation that requires additional data and comment.

Given that the newest estimates of Kanagaroo numbers show declines from those on which the Service based its April 1983, proposal, and the lack of firm data to show that populations are in fact recovering at this time, the Service believes that it is in the best interest of conservation to withdraw its delisting proposal. If in the future, additional information becomes available to confirm the speed with which the kangaroos are recovering from the effects of the 1982–1983 drought, the Service may again publish a proposed rule to remove them from classification pursuant to the Act.

Finding and Withdrawal

In compliance with sections 4(b)(6)(A)(i)(IV) and 4(b)(6)(B)(ii) of the Act, as amended, the Service hereby withdraws its proposed rule of April 8, 1983 (48 FR 15428) to delist the red, eastern gray, and western gray kangaroos because population estimates of these kangaroos have shown substantial declines in numbers from those upon which the proposal was based, and hard evidence of the beginning of a population recovery is not now available.

References

Data provided to the Service by the Government of Australia in a communication dated February 15, 1984.

Author

The primary author of this notice is John L. Paradiso, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: April 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-10875 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 80
Tuesday, April 24, 1984

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

Office of the Secretary

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board
Date: May 10–11, 1984
Time and Place: 8:30 a.m. May 10 to 4:30 p.m. May 11, Room 104, Administration Building, Department of Agriculture, Washington, D.C.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.
Contact Person: C. F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, Room 239, Building 005, BARC-West, Beltsville, Maryland 20705, telephone (301) 344–1560.
Done at Beltsville, Maryland, this 6th day of April 1984.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 84–0981 Filed 4–23–84; 8:45 am]
BILLING CODE 3410–03–M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), Science and Education announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: June 5–6, 1984
Time: 8:00 a.m.–5:00 p.m.
Place: Little Rock Excelsior, Three Statehouse Plaza, Little Rock, Arkansas 72201
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contract person below.
Purpose: The Board will be preparing materials recommending responsibilities and allocations of funds among Federally supported agricultural research and extension agencies.
Contract Person for Agenda and More Information: Dr. Barbara L. Fontana, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 319–A Administration Building, U.S. Department of Agriculture; Washington, D.C. 20250; telephone (202) 447–3684.

Done at Washington, D.C., this 9th day of April 1984.

Barbara L. Fontana,

Executive Secretary.

[FR Doc. 84–10982 Filed 4–23–84; 8:45 am]
BILLING CODE 3410–MT–M

Forest Service

Review of Anadromous Fish Habitat as Required by Alaska National Interest Lands Conservation Act

AGENCY: Forest Service, USDA.
ACTION: Notice of completion of review.

SUMMARY: The Alaska National Interest Lands Conservation Act requires the Secretary of Agriculture to review existing laws and regulations to determine if they are adequate to ". . . maintain the habitats, to the maximum extent feasible, of anadromous fish and other foodfish, and to maintain the present and continued productivity of such habitat when such habitats are affected by mining activities on National Forest lands in Alaska." This review is now completed, and it has been determined that existing laws and regulations are adequate to maintain anadromous fish habitats on National Forest lands in Alaska.

FOR FURTHER INFORMATION CONTACT: John A. Sandor, Regional Forester, Alaska Region, Federal Office Bldg., Box 1628 Juneau, AK 99802.

SUPPLEMENTARY INFORMATION: As the Secretary's designated representative, the Regional Forester for the Alaska Region established a team comprised of representatives from the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources; the Department of Commerce (National Marine Fisheries Service); the Department of the Interior (Bureau of Indian Affairs and U.S. Fish and Wildlife Service); the U.S. Army Corps of Engineers; and the U.S. Environmental Protection Agency to examine existing State and Federal Laws, regulations, and Forest Service Regional and Forest management plan requirements. Based upon the team's findings, the Assistant Secretary of Agriculture for Natural Resources and Environment has concluded that existing regulations are adequate to maintain the habitats, to the maximum extent feasible, of anadromous fish and other foodfish, and to maintain the present and continued productivity of such habitat when such habitats are affected by mining activities on National Forest lands in Alaska.

A copy of the team's report is available at the address listed above.

Dated: April 17, 1984.

R. Max Peterson,

Chief.

[FR Doc. 84–10986 Filed 4–23–84; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will meet on May 29, 1984, from 2:00 p.m. unitl 10:00 p.m., with a recess from 6:00 p.m. to 8:00 p.m., at the Hotel Waterside (formerly Holiday Inn-Scope), 1700 Monticello Avenue, Norfolk, Virginia 23510. The purpose of the meeting is to review the status of the Committee's reports to the U.S. Commission on Civil Rights and develop plans for activities during the remainder of the year.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Curtis W. Harris, at (804) 458–7404 or the Mid-Atlantic Regional Office at (202) 264–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 19, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-11014 Filed 4-23-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Litharge, Red Lead, and Lead Stabilizers From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on litharge, red lead, and lead stabilizers from Mexico. The review covers the period July 1, 1982 through December 31, 1982. As a result of the review, the Department has preliminarily determined the net bounty or grant to be 9.65 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 54847) a countervailing duty order on litharge, red lead, and lead stabilizers from Mexico and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican litharge, red lead, and lead stabilizers, which include lead compounds "not specifically provided for" ("NSPF") and pigments containing lead NSPF. Such merchandise is curently classifiable under the following items of the Tariff Schedules of the United States Annotated: litharge, 473.5200; red lead, 473.5600; lead compounds NSPF, 419.0400; and pigments containing lead NSPF, 473.9000.

The review covers the period July 1, 1982 through December 31, 1982 and two programs: (1) Preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX"), and (2) preferential financing under article 94 of the Banking Law. The review also covers seven additional programs that we preliminarily find not to confer bounties or grants on exports of Mexican litharge, red lead, and lead stabilizers.

Analysis of Programs

(1) *FOMEX. Loans to Exporters.* The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust fund of the Mexican Treasury Department. For the period of review, the Banco de Mexico acted as trustee for the program. On August 1, 1983, the trustee became the National Bank of Foreign Trade. The trustee, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters of litharge, red lead, and lead stabilizers for two purposes: pre-export (production) financing and export financing. We consider both export and pre-export FOMEX loans to be export bounties or grants since they are given only on merchandise destined for export. We found that the maximum annual interest rate that financial institutions may charge borrowers for FOMEX pre-export financing, denominated in Mexican pesos, is 8 percent. The maximum annual interest rate for FOMEX export financing, denominated in the currency of the importing country, is 6 percent.

We used as benchmarks for the commercial interest rate in Mexico a national average commercial rate for comparable short-term peso- or dollar-denominated loans during the review period. For peso-denominated loans, we used the average of the "Costo Porcentual Promedio de Captacion ("CPP"), " which represents the average cost of money to Mexican banks. Based on information provided to us by banks operating in Mexico, we added to the average CPP 10 percentage points to arrive at an average national, short-term commercial rate. The CPP has been published monthly in the Government of Mexico's *Diario Oficial* since October 1981. Based on all information now available, we believe the CPP-based rate is a more accurate reflection of the average short-term commercial interest rate than the annual rate reported in the Banco de Mexico's *Indicadores Economicos,* which we previously used. For dollar-denominated loans, we used the average short-term interest rate during the review period, obtained from the U.S. Federal Reserve Board. Based on this information, we preliminarily determine that during the latter half of 1982 comparable peso-denominated loans were available commercially at 55.86 percent, and comparable dollar-denominated loans were available at 14.92 percent. Using the actual rates on the preferential loans, the resulting weight-averaged interest differentials during the review period are 47.99 percent for peso-denominated loans, and 9.66 percent for dollar-denominated loans. The Government of Mexico was able to identify the proportion of total FOMEX loans applicable to exports for the United States. However, since the two known exporters, Pigmentos y Oxidos, S.A. ("PYOSA") and Productos Industriales de Plomo, S.A. ("PIPSA"), applied for and received both pre-export and export loans based on total worldwide sales, and not on specific U.S. sales, we allocated the benefit from these lending programs over the value of worldwide exports during the period of review.

On this basis, we preliminarily determined the amount of net bounty or grant from FOMEX pre-export loans to be 1.69 percent, and from FOMEX export loans to be 2.56 percent, for a total net bounty or grant during the review period of 4.25 percent *ad valorem.*

Loans to Importers. The petitioner, Hammond Lead, Inc., has alleged that U.S. importers of Mexican litharge and red lead are eligible to receive preferential export financing from FOMEX. The allegation states that loans are available for 100 percent of the f.o.b. invoice price of the exports at below-market rates, for a term of up to one year.

The FOMEX regulations indicate that the National Bank of Foreign Trade may provide credit either to the exporter or to the importer. However, importers cannot obtain financing on the same shipments that served as the bais for FOMEX loans granted to the exporters. The National Bank of Foreign Trade certified that no FOMEX loans were granted to U.S. clients of either of the two known exporters, PYOSA or PIPSA, during the period of review.

On this basis, we preliminarily determine that no net bounty or grant from FOMEX export loans to U.S.

importers exists during the period of review.

(2) *Article 94 Loans.* The Banco de Mexico, in accordance with banking law and the monetary and credit policies of the Ministry of Treasury and Public Credit (S.H.C.P.), determines the percentage of liabilities held at credit institutions that must be deposited at the Banco de Mexico and invested in other types of assets. Section 2 of article 94 of the General Law of Credit Institutions and Auxiliary Organizations (the "Banking Law") establishes that up to 25 percent of a bank's total assets be funneled into specially designated sectors of economic activity. For loans granted in either pesos or foreign currency under section 2, below-market interest rates are available.

In circular 1842/79, the Banco de Mexico established 12 categories of industries that are eligible to obtain financing under section 2 of article 94. Most categories carry their own maximum interest rates, set by the Banco de Mexico. Category 12 consists only of exports of manufactured products, and carries a *maximum* interest rate of 8 percent, which is below the comparable commercial rate. Some of the remaining 11 categories bear *maximum* rates above 8 percent, but still below the comparable commercial rate. However, they are available to a broad spectrum of industries and therefore, are generally available. Producers of litharge and red lead are eligible to obtain financing under category 5 and category 12.

Since we verified that one exporter of litharge and red lead, PIPSA, received article 94 financing at 8 percent and could not differentiate its loans under category 5 and category 12, we preliminarily determine that the exporter received those loans under category 12, rather than under category 5. We preliminarily determine that financing obtained at the preferential interest rate under category 12 of section 2 of article 94 of the Banking Law constitutes an export bounty or grant.

To calculate the benefit from these loans, we used as benchmark rates the same average commercial interest rates as for FOMEX loans. The resulting weight-averaged interest differentials for article 94 loans during the review period are 47.86 percent for peso-denominated loans and 9.79 percent for dollar-denominated loans.

Since article 94 loans are based on shipments to individual countries, we calculated the amount of financing that PIPSA received under this program on its exports to the United States during the period of review and allocated this amount over the value of total Mexican exports of the merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from article 94 loans to be 5.40 percent *ad valorem.*

On April 1, 1983, the Banco de Mexico set the maximum interest rate on category 12 loans, which by this time were available only in pesos, at the prevailing CPP rate minus 5 percentage points. To calculate the potential benefit for purposes of cash deposit of estimated countervailing duties, we used as the benchmark rate the average CPP rate plus 10 percentage points. The resulting interest differential is 15 percent points. Therefore, assuming the same level of financing, we preliminarily determine that the potential net bounty or grant attributable to article 94 preferential financing is 1.70 percent *ad valorem.*

(3) *Boletin Price for Lead.* The petitioner has alleged that Mexican producers of litharge and red lead are supplied lead at an artificially established "Boletin" price that is below the U.S. lead price.

The Mexican Mining Chamber establishes the domestic sales price for lead in Mexico and publishes it weekly in a business journal entitled the "Boletin Financiero," hence the name "Boletin" price. The Mining Chamber sets the prie at the end of each week, when Mexico's two lead refineries report the weighted-average price of the previous week's sales of Mexican refined lead in export markets, notably in the United States and on the London Metal Exchange. To arrive at the Boletin price, the Mining Chamber subtracts from this price the costs incurred through exportation, such as inland freight, ocean freight, import duties, broker's fees, selling expenses, and financing costs, in effect working back to an average f.o.b. refinery price.

PYOSA and PIPSA purchased lead at the nationally established rates during the period of review. Since Mexican litharge and red lead manufacturers do not purchase lead at prices lower than those generally available to other Mexican manufacturers (of such products as paints, dyes, batteries, solder, and munitions), we preliminarily determine that the Boletin price mechanism does not constitute a bounty or grant within the meaning of section 771 of the Tariff Act.

(4) *Other Programs.* We also examined the following programs, which we preliminarily find exporters of litharge, red lead, and lead stabilizers did not use during the review period:

(1) Certificates of Fiscal Promotion ("CEPROFI").

(2) State Tax Incentives.

(3) Fund for Industrial Development ("FONEI").

(4) The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN").

(5) Import Duty Reductions and Exemptions.

(6) Tax Rebate Certificates ("CEDI").

Preliminary Results of the Review

As a result of the review, we preliminarily determine the total bounty or grant to be 9.65 percent *ad valorem* during the period of review.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of the duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of the final countervailing duty order. The Department therefore intends to instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after September 21, 1982, the date of the preliminary affirmative determination (47 FR 41607), and on or before December 5, 1982. We intend to instruct the Customs Service to assess countervailing duties of 9.65 percent of the f.o.b. invoice price on all shipments of Mexican litharge, red lead, and lead stabilizers entered, or withdrawn from warehouse, for consumption on or after December 6, 1982, and exported on or before December 31, 1982.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.95 percent of the entered value on all shipments of Mexican litharge, red lead, and lead stabilizers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the

first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 18, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-10933 Filed 4-23-84; 8:45 am]

BILLING CODE 3510-DS-M

Wool From Argentina; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On February 21, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina. The review covers the period January 1, 1983 through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 6398) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through June 30, 1983 and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3 pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be 7.15 percent for the period January 1, 1983 through June 30, 1983. The Department will instruct the Customs Service to assess countervailing duties of 7.15 percent of the f.o.b. invoice price on any shipments entered, or withdrawn from warehouse, for consumption on or after January 14, 1983 and exported on or before June 30, 1983.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 7.15 percent of the entered value on any shipment of Argentine wool entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 18, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-10932 Filed 4-23-84; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held May 30, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, N.W., Washington, D.C. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: April 19, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-10969 Filed 4-23-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit; University of California

On February 21, 1984, Notice was published in the **Federal Register** (49 FR 6399) that an application had been filed with the National Marine Fisheries Service by the Center for Marine Studies, University of California, Santa Cruz, California 95064, for a permit to collect skin biopsy samples from up to 100 live gray whales (*Eschrichtius robustus)* and an unspecified number to be potentially harassed in photo-identification studies.

Notice is hereby given that on April 13, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service, issued a permit to the Center for Marine Studies for the collection of biopsies from up to 100 gray whales and the potential harassment of an unspecified number

subject to certain conditions set forth in the Permit.

As required by the Endangered Species Act of 1973 issuance of this permit is based on a finding that such permit (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit is available for review in the following offices:

Assistant Administrator for fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 13, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-10880 Filed 4-23-84; 8:45 am]

BILLING CODE 3510-22-M

National Weather Service; Next Generation Weather Radar Joint System Program Office; Next Generation Weather Radar Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces a public hearing on a draft Programmatic Environmental Impact Statement (PEIS) regarding the proposed Next Generation Weather Radar (NEXRAD).

DATE: The hearing will be held at 11:00 a.m., Tuesday, May 22, 1984.

ADDRESS: The hearing will be held in Room 6802, Herbert Hoover Building (Main Commerce Building), 14th & Constitution Avenue, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Porter, Wx7, NEXRAD JSPO, National Weather Service, Room 323, 11420 Rockville Pike, Rockville, MD 20852 (301) 443-5950.

SUPPLEMENTARY INFORMATION: The purpose of the hearing is to solicit views of all interested and affected parties on matters concerning, among other things, the siting, design, and communications features for the proposed Next Generation Weather Radar (NEXRAD). NEXRAD is a tri-agency program jointly sponsored and funded by the Departments of Commerce, Defense, and Transportation, with the Department of Commerce assigned the leadership role by the Office of Management and Budget.

The program is structured to meet the common needs of the three participating agencies for an improved weather radar system which will support agency responsibilities to reduce losses of life and property resulting from a number of severe weather conditions. The new system is also required as a replacement for obsolete weather radar equipment which will have been in use for almost 30 years by the time the first NEXRAD operational units become available. The new NEXRAD system will use Doppler principles to improve the reliability of detection, reduce the false alarm rate, and sharply increase warning lead time for tornadoes, which are a major threat to life and property over much of the United States. It will also improve the reliability and precision of detection and warning for a number of other life threatening weather phenomena such as severe thunderstorms and flash floods.

NEXRAD radars are currently planned for installation throughout the continental United States. The identification and selection of sites for those installations is a major task requiring surveys of available and alternative sites, selection against a number of criteria, and the planning and preparation of necessary facilities at each site in coordination with the planned radar installation schedule. Contractor-conducted site surveys have begun and will extend over a nominal 4-year period. In addition to environmental impact considerations, criteria for site selection will include the following:

(a) Proximity to current or planned weather service forecast offices,

(b) Proximity to designated high priority commercial airports,

(c) Proximity to designated high value airbases,

(d) Continental U.S. area/volume coverage,

(e) Minimization of total number of radar systems required, and

(f) Limited redundant coverage in high threat tornado and hurricane areas.

Oral statements will be received. However, in order that all persons desiring to present statements have an equal opportunity to express their views, it is requested that all persons limit their oral comments to approximately ten (10) minutes. The cooperation and assistance of persons in conforming to this request will be appreciated. Written statements and exhibits will be accepted by the Department of Commerce official conducting the hearing, or they may be mailed to Mr. Porter at the above address, postmarked within ten (10) calendar days following the hearing.

Copies of the draft Programmatic Environmental Impact Statement have been sent to each state's envionmental review office and are also available for review by requesting a copy from Mr. Porter at the above address.

Dated: April 19, 1984.

John R. Porter,

Chief, Facilities, NEXRAD Joint System Program Office.

[FR Doc. 84-10913 Filed 4-23-84; 8:45 am]

BILLING CODE 3510-12-M

COMMISSION OF FINE ARTS

The Commission of Fine Arts; Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, May 16, 1984 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of deisgn referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C., April 17, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84-10954 Filed 4-23-84; 8:45 am]

BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; Meeting

This to to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, D.C., headquarters located at Room 532, 2033 K Street, NW., Washington, D.C. 20581, on May 8, 1984, beginning at 9:00

a.m. and lasting until 5:00 p.m. The agenda will consist of a discussion of:

Opening Statement: Commissioner Fowler C. West

I. Commission's State Liaison Unit: Goals of the unit, Recent Cooperative Cases Brought, Information Sharing, Federal and State Cooperation, Commodity Law Violators Manual

II. NFA—State Liaison, Audit Function and Education: Description of Activities, Problems Observed

III. Commission's Leverage Regulations: New Regulations, Problem Areas: CFTC-State

IV. Model Statutes: New York Statutes, Florida Boiler Room Statute, NASAA Model Statute, Other possible state statutes

V. Public Statements and General Discussion

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee are more fully set forth in the Federal Register issue of April 23, 1984.

The meeting is open to the public. The Co-Chairman of the Advisory Committee, Kenneth M. Raisler, the General Counsel, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee c/o Mr. Raisler, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Raisler in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on April 19, 1984.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-11017 Filed 4-23-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Manning a Ready Force Subpanel; Meeting Change

The following changes have occurred for the meeting of the Manning a Ready Force Subpanel for the Army Science Board 1984 Summer Study on Leading and Manning Army 21, which was originally announced in the **Federal Register** issue of Thursday, 19 April 1984 (49 FR 15600), FR Doc No. 84-10565:

Meeting Dates: Wednesday & Thursday, 9 & 10 May 1984 (instead of Thursday & Friday, 10 & 11 May 1984).

Meeting Locations: 9 May 1984, 0830-1700 hrs, at the Pentagon, Washington, DC; 10 May 1984, 0830-1200 hrs, at Fort Meade, Maryland; 10 May 1984, 1300-1700 hrs, at the Pentagon (instead of just at the Pentagon).

Agenda: Briefings and discussions of Quality of Life and Community of Life Programs at Fort Meade Headquarters have been added to the agenda.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-10905 Filed 4-19-84; 11:12 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting Change

The following changes have occurred for the meeting of the Leadership Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21, which was originally announced in the **Federal Register** issue of Friday, April 6, 1984 (49 FR 13737), FR Doc No. 84-9191:

Meeting Dates: Monday & Tuesday, 21 & 22 May 1984 (instead of Monday-Wednesday, 30 April thru 2 May 1984).

Meeting Locations: 21 May at Fort Hood, Texas; 22 May at Fort Bliss, Texas.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-10906 Filed 4-19-84; 11:11 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: Tuesday, 15 May 1984.

Times: 0830-1700 hours (Closed).

Place: U.S. Army Intelligence and Security Command, Arlington Hall Station, Arlington, Virginia.

Agenda

The Personnel Factors in Weapon System Performance Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet for classified briefings and discussions on the following: (1) What means does the Army have to better integrate human capabilities considerations into new systems design and P^{3}I efforts, and what needs to be done to make human considerations a key factor in concept development and system design? (2) What is the effectiveness of methods the Army uses to assess mental and physical processes/capacities which leverage weapon systems and unit performance? Are specific human capabilities required to obtain planned hardware performance? Which methodologies result in high individual and high group performance? Specific weapons systems will be discussed. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-10907 Filed 4-23-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Friday, 11 May 1984.

Time: 0830-1700 hours (Closed).

Place: Lockheed Missiles & Space Co., Inc., Sunnyvale, California.

Agenda

The Discrimination Subpanel of the Army Science Board Ballistic Missile Defense Follow-On Ad Hock Subgroup will meet for classified briefings and discussions on data pertaining to BMD tests and analyses. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-10908 Filed 4-23-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 25, 1981, an arbitration panel rendered a decision in the matter of the Department of Rehabilitation, State Licnsing Agency of the State of California vs United States Postal Service. This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d–1(b), upon receipt of a complaint filed by the Department of Rehabilitation of the State of California on June 5, 1980. Under this section of the Act, a State licensing agency which determines that a Federal property managing agency is failing to comply with the Act or implementing regulations may request the Secretary to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: Director, Division for Blind and Visually Impaired, Rehabilitiation Services Administration, Department of Education, 400 Maryland Avenue, SW., Room 3216, Mary E. Switzer Building, Washington, D.C. 20202, Area Code (202) 732–1316 or TTY (202) 732–1298. The full text of the arbitration panel decision can be obtained from this office.

Dated: April 19, 1984.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Arbitration Panel Decision

The Department of Rehabilitation, State licensing agency of the State of California, filed a complaint with the then Department of Health, Education, and Welfare against the United States Postal Service concerning compliance with 20 U.S.C. Section 107d–3 of the Randolph-Sheppard Act, as amended, which specifies the manner in which income from vending machines on Federal property is to be shared with the blind vendor on the premises or the State licensing agency. The complainant pursued the grievance consistent with the Randolph-Sheppard Act's procedures applicable to arbitrations and with Departmental interim policies and procedures.

The issue before the arbitration panel was whether the so-called "break-even" policy of the Postal Service, as it pertained to certain vended cafeterias and lunchrooms, violated the income sharing provisions of the statute. The break-even policy at issue was set forth in Postal Service Food Service regulations and read as follows:

"Manual cafeteria operations and/or associated vending machines that are established for this purpose shall be operated on a break-even basis in order to provide employees wholesome food at the lowest practicable cost. Funds generated by such operations shall not be turned over to employee social and recreational committees, but shall be redistributed to lunchroom patrons through reduced food costs for items sold or vended."

The Postal Service argued that the Act contains no express provision requiring the production of vending machine income or the management of Federal agency vending as a business with a profit making motive.

The Department of Rehabilitation argued that there is implicit in the Act the contemplation of Congress that income would be generated and therefore that the break-even policy frustrates Congressional intent by eliminating the possibility of generating income.

The Panel concluded, one member dissenting, that the break-even policy is inconsistent with the intent of the Act when applied to fully vended facilities, but that it is not unreasonable for the Postal Service to apply its policy to partly manual and partly vended cafeterias. In reaching its conclusion, the Panel relied in part on legislative history which suggested to the Panel that Congress was concerned with the distribution of income from vending machines to the blind as well as with increasing job opportunities for the blind. Since the three vending facilities involved in the present case were wholly vended, the Panel concluded that with respect to them, the Postal Service's policy was violative of the Act.

The Panel made its award prospectively and denied the request of the Department of Rehabilitation for a money award of damages.

The arbitration panel decision does not necessarily represent the views of the Department of Education.

[FR Doc. 84–11015 Filed 4–23–84; 8:45 am]

BILLING CODE 4000–01–M

Office of the Assistant Secretary for Special Education and Rehabilitative Services

Discretionary Grant Programs Under the Rehabilitation Act of 1973, as Amended; Application Notices Establishing Closing Dates for Transmittal of Fiscal Year 1984 Applications; Correction

AGENCY: Department of Education.

ACTION: Correction—Discretionary Grant Programs Under the Rehabilitation Act of 1973, as amended; Application Notices Establishing Closing Dates for Transmittal of Fiscal Year 1984 Applications.

SUMMARY: On January 30, 1984 an application notice establishing closing dates for transmittal of applications for certain discretionary grant programs under the Rehabilitation Act of 1973 was published at 49 FR 3681–3684.

On page 3683 of the notice, first and second columns, the application notice for Client Assistance Projects (CFDA Number 84.128F) is withdrawn.

New legislation for this program was enacted February 22, 1984. As a result of this legislation, the program has been changed from a discretionary grant program to a formula grant program. Proposed regulations governing this new program will be published in the near future.

Dated: April 19, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84–11018 Filed 4–23–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–84–009]

OFP Case No. 61049–9246–20–24

Powerplant and Industrial Fuel Use Exemption Application; Bayou Cogeneration Plant for a Proposed Facility in Pasadena, Texas

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Bayou Cogeneration Plant for a Proposed Facility in Pasadena, Texas.

SUMMARY: On March 5, 1984, the Bayou Cogeneration Plant (Bayou) filed a petition with the Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) ("FUA" or "the Act") for its propsed electric powerplant in Pasadena, Texas. Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is a 302.12 net megawatt (MW) cogeneration facility designed to produce electricity and process steam at the petitioner's plant in Pasadena, Texas. Natural gas will be the sole fuel utilized; there will be no emergency standby fuel.

It is expected that more than 50 percent of the net annual electric power generation of the petitioner's turbine generators will be sold to the Houston Lighting and Power Company (HLP), making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR § 500.2.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 8, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-009, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Docket No. ERA-FC-84-009 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Idependence Avenue, S.W., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: The petitioner proposes to construct and operate a cogeneration facility in Pasadena, Harris County, Texas. The system will consist of four (4) gas turbine generators coupled to four (4) supplementary fired heat recovery steam generators. The combustion gas turbines will produce the necessary hot gases for the heat recovery steam generators which are supplementally fired with natural gas. At design conditions, the energy output of the facility will be as follows: electric power from the gas turbine driven generators will be 302.12 net megawatts (MW); process steam for industrial use will be 1,249,600 pounds per hour at 800 psig and 1,369 net Btu's per pound, and 130,000 pounds per hour at 175 psig and 1,196.3 net Btu's per pound.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electrtic generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permament cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Bayou has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed powerplant, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Bayou has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Bayou is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on April 16, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-10921 Filed 4-23-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-008]

OFP Case No. 63024-9244-21-24

Powerplant and Industrial Fuel Use Exemption Application; Greenleaf Power Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Greenleaf Power Corporation for a Proposed Facility in Sutter County, California.

SUMMARY: On February 15, 1984, Greenleaf Power Corporation (Greenleaf) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for its proposed electric powerplant in Sutter County, California. Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is a 49.5 megawatt (MW) cogeneration facility designed to produce electricity and useful thermal energy at the petitioner's plant in Sutter County, California. Natural gas will be the sole fuel utilized.

It is expected that more than 50 percent of the net annual electric power generation of the petitioner's turbine generators will be sold to the Pacific Gas & Electric Company (PG&E), making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 8, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-009, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-008 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:
Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration 1000 Independence Avenue, SW., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730
Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: The petitioner proposes to construct and operate a 49.5 megawatt (MW) cogeneration facility in Sutter County, California. The project includes a gas trubine generator, an associated natural circulation duct-fired heat recovery steam generator, a condensing steam turbine-generator set, and a system for using thermal energy to benefit local agriculture. The thermal energy will be used in either a wood chip dryer or an irrigation water warming service; only one of these options will be constructed at the proposed site.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of 503.37(a)(1), greenleaf has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed powerplant, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), Greenleaf has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR § 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Greenleaf is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on April 16, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-10923 Filed 4-23-84; 8:45 am]
BILLING CODE 6450-01-M

Remedial Orders and Proposed Order of Disallowance To Atlantic Richfield Company

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Issuance of Proposed Remedial Orders and Proposed Order of Disallowance to Atlantic Richfield Company and Notice of Opportunity for Objection.

I. Introduction

Atlantic Richfield Company ("Atlantic"), 515 South Flower Street, Los Angeles, California 90051, is a major refiner engaged in the production and the refining of crude oil and the marketing of petroleum products. Atlantic was therefore subject to the Mandatory Petroleum Price and Allocation Regulations ("Regulations") which were in effect through Janauary 28, 1981.

During all or part of the period between September 1973 and January 1981 (the audit period), Atlantic owned and operated refineries in Houston, Texas; Carson, California; Philadelphia, Pennsylvania; Cherry Point, Washington; Chicago, Illinois; and Prudhoe Bay, Alaska. During the same period, Atlantic marketed refined petroleum products, principally in the northeastern and far western United States. The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") conducted an audit of Atlantic and determined that the firm violated the Regulations.

Pursuant to 10 CFR 205.192(c), ERA hereby gives notice that ERA issued the Proposed Remedial Orders ("PRO's") and the Proposed Order of Disallowance ("POD") described below to Atlantic on September 30, 1983, and November 30, 1983, respectively. ERA hereby gives notice of an opportunity for objection thereto. In accordance with 10 CFR 205.192(c), a copy of the PRO's and POD with confidential information deleted may be obtained from the DOE. ERA discusses below the proposed orders for which notice of issuance is hereby given, and also discusses, as pertinent, remedial portions of proposed orders previously issued.

II. Issuance of Proposed Remedial Orders and Proposed Order of Disallowance

1. Proposed Remedial Order No. NARP00101

This PRO alleges that Atlantic charged prices in excess of the ceiling prices permitted in first sales of domestically produced crude oil (including condensate) from September 1973 through December 1976. Atlantic's erroneous computation of condensate prices during this audit period resulted in total overcharges of not less than $252,091.00.

As a remedy, the PRO directs Atlantic to refund $252,091.00 plus interest and to refund overcharges plus interest for other unaudited properties and for other unaudited time periods.

2. Proposed Remedial Order No. RARM00101

This PRO charges Atlantic with unlawfully imposing greater incremental price increases on premium and special diesel fuels than it imposed in its regular grade diesel fuels from December 1973 through March 1975. As a result of Atlantic's improper treatment of premium and special diesel fuels, Atlantic recovered approximately $6.4 million more in sales of those products than it would have had it charged the same increments applied in sales of other No. 2 oils.

As a remedy, the PRO directs Atlantic to refund the $6.4 million plus interest and to recompute its costs and recoveries for No. 2 oils and for General Refinery Products from August 1973 through July 1976. In the alternative, the PRO directs Atlantic to recalculate its costs and recoveries, to deem recoveries on all purchases of No. 2 oils at the highest increment charged to purchasers of premium and special diesel fuels, and to refund any overcharges generated as a result of this recalculation.

3. Proposed Remedial Order No. RARH00201

ERA charges Atlantic with improperly including volumes and costs associated with cargoes of crude oil that were in-transit at the end of a month of measurement but which Atlantic did not intend to refine, in its "A" factor calculation of the total cost and quantity of crude oil purchased in that month of measurement. The PRO determined that Atlantic's conduct resulted in an overstatement of increased costs available for recovery of $14,283,772 for the August 1973 through December 1976 months of measurement, and in further cost overstatements for months of measurement from January 1977 through December 1978.

As a remedy for the violation, the PRO directs that Atlantic recompute the amount of increased crude costs by excluding the costs and volumes of all imported crude oil which it did not ultimately refine, and to use the recomputed costs in all future refilings and in all calculations of Atlantic's refund liability.

4. Proposed Remedial Order No. RARL00202

This PRO charges Atlantic with overstating the amount of refinery operating non-product costs allocable to gasoline from March 1979 through January 1981. ERA's audit revealed that Atlantic employed a non-product cost factor based on its net volumes of gasoline after adjustments for exchanges. By including exchange volumes in its calculation of the "U" factor, Atlantic overstated the increased costs allocable to gasoline by approximately $10 million and understated the costs allocable to the General Refinery Products ("GRP") category by approximately $300,000.

As a remedy, the PRO directs Atlantic to employ properly calculated "U" factors in recalculating costs, in all future refilings, and in all calculations of Atlantic's refund liability.

5. Proposed Remedial Order No. RARH00203

This PRO charges Atlantic with improperly including imputed intra-firm interest for marine vessels in its calculations of increased crude costs. As a result of this violation, Atlantic Improperly claimed "indirect interest" of $20,175,413 as increased costs for the months of measurement December 1976 through December 1980.

As a remedy for the violation, the PRO directs Atlantic to recompute its crude costs reported for the months of measurement from December 1976 through December 1980 in order to exclude all amounts of "indirect interest" attributed to certain marine vessels, and to use the recomputed costs in all future refilings, and in all calculations of Atlantic's refund liability.

6. Proposed Remedial Order No. RARH00204

This PRO charges Atlantic with improperly including in the total amount of increased costs it reported as available for recovery through sales of gasoline, a larger percentage of crude oil and non-product costs than allowed by application of the "R" factor. The additional amounts reported had previously been attributed to exempt products by application of the "R" factor. The PRO also alleges that Atlantic improperly included amounts of increased costs which it attributed to (1) purchases of exempt products and (2) the cost of marketing exempt products. Atlantic's inclusion of these amounts totalled $278.5 million for the period March 1979 through January 28, 1981.

As a remedy for these violations, ERA proposes that Atlantic be order to recompute the amounts of crude costs, marketing costs, and other non-product costs available for recovery which were attributable to sales of motor gasoline

during the months of measurement from March 1979 through December 1980 by excluding the amount attributable to exempt products. The PRO further provides that the recomputed costs shall be used in all future refilings and in all calculations of Atlantic's refund liability.

7. Proposed Remedial Order No. RARH00205

This PRO charges Atlantic with charging prices for propane from October 1980 through January 1981 which resulted in the recoupment of more than the amount of increased costs actually incurred and attributed to the GRP category for those months. The PRO alleges that Atlantic improperly recouped $21.4 million based upon Atlantic's latest properly filed refiner cost allocation reports.

As a remedy for this violation, the PRO directs Atlantic to calculate the overcharge per unit of propane sold and to remit refunds with interest to be disposed of as determined by DOE. The amount ultimately to be refunded may be affected substantially by decisions reached in other pending proceedings.

8. Proposed Remedial Order No. RARB00307

This PRO charges Atlantic with assigning improper and excessive May 15, 1973 selling prices to certain wholesale commercial and industrial level end-user customers and thereby calculating excessive sales prices during the period of price controls from August 1973 to January 1981.

As a remedy, the PRO directs Atlantic to use its computerized record systems to identify reasonable classes of purchaser for industrial and consumer customers, to determine correct May 15, 1973 selling prices for those classes, to assign customers to the appropriate classes, to identify the instances in which a customer was assigned an excessive price, and finally, to calculate and to refund to identified customers the differences between the prices charged and those that would have been charged if Atlantic had established and assigned May 15 prices in accordance with the Regulations. In the alternative, the PRO directs Atlantic to recompute its recoveries to include deemed recoveries under the equal application rule, to refile its cost reports, and to remit refunds of overcharges with interest to DOE. The PRO provides that DOE shall determine the appropriate disposition of the refunds.

9. Proposed Order of Disallowance No. RARH01893

In 1979, Atlantic reported transactions between affiliated entities in which it imported crude oil originating from countries where it lifted equity crude oil or received crude oil on a preferential basis, or imported crude oil received in exchange for such crude oil. Costs claimed in these transactions are subject to disallowance where Atlantic's weighted average (by volume) costs of all crude oil of the same type exceed the DOE's maximum price for that type of crude in the month of measurement. As a result of ERA's audit, ERA determined that Atlantic overstated its costs by $3,524,127.75.

As a remedy for this violation, the POD states that Atlantic's landed costs should be disallowed by amounts which exceed DOE's representative prices in the months in which the costs were incurred and that Atlantic should use the recalculated costs in all future refilings and in all calculations of its refund liability.

III. Discussion of Remedies

With the publication of this Notice, ERA is engaged in administrative litigation with Atlantic with respect to the following Proposed Remedial Orders and Proposed Orders of Disallowance which allege violations of the Regulations:

1. PRO No. NARP00101 (identified above)
2. PRO No. RARM00101 (identified above)
3. PRO No. RARH00201 (identified above)
4. PRO No. RARL00202 (identified above)
5. PRO No. RARH00203 (identified above)
6. PRO No. RARH00204 (identified above)
7. PRO No. RARH00205 (identified above)
8. PRO No. RARB00307 (identified above)
9. POD No. RARH01893 (identified above)
10. PRO No. RARH00104 (Office of Hearings and Appeals ("OHA") Case No. BRO–1247) (Federal Energy Regulatory Commission ("FERC") No. RO–83–15–000)
11. PRO No. RARL00201 (OHA Case No. HRO–0027)
12. PRO No. RARH00202 (OHA Case No. BRO–1322)
13. PRO No. RARM01401 (OHA Case No. BRO–0293) (FERC No. RO–84–1–000)
14. POD No. RARH01891 (OHA Case No. BRO–1243)
15. PRO No. RARH01980 (OHA Case No. BRO–1452)

As a remedy for the violations alleged in the cost-related cases (ERA Case Nos. RARH00201, RARL00202, RARH00203, RARH00204, and RARH01893, and previously issued cases RARH00104, RARL00201, RARH00202, RARM01401, RARH01891, and RARH01980), the proposed orders generally direct Atlantic to submit corrected calculations of its costs, to refile its cost reports, to submit a plan for refunding any improper cost overrecoveries, to remit refunds with interest, and to employ the cost recalculations in all future refilings and in all calculations of Atlantic's refund liability. ERA recognizes that the total amount of Atlantic's refund liability as a result of this administrative litigation cannot be finally determined until all of the cost-related cases are decided. It is likely that the final amount of refund due will be less than the total amounts of costs which were alleged to be excessive in the proposed orders. The new proposed orders provide that other remedial actions necessary to eliminate or to compensate for the violations may be the subject of a supplemental order by the Office of Hearings and Appeals, establishing one set of procedures for recalculating costs and for handling refunds for all these enforcement actions even though cost recalculations and other remedies have been requested in each separate case.

In ERA Case No. RARM00101, which concerns the imposition of greater price increases on certain specialty diesel fuels than imposed on other No. 2 oils, and ERA Case No. RARB00307, which involves the assignment of improper May 15, 1973, selling prices for certain classes of purchaser, ERA has recommended that Atlantic make direct refunds of the amounts representing the recovery and price adjustments necessitated because of Atlantic's violations. Refunds were recommended because the violations alleged in these actions directly affected specific customer groups. In these two cases, Atlantic would be ordered to refund these amounts in addition to any overcharge amounts calculated as a result of the cost-related cases. In Case No. RARM00101, the PRO requires Atlantic to transmit the refund amounts to DOE, and states that DOE shall determine the appropriate disposition of the funds. In Case No. RARB00307, the PRO requires Atlantic to identify and to make refunds to the affected consumers.

In these cases (Case Nos. RARM00101 and RARB00307), ERA has requested in the alternative that Atlantic be ordered to recalculate recoveries and compute

overcharges after making adjustments for the alleged violations. These calculations may be part of the computation of costs and overcharges required after resolution of the other administrative proceedings described in this section. If the alternative remedies are ordered, these two cases provide that any overcharges resulting from the recalculations shall be refunded with interest to the United States Department of Energy and that DOE shall determine the appropriate disposition of the amounts paid.

In Case No. RARP00101, concerning the erroneous computation of condensate prices, and Case No. RARH00205 concerning propane overrecoveries, Atlantic would be required to refund overcharges, plus interest. The total refund liability in Case No. RARH00205 may be affected by the recalculations required in the other cost cases, as well as in Case Nos. RARM00101 and RARB00307.

IV. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all of the proposed orders described in Section II above with DOE's Office of Hearings and Appeals, within 15 days after the date of this publication. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed orders. If a Notice of Objection is not filed in accordance with Section 205.193, the proposed order may be issued as a final Remedial Order or Order of Disallowance.

The Notice must be filed, in duplicate, by 4:30 p.m. EST on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on the following person in each of the identified PRO proceedings pursuant to 10 CFR 205.193(c): George Kielman, Deputy Solicitor for Administrative Litigation, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue, SW, Room 3H-017, Washington, D.C. 20585.

No data or information which is confidential shall be included in any Notice of Objection.

Requests for copies of any of the proposed orders with confidential information deleted, should be identified by ERA Case No. and be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C. this 16th day of April 1984.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-10922 Filed 4-23-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER-84-286-000]

Centel Corporation, Western Power Division; Order Accepting for Filing and Suspending Rates in Part, Noting Interventions, Denying Request To Order Submission of Additional Data, Denying Motion for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued: April 17, 1984.

On February 17, 1984, Centel Corporation (Centel), Western Power Division, submitted for filing a proposed rate increase [1] for full requirements wholesale service to 21 customers and for transmission service to Kansas Electric Power Cooperative (KEPCO). In order to achieve the same rate of return from all of its customer classes, Centel also filed a rate decrease for partial requirements service to ten customers. Overall, the proposed rate changes would result in increased revenues to Centel of approximately $1.1 million (5.1%), based on the test year ending June 30, 1985. Centel requests an effective date of April 18, 1984.

Notice of Centel's filing was published in the **Federal Register** with comments and motions to intervene due on or before March 15, 1984 (49 FR 8064). The Kansas Municipal Group (Municipals) [2] filed a timely protest and motion to intervene. The Municipals suggest that Centel's filing is incomplete and request that Centel be directed to submit additional data. In support of their request for a five-month suspension, the Municipals allege that: (1) Increases in certain Period II operating expenses are excessive; (2) demand and energy usage projections are overstated; [3] (3) capacity reserve margins are excessive and revenue credits for off-system sales are understated; (4) transmission losses from the Jeffrey Energy Center are overstated; (5) the company's income tax allowance may be improperly calculated; (6) the requested rate of return on common equity is excessive; (7) coal-related fuel stocks are overstated; and (8) a proposed increase in depreciation accruals is unreasonable. In addition to the cost of service issues, the Municipals allege that the rates will create a price squeeze.

Centel's REA cooperative customers and the Kansas Electric Power Cooperative (collectively, KEPCO) also filed a timely protest and motion to intervene which requests a five-month suspension. KEPCO raises cost of service issues similar to those of the Municipals with regard to rate of return, demand allocation, transmission losses from the Jeffrey Energy Center, increased depreciation accruals, and revenue credits from off-system sales. KEPCO further claims that Centel's inclusion in its tax calculation of a negative deduction for previously unfunded deferred tax liability is unsupported, that Centel's rate case expense is overstated and misallocated, and that the company's O&M expense projections are inflated.

In addition, KEPCO requests summary disposition with respect to the addition to rate base of accumulated deferred income taxes related to deferred maintenance. KEPCO disputes Centel's rationale that the deferred taxes have been incurred by investors who have not yet been reimbursed by the customers. KEPCO contends that deferred taxes should be deducted from rate base, not added to it. Finally, KEPCO also alleges price squeeze.

On March 30, 1984, Centel filed an answer to KEPCO's protest and motion to intervene, disputing KEPCO's claim that Centel's proposed rates are excessive and responding to KEPCO's claim that the demand charge to KEPCO is overstated because of inconsistencies in Centel's projections of coincident peak and noncoincident peak demands.

Midwest Energy, Inc. (Midwest) filed a timely motion to intervene in which it raises no substantive issues. The

[1] *See* Attachment for affected customers and rate schedule designations.

[2] Municipals are composed of Centel's full requirements municipal customers and eight of the ten partial requirements municipal customers (Anthony, Attica, Beloit, Hoisington, Kingman, Pratt, Russell, and Washington, Kansas).

[3] KEPCO contends that the allegedly overstated demand projections are the result of inconsistencies in Centel's projections of Period II coincident peaks and noncoincident peaks for KEPCO.

proposed filing does not amend Midwest's rates, but Midwest believes that actions taken in this proceeding could affect its wholesale rates from Centel in the future.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), the timely motions to intervene make the Municipals, KEPCO, and Midwest parties to this proceeding.

With regard to the Municipals' claim that Centel's filing is incomplete, we find that Centel's submittal substantially complies with Part 35 of the Commission's regulations (18 CFR Part 35). We shall, therefore, deny the request that Centel be required at this time to provide additional cost support.

Regarding the addition to rate base of accumulated deferred income taxes related to deferred maintenance, KEPCO contends erroneously that "[b]y definition deferred taxes should be deducted from rate base and not added to it as the Company has done." Contrary to KEPCO's position, the Commission's regulations and policy require that deferred taxes be either deducted from or added to rate base as appropriate. Our review indicates that the amount in question relates to Account 190 of the Uniform System of Accounts. Since section 35.25 of the Commission's regulations (18 CFR § 35.25) mandates that deferred tax balances in Account 190 be treated as an addition to rate base, we shall deny KEPCO's request for summary disposition.

Our preliminary review of the instant filing and the pleadings indicates that the rates proposed by Centel have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Centel's proposed rates for filing and suspend the rate increases as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable and may yield substantially excessive revenues, as defined in *West Texas*, we will generally suspend the rates for a period of five months. Our review in this docket indicates that the proposed rates for firm transmission service may not yield substantially excessive revenues. However, our review also suggests that the proposed rates for full requirements service may be substantially excessive. Accordingly, we shall suspend the rates for firm transmission service for one day, to become effective, subject to refund, on April 19, 1984. We shall suspend the proposed rates for full requirements service for five months, to become effective, subject to refund, on September 18, 1984. Inasmuch as Centel's proposed rates for partial requirements service represent a reduction from the current rate level, we shall permit those rates to take effect, without suspension, on April 18, 1984, as requested.[4] In the event that the investigation in this docket reveals that the partial requirements rates are unreasonable, despite the decrease, any change in those particular rates shall become effective prospectively from the date of a final Commission order.

In light of the price squeeze allegations raised by the Municipals and KEPCO, we shall phase that issue in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339, 8 FERC ¶ 61,131 (1979).

The Commission orders

(A) The Municipals' request that the Commission require Centel to submit additional data is hereby denied.

(B) KEPCO's motion for summary disposition is hereby denied.

(C) Centel's proposed rates are hereby accepted for filing. The rates applicable to transmission service are suspended for one day, to become effective, subject to refund, on April 19, 1984; the rates for full requirements service are suspended for five months, to become effective, subject to refund, on September 18, 1984; the proposed decrease in partial requirements rates snall become effective on April 18, 1984, with any Commission-ordered change to be prospective only.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Centel's rates.

(E) The Commission staff shall serve top sheets in this proceeding on or before April 27, 1984.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiative of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[4] Where our analysis indicates significant differences in excess revenues we consider the classes independently for suspension purposes. *See, West Texas Utilities*, 26 FERC ¶ 61,041, 61,138 (1984).

CENTEL.—RATE SCHEDULE DESIGNATIONS; DOCKET NO. ER84-286-000

[Filed: February 17, 1984]

Other party and designation	Supersedes supplement No.
I Municipal Wholesale Customers Rate 84-MWh-5	
1. Cawker City — Supplement No. 10 to Rate Schedule FERC No. 87	9
2. Cimarron Supplement No. 3 to Rate Schedule FERC No. 109	2
3. Coats Supplement No. 10 to Rate Schedule FERC No. 88	9
4. Glasco Supplement No. 10 to Rate Schedule FERC No. 97	9
5. Glen Elder Supplement No. 10 to Rate Schedule FERC No. 89	9
6. Holyrood Supplement No. 10 to Rate Schedule FERC No. 90	9
7. Isabel Supplement No. 10 to Rate Schedule FERC No. 91	9
8. Lucas Supplement No. 10 to Rate Schedule FERC No. 93	9
9. Luray Supplement No. 10 to Rate Schedule FERC No. 111	2
10. Mankato Supplement No. 10 to Rate Schedule FERC No. 95	9
11. Montezuma	

CENTEL—RATE SCHEDULE DESIGNATIONS; DOCKET NO. ER84-286-000—Continued

[Filed: February 17, 1984]

Other party and designation	Supersedes supplement No.
Supplement No. 10 to Rate Schedule FERC No. 110	2
II Interconnected Municipal Wholesale Rate 84-A-1	
1. Anthony	
Supplement No. 22 to Rate Schedule FPC No. 59	21
2. Attica	
Supplement No. 19 to Rate Schedule FPC No. 84	18
3. Beloit	
Supplement No. 20 to Rate Schedule FPC No. 60	19
4. Hoisington	
Supplement No. 22 to Rate Schedule FPC No. 57	21
5. Kingman	
Supplement No. 24 to Rate Schedule FPC No. 58	23
6. Pratt	
Supplement No. 23 to Rate Schedule FPC No. 34	22
7. Russell	
Supplement No. 22 to Rate Schedule FPC No. 41	21
8. Washington	
Supplement No. 22 to Rate Schedule FPC No. 56	21
9. Osborne	
Supplement No. 15 to Rate Schedule FPC No. 86	14
10. Stockton	
Supplement No. 13 to Rate Schedule FERC No. 99	12
III Rural Electric Cooperatives Rate 84-CWh-2	
1. Ark Valley	
Supplement No. 16 to Rate Schedule FPC No. 74	15
2. C.M.S.	
Supplement No. 20 to Rate Schedule FPC No. 75	19
3. C&W	
Supplement No. 16 to Rate Schedule FPC No. 76	15
4. Jewell—Mitchell	
Supplement No. 17 to Rate Schedule FPC No. 77	16
5. N.C.K.	
Supplement No. 17 to Rate Schedule FPC No. 78	16
6. Ninnescah	
Supplement No. 16 to Rate Schedule FPC No. 79	15
7. Norton—Decatur	
Supplement No. 15 to Rate Schedule FPC No. 80	14
8. Smoky Hill	
Supplement No. 16 to Rate Schedule FPC No. 81	15
9. Summer—Cowley	
Supplement No. 16 to Rate Schedule FPC No. 81	15
10. Victory	
No. 17 to Rate Schedule FPC No. 83	15
IV Off-Peak Service Rate 84-D	
1. Anthony	
Supplement No. 23 to Rate Schedule FPC No. 59	19
2. Attica	
Supplement No. 20 to Rate Schedule FPC No. 84	16
3. Beloit	
Supplement No. 21 to Rate Schedule FPC No. 60	17
4. Hoisington	
Supplement No. 23 to Rate Schedule FPC No. 57	19
5. Kingman	
Supplement No. 25 to Rate Schedule FPC No. 58	21
6. Pratt	
Supplement No. 24 to Rate Schedule FPC No. 34	20
7. Russell	
Supplement No. 23 to Rate Schedule FPC No. 41	19
8. Washington	
Supplement No. 23 to Rate Schedule FPC No. 56	19
9. Osborne	
Supplement No. 16 to Rate Schedule FPC No. 86	12
10. Stockton	
Supplement No. 14 to Rate Schedule FERC No. 99	10

V RATE SCHEDULE 84-TSV-1

Other party and designation	Supersedes
Kansas Electric Power Cooperative	
Rate Schedule No. 112 (Supersedes Rate Schedule FERC No. 108, as supplemented).	Transmission Service Tariff.
Supplement No. 1 to Rate Schedule FERC No. 112.	Appendix A—Form of Service Agreement.
Supplement No. 2 to Rate Schedule FERC No. 112.	Appendix B—Delivery Points.
Supplement No. 3 to Rate Schedule FERC No. 112.	Appendix C—Interconnection Points.

[FR Doc. 84-10987 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-328-000]

K N Energy, Inc.; Request Under Blanket Authorization

April 18, 1984.

Take notice that on March 30, 1984, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-328-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that K N proposes to add a sales tap in Rooks County, Kansas, at the request of Producers Gas Equities, Inc. (Producers), under the authorization issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth request on file with the Commission and open to public inspection.

K N states that it proposes to add a sales tap in the southeast quarter of Section 30, Township 9, Range 17, in Rooks County, Kansas, to permit the delivery of approximately 19 Mcf of natural gas per day. It is stated that this tap would be added to the Group A delivery points under K N's present service agreement with Producers. It is further asserted that this proposal would not change the contract demand of 12,700 Mcf per day for the Group A delivery points and that no reallocation of delivery volumes would be required.

K N states that its current sales to Producers were authorized in Docket No. CP73-224 and that the rate schedule applicable to all of the Group A delivery points is its Rate Schedule CD-1. It is indicated that the subject proposal would have no impact on K N's peak day and annual deliveries and would not affect service to any other existing customer of K N or Producers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10986 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7642-006, et al.]

Mobil Oil Corporation, et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

April 18, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are 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 applications should on or before May 7, 1984, file with the Federal Energy

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and dated filed	Applicant	Purchaser and location	Price Per 1,000 ft ³	Pressure base
G-7642-006, D, April 5, 1984	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Hugoton Field	(1)	
CI68-621-003, E, March 28, 1984	Houston Oil & Minerals Corporation (Successor-in-Interest to Tenneco Oil Company), P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Vermilion Block 250, offshore Louisiana.	(2)	14.73
CI68-816-003, April 4, 1984	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Northern Natural Gas Company, Panhandle Area, Gary County, Texas.	(3)	14.73
CI84-228-000 (CI75-83), B, February 27, 1984.	Exchange Oil & Gas Corporation, 24th Floor, 1250 Poydras Street, New Orleans, Louisiana.	Texas Gas Transmission Corporation Pas des Islettes Field, Terrebonne Parish, Louisiana.	(4)	
CI84-348-000, B, March 30, 1984	Crab Run Gas Company, 6801 Industrial Road, Springfield, Virginia 22151.	Washington Gas Light Company, Vatican Field, Lafayette Parish, Louisiana.	(5)	
CI84-349-000 (CI78-530), B, March 30, 1984.	Coastal Oil & Gas Corporation, Nine Greenway Plaza, Houston, Texas 77046.	Tennessee Gas Pipeline Company, East Calcasieu Pass Field, Cameron Parish, Louisiana.	(6)	
CI84-350-000 (G-16376), B, March 27, 1984.	McCommons Oil Company, 1100 LTV Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Inc., Boonesville Bend (Cong. Gas), Wise County, Texas.	(7)	
CI84-351-000, F, March 30, 1984	Phillips Oil Company (Successor to Phillips Petroleum Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Southern Natural Gas Company, Bastian Bay Field, Plaquemines, Louisiana.	(8)	
CI84-352-000 (CI60-554), B, April 2, 1984.	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, Texas 77380.	Valley Gas Transmission, Inc., Hinnant Field, Live Oak County, Texas.	(9)	
CI84-353-000, B, April 2, 1984	Discorbis Oil Company 1415 Alamo National Building, San Antonio, Texas 78205.	Valley Gas Transmission, Alta Mesa (1100), Duval County, Texas.	(10)	
CI84-354-000, F, April 4, 1984	Phillips Oil Company (Par. Succ. to Phillips Petroleum Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	United Gas Pipe Line Company, South Timbalier Area, offshore Lafourche, Louisiana.	(11)	15.025
CI84-355-000 (CI67-805), B, April 4, 1984.	Exchange Oil & Gas Corporation, 24th Floor, 1250 Poydras St., New Orleans, Louisiana 70112.	ANR Pipeline Company (formerly Michigan Wisconsin Pipe Line Company), Block 17 Field, West Cameron area offshore, Louisiana.	(12)	
CI84-356-000, A, April 5, 1984	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, South Timbalier Block 59, offshore Louisiana.	(13)	15.025
CI84-357-000 (G-10112), B, April 9, 1984.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Texas Eastern Transmission Corporation, West Rockport Field, Aransas County, Texas.	(14)	
CI84-358-000, A, April 9, 1984	The Superior Oil Company, Post Office Box 1521, Houston, Texas 77001.	Columbia Gas Transmission Corporation, Block 35 and 36, Vermilion Area (Block 14 Field), offshore Louisiana, Federal domain.	(15)	15.025
CI84-359-000, D, April 9, 1984	Samedan Oil Corporation, P.O. Box 909, Ardmore, Oklahoma 73402.	Natural Gas Pipeline Company of America, Putnam Field, Dewey County, Oklahoma.	(16)	
G-11046-001, D, April 6, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Tennessee Gas Pipeline Company, NE/4 of West Cameron Block 194, offshore Louisiana.	(17)	
CI63-626-000, D, April 10, 1984	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Transwestern Pipeline Company, Ball Lake Field, Lea County, New Mexico.	(18)	
CI76-595-001, D, April 9, 1984	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Tennessee Gas Pipeline Company, Bethany-Carthage Field, Panola County, Texas.	(19)	
CI67-1644-001 and CI81-355-002, E, April 6, 1984.	Phillips Oil Company, Successor In Interest to Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 28, offshore Terrebonne, Louisiana.	(20)	14.73
G-3742-000, D, April 13, 1984	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	Transcontinental Gas Pipeline Co., West Tuleta Field, Bee County, Texas.	(21)	
CI64-1380-001, E, April 11, 1984	Samson Resources Company, Successor In Interest To Shell Oil Company, Two West Second Street, Tulsa, Oklahoma 74103.	Arkansas Louisiana Gas Company, Bonanza Field, Sebastian County, Arkansas.	(22)	14.73
CI73-386-001, D, April 11, 1984	Energy Reserves Group, Inc., 217 North Water Street, P.O. Box 67201, Wichita, Kansas 67201.	Arkansas Louisiana Gas Company, Lacy Field, Kingfisher County, Oklahoma, Hugoton Anadarko Area.	(23)	
CI75-438-002 and CI79-104-002, E, April 12, 1984.	Huffco Petroleum Corporation, Successor In Interest To Columbia Gas Development Corporation and Coleva, Post Office Box 4436, Houston, Texas 77210.	Columbia Gas Transmission Corporation West Cameron Block 531, Offshore Louisiana.	(24)	14.73
CI76-595-001, D, April 9, 1984	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Tennessee Gas Pipeline Company, Bethany-Carthage Field, Panola County, Texas.	(25)	

[1] To release gas for irrigation fuel.
[2] Houston Oil & Minerals acquired the property as of December 28, 1982.
[3] Applicant is filing for additional delivery point.
[4] Depletion of reserves and expiration of leases.
[5] Reserves depleted and well has been plugged; leases have by their terms expired.
[6] Due to depletion of the reservoir, the only well that ever produced under this certificate, the E. R. Henry #1, has ceased to produce, and has been plugged and abandoned.
[7] Deliveries less than 25 mcf per day per well. No reserves. Leases have reached economic limit.
[8] Effective December 1, 1983, Phillips Petroleum Company assigned to Phillips Oil Company its interest in the LL&E #9-11, #13-14 and #17-19 wells and the Fasterling #3 and #5 wells located in Plaquemines Parish, Louisiana.
[9] Reserves depleted, all wells plugged and abandoned, all oil and gas leases have expired and reverted to lessors, contract terminated.
[10] Plugged and abandoned well for lack of production.
[11] Effective December 1, 1983, Phillips Petroleum Company assigned to Phillips Oil Company its interest in the NW/4; N/2 SW/4 of Block 27, South Timbalier Area, OCS-G1443, Offshore Lafourche Parish, Louisiana.
[12] Exchange request abandonment due to ANR's failure to take gas ratably from such field in violation of the terms of their gas purchase contract.
[13] Applicant is filing under Gas Purchase and Sales Agreement dated March 23, 1984.
[14] Cessation of production.
[15] Applicant is filing under Gas Purchase Contract dated August 20, 1980.
[16] OCS Lease No. 0193 dated November 19, 1948, covering the NE/4 of West Cameron Block 194, Offshore Louisiana expired February 20, 1982.
[17] To amend Certificate of Public Convenience and Necessity to reflect the terms of a contract amendment dated June 3, 1963, which restricted the reserve dedication to reservoirs down to and including the Devonian Formation.
[18] Leases have been terminated.
[19] Effective October 1, 1983, Phillips Petroleum Company assigned to Applicant its interest in the Ship Shoal Block 28 Field Area, Offshore Terrebonne Parish, Louisiana.
[20] Per terms of Farmout Agreement the acreage has been assigned to Mills Bennett Estate on February 20, 1984.

[32] Effective April 1, 1983, Shell Oil Company assigned its interest in certain acreage to Samson Resources Company.
[33] Leases expired under its own terms.
[34] Effective as of December 9, 1983, Coleve and Columbia Gas Development Corporation assigned their interests in certain properties to Huffco.
[35] Leases not covered by the rollover contract between Gulf and Tennessee dated February 21, 1980.
Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-10989 Filed 4-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP75-154-008]

Montana-Dakota Utilities Co.; Petition To Amend

April 18, 1984.

Take notice that on March 9, 1984, Montana-Dakota Utilities Co. (Petitioner), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP75-154-008 a petition to amend the order issued May 11, 1977,[1] in Docket No. CP75-154, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to sell natural gas to K N Energy, Inc. (K N), and to transport natural gas for the account of K N from certain new delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Petitioner and K N entered into a gas sales, transportation, and gas exchange agreement (agreement) on May 10, 1974, which provided that Petitioner would transport and exchange gas gathered by K N in the Bowdoin Field, Phillips and Valley Counties, Montana. It is further stated that pursuant to the terms of the agreement, K N delivers the Bowdoin Field production to Petitioner at either an existing delivery point at Petitioner's Saco compressor station in Valley County, Montana, or other mutually agreeable delivery points on Petitioner's gathering system. The agreement further states that Petitioner redelivers equivalent volumes to Northern Utilities, Inc. (Northern), for K N's account, at either an existing interconnection in Fremont County, Wyoming, or at the existing interconnection between the facilities of Northern and K N at K N's compressor plant, east of Casper, Wyoming, after delivery to K N by Northern for the account of Petitioner. It is asserted that the terms of the agreement were authorized by the Commission in Docket No. CP75-154.

Petitioner and K N on June 27, 1983, entered into an amendment to the agreement, which is the subject of the instant petition. Petitioner states the purpose of the amendment is to clarify the rights and obligations of the parties, to add additional delivery and redelivery points, and to reorganize the exhibits attached to the agreement so that such exhibits reflect the clarification made in the proposed amendment. Petitioner further requests authority to make sales of natural gas to K N, for resale in interstate commerce. The June 27, 1983, amendment indicates that with respect to gas designated for exchange, K N would have the option to purchase 15 percent of the volumes produced by Petitioner or its subsidiaries and 50 percent of the volumes which Petitioner purchases from non-affiliated producers. Petitioner states that K N's right to purchase volumes is virtually the same as Petitioner's option under the June 27, 1983, amendment. Petitioner avers that the proposed sales would serve to ensure an adequate supply of natural gas for K N and to reduce Petitioner's short-term deliverability surplus.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10990 Filed 4-23-84; 8:45 am]
BILLING CODE 6717-01-M

[1] This proceeding was commenced before the F.P.C. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP82-250-007]

Northwest Pipeline Corp., Petition To Amend

April 18, 1984.

Take notice that on April 6, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110-1526, filed in Docket No. CP82-250-007 a petition to amend the orders issued September 30, 1982, and May 13, 1983, in Docket No. CP82-250-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the term of the certificated transportation service presently provided for the account of Beker Industries Corp. (Beker), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest indicated that on September 2, 1983, and March 15, 1984, it requested that its certificate be amended to authorize *inter alia*, a reduction in the authorized transportation service to 3.3 billion Btu's per day.

Northwest and Beker further amended the transportation agreement dated March 9, 1982, by letter agreement dated March 27, 1984, to extend the term of the subject transportation service for an additional two years, it is explained.

Northwest requests herein that the Commission amend its order of September 30, 1982, and May 13, 1983, so as to authorize the transportation service until April 1, 1986, the expiration date of the amended transportation agreement. Northwest indicates that it proposes by this petition no other changes to the existing authorization.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 384.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10991 Filed 4-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-318-000]

Ohio Interstate Pipe-line Co.; Application

April 18, 1984.

Take notice that on March 26, 1984, Ohio Interstate Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-318-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the transportation of natural gas for certain pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that Applicant is a newly-formed interstate pipeline organized under the laws of the State of Delaware by ANR Eastern Pipeline Company (ANR Eastern), a wholly-owned subsidiary of ANR Pipeline Company (ANR), and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), each of which would initially own a 50 percent interest in the partnership.

Applicant requests authorization to render a transportation service for four pipeline shippers: Transcontinental Gas Pipe Line Corporation (Transco); Texas Eastern Transmission Corporation (TETCO); Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and; Algonquin Gas Transmission Company (Algonquin). Applicant also requests authorization to construct and operate certain pipeline, compression, measurement and other related facilities which would be required to enable Applicant to render the proposed transportation services.

It is stated that the Applicant's pipeline system would be part of an overall plan, known as the "United States Route" for the transportation of volumes of natural gas which are proposed to be imported by the shippers from Canada and is competitive with, and alternative to, the proposals presently pending before the Commission for the transportation of such gas in the consolidated proceedings set for hearing in *Boundary Gas, Inc.* (Boundary), Docket Nos. CP81-107-000, *et al.*

Applicant states that the United States Route would require Foothills Pipe Lines (Sask.) Ltd. (Foothills) to deliver the shippers' gas to northern Border Pipeline Company (Northern Border) at Monchy, Saskatchewan. Northern Border would thereafter transport the gas eastward in its facilities and, at the eastern terminus of the Northern Border system, near Ventura, Iowa, Northern Border would construct a new pipeline from Ventura to an interconnection with the existing pipeline facilities of ANR at Sandwich, Illinois, it is explained. Applicant states that ANR would transport the gas delivered to it by Northern Border at Sandwich, Illinois, across its system to Defiance, Ohio, and that at Defiance, ANR would deliver the gas into the facilities proposed by Applicant, which facilities would be used to transport such gas to an interconnection with Tennessee in Mercer County, Pennsylvania, and to an interconnection, with TETCO and Transco at Leidy, Pennsylvania. From those points, new and/or existing facilities of the shippers and/or other transporters would be utilized to transport the gas to markets, it is submitted. Applicant further indicates that ANR and Northern Border would file applications with the Commission for authorization to implement their portions of the overall proposal and that Foothills has stated that it would cooperate with the shippers for the transportation of their gas in Canada.

Applicant indicates that it proposes to render a firm transportation service for the shippers in the volumes set forth below:

Shipper	Volume (1,000 ft³ per day)	Delivery point
Algonquin	51,000	Leidy, Pa.
TETCO	151,100	Do.
Transco	610,400	Do.
Tennessee	359,000	Mercer, Pa.
Boundary	52,500	Do.

Applicant states that the volume of natural gas proposed to be transported for the shippers on a firm basis is equal to the volume of natural gas they presently proposed to import from Canada into the northeastern United States (as well as the volume Transco proposes to store) in the proceedings in *Boundary Gas, Inc.* (Phase II)

Applicant states that the proposed transportation services would be rendered in accordance with the terms of the *pro forma* Rate Schedule T. The proposed transportation services would be rendered for fifteen years, it is submitted.

Applicant states that for the transportation service involved herein, Applicant proposes to charge an initial rate of $6.50 per Mcf of contract demand per month for deliveries to Mercer, Pennsylvania, and an initial rate of $12.00 per Mcf of contract demand per month for deliveries to Leidy, Pennsylvania. Additionally, Applicant proposes a minimum monthly bill for all shippers equal to the contract demand multiplied by the demand charge for the month. For volumes rendered by shippers in excess of the contract demand, Applicant proposes to transport such volumes on a best efforts basis and charge a rate of 21.4 cents per Mcf and 39.5 cents per Mcf, respectively, for transportation of such volumes to the Mercer and Leidy delivery points. The annual depreciation rate would be 6.67 percent, it is asserted.

The application shows that the facilities would consist of approximately 218 miles of 42-inch O.D. pipeline from a point of interconnection with ANR's compressor station located in Defiance County, Ohio, to a point of interconnection with the pipeline facilities of Tennessee located in Mercer County, Pennsylvania; approximately 155 miles of 36-inch O.D. pipeline from Mercer County to an interconnection with TETCO's and Transco's facilities located in Clinton County, Pennsylvania; 22,000 horsepower of compression at the Mercer County interconnection; 14,000 horsepower of compression near the Clinton County interconnection; and measurement and other related facilities.

The total cost of the proposed facilities is estimated to be $505,377,000 which cost would be financed with project financing. Applicant would attempt thereby to obtain a 75 percent/25 percent debt/equity financial structure, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this 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 the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10992 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 5248-999, et al.]

West Slope Power Co., et al.; Technical Sessions

April 19, 1984.

In partial fulfillment of section 306 of the Energy and Water Appropriations Act, 1983 (Pub. L. 98-50), the Federal Energy Regulatory Commission (FERC) is conducting a comprehensive water resource analysis of the Upper San Joaquin River Basin. Technical sessions are a part of this analysis and will be held May 15-17, 1984, in order to obtain technical input on the types and severity of impacts that small scale hydroelectric projects can have on target resources. These potential impacts will be presented in a matrix format for discussion and modification. The outcome of these technical sessions will provide the background against which hydroelectric projects located in the study area will be evaluated as to their potential effects on the target resources identified during public meetings held in Fresno and North Fork, California on January 23, 1984. These target resources are (1) recreation/local economy, (2) resident trout fishery, (3) riparian vegetation, (4) wildlife resources, (5) sensitive species, (6) land/water use, (7) cultural resources, and (8) aesthetics.

Those agencies, developers, and interested groups that have *not* designated a liaison for the respective technical sessions should contact staff at the telephone numbers listed below. Written comments are encouraged especially if attendance at the technical sessions is not possible.

The following is a schedule of the technical sessions during May 15-17, 1984:

Date	Time	Location	Target resource
May 15	2:00 p.m.	Sierra Mono Museum, North Fork, CA.	Cultural.
May 16	8:30-11:30 a.m.	Federal Building, 1130 O Street.	Resident Fisheries.
	12:30-3:30 p.m.	Room 3208, Fresno, CA 93721.	Riparian Vegetation, Wildlife Resources, Sensitive Species.
May 17	8:30-10:00 a.m.	Federal Building, 1130 O Street.	Aesthetics.
	10:00-11:30 a.m.	Room 3208, Fresno, CA 93721.	Land and Water Use.
	12:30-3:30 p.m.		Recreation/ Local Economy.

For further information please contact Tom Russo 202-376-9255 or George C. O'Connor, Jr. 202-357-5630.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10993 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of March 12 Through March 30, 1984

During the period of March 12 through March 30, 1984, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decision and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 16, 1984.

High Point Oil Company, Indianapolis, IN, HEE-0086.

High Point Oil Company filed an Application for Exception on February 6, 1984. The exception request, if granted, would relieve High Point of the requirement that it submit Form EIA-782B, entitled "Reseller Retailer's Monthly Petroleum Product Sales Report." On March 27, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Petro-Thermo Corp. Hobbs, NM, HEE-0074, Crude Oil

Petro-Thermo Corporation filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit Petro-Thermo to sell all of the crude oil that it reclaimed during the period of price controls at market price levels. On March 30, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 84-10924 Filed 4-23-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of March 23 Through March 30, 1984

During the Week of March 23 through March 30, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in

these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

April 17, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 23 through Mar. 30, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 23 1984	Gulf Oil Corporation, New York, New York	HFX-0101	Supplemental Order if granted: Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, would be implemented to distribute funds in connection with July 13, 1979, Decision and Order issued to Gulf Oil Corporation (Case No. DFF-0001).
Mar. 26, 1984	Yukon Energy Corporation, Minneapolis, Minnesota	HEE-0091	Exception from the Conservation Program for Consumer Products if granted: Yukon Energy Corporation would not be required to perform energy efficiency tests of its multi-fuel forced air furnaces as required under 10 C.F.R., Part 430.
Mar. 23, 1984	Walls & Marshall Fuel Company, Inc.,	RR21-3	Request for Modification/Rescission in the Amoco Refund Proceeding if granted: The January 31, 1984 Decision and Order (Case No. RF21-9288) issued to Walls & Marshall Fuel Company, Inc. would be modified by granting the firm's application for refund in the Amoco refund proceeding.
June 22, 1983	U.S.A Petroleum Company, Washington, D.C.	HER-0086	Request for Modification/Rescission if granted: The July 21, 1983, Consent Order issued to U.S.A. Petroleum, Inc. would be modified regarding the April 1, 1983, Federal Energy Regulatory Commission Decision.
Mar. 30, 1984	Atlantic Richfield Company, Washington, D.C.	HES-0042	Request for Stay if granted: Atlantic Richfield Company would receive a stay of the March 27, 1984, Decision and Order issued to Atlantic Richfield Company by the Office of Hearings and Appeals (Case Nos. RF3-1, RF3-2 & RF3-3) pending a final determination on the Appeal which the firm intends to file.

REFUND APPLICATIONS RECEIVED

[Week of March 23 through March 30, 1984]

Date	Name of refund proceeding/Name of refund applicant	Case No.
March 23, 1984.	Amoco/California	R21-75.
Do.	Palo Pinto/California	R5-76.
March 26, 1984.	Belridge/Nevada	RQ8-77.
March 28, 1984.	Amoco/Alco Oil, Inc.	RF21-12294 RF21-12295
March 29, 1984.	Amoco/Nevada	RQ21-78.
Dec. 7, 1984.	Amoco/H&H Oil Company	R21-12296.
	Amoco/Carl W. Johnson	RF21-12297.
	Amoco/Bystol Oil, Inc	RF21-12298.
	Amoco/Planters Oil Co	RF21-12299.
	Amoco/Mays Oil, Inc	RF21-12300.
	Amoco/Reid Petroleum Corporation.	RF21-12301
	Amoco/Sav-All Gas	RF21-12302.
	Amoco/Sellus Oil	RF21-12303.

REFUND APPLICATIONS RECEIVED—Continued

[Week of March 23 through March 30, 1984]

Date	Name of refund proceeding/Name of refund applicant	Case No.
	Amoco/Streuter Chevrolet, Inc.	RF21-12304.

[FR Doc. 84-10919 Filed 4-23-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of March 30 Through April 6, 1984

During the Week of March 30 through April 6, 1984, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of ntoice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 17, 1984.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 30 through April 6, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 4, 1984	Economic Regulatory Administration/Atlantic Richfield Company, Washington, D.C.	HRR-0087	Request for Modification/Rescission. If granted: The March 22, 1984, Decision and Order (Case No. DRO-0193) issued to Atlantic Richfield Company would be modified regarding three issues addressed in the Remedial Order.
Apr. 5, 1984	O. B. Mobley, Jr., Shreveport, Louisiana	HEF-0499	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V in connection with the April 4, 1984, Decision and Order issued to O. B. Mobley, Jr.

REFUND APPLICATIONS RECEIVED

[Week of March 30, 1984 to April 6, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Apr. 2, 1984	Amoco/Colorado	RQ21-79
	Belridge/Colorado	RQ8-80

REFUND APPLICATIONS RECEIVED—Continued

[Week of March 30, 1984 to April 6, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Apr. 3, 1984	Amoco/Streuter Chevrolet, Inc.	RF21-12304
Apr. 5, 1984	Amoco/Illinois	RQ21-81

REFUND APPLICATIONS RECEIVED—Continued

[Week of March 30, 1984 to April 6, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
	Belridge/Illinois	RQ8-82

[FR Doc. 84-10920 Filed 4-23-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240041; PH-FRL 2534-3]

Special Local Need Registrations; Voluntary Cancellations

Correction

In FR Doc. 84-5381 beginning on page 8484 in the issue of Wednesday, March 7, 1984, make the following corrections on page 8486:

1. In the first column, insert "MICHIGAN" before the first entry beginning with "MI-".
2. In the second column, insert "TENNESSEE" before the first entry beginning with "TN-".

BILLING CODE 1505-01-M

[OPTS-5915 A-2571-7]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under Sec. 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-37 and TME-84-39. The test marketing conditions are described below.

EFFECTIVE DATE: April 17, 1984.

FOR FURTHER INFORMATION CONTACT: Joe B. Boyd, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M St. SW., Washington, D.C. 20460, (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-37 and TME-84-39. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

TME 84-37

Date of Receipt: March 6, 1984.
Notice of Receipt: March 16, 1984 (49 FR 9953).
Applicant: Confidential.
Chemical: (G) Alkyl tri ester.
Use: (G) Softener for textile prints.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Manufacture and use: dermal, a total of 12 workers, up to 6 hrs/day, up to 30 days/yr.
Test Marketing Period: 3 months.
Commencing on: April 17, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-39

Date of Receipt: March 8, 1984.
Notice of Receipt: March 16, 1984 (49 FR 9953).
Applicant: Confidential.
Chemical: Lignosulfate, reaction product with a phenolic monomer and an oxidant (Generic).
Use: Confidential.
Production Volume: 120,000 lbs of a solution containing approximately 50% final solids content.
Number of Customers: One.
Worker Exposure: Manufacture: dermal and inhalation, 2-3 workers. Transport and use: dermal and inhalation, 4 workers.
Test Marketing Period: 1 year.
Commencing on: April 17, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 17, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-10948 Filed 4-23-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRI-2571-6]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on May 9-10, 1984, in Conference Room 3906-3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. on May 9, 1984, and adjourn not later than 4:00 p.m. on May 10, 1984, possibly earlier.

A principal purpose of the meeting will be to review and comment on the scientific adequacy of two drafts health assessment documents prepared by the Office of Health and Environmental Assessment of EPA's Office of Research and Development, as follows:

Health Assessment Document for Trichlorethylene—EPA-600/8-82-006B, External Review Draft, December 1983.

Health Assessment Document for Tetrachlorethylene (Perchloroethylene)—EPA-600/8-82-005B, External Review Draft, December 1983.

For information on how to obtain a copy of the draft documents please contract: ORD Publications Office—Center for Environmental Research Information, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, (513) 684-7562.

Requestors should be sure to cite the EPA number assigned to the documents.

A further principal purpose of the meeting will be to review and comment on a draft paper, prepared by EPA's Office of Toxic Substances, describing design options for a retrospective validation study of PMN health hazard assessments and including a discussion of structure-activity relationships in health hazard assessment (PMN—Premanufacture Notification under

section 5 of the Toxic Substances Control Act).

For information on how to obtain copies of the draft paper please contact: TSCA Assistance Office—Mr. Jack P. McCarthy, U.S. Environmental Protection Agency, TS–799, 401 M Street SW., Washington, D.C. 20460, (202) 382–3392.

The agenda will also include a discussion of suggested upcoming issues for Environmental Health Committee review, and brief reports and informational items of current interest to the members.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact the Executive Secretary, Environmental Health Committee, Science Advisory Board (A–101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. May 2, 1984. Please ask for Mrs. Patti Howard or Mr. Ernst Linde. The telephone number is (202) 382–2552.

Dated: April 18, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84–10949 Filed 4–23–84; 8:45 am]

BILLING CODE 6560–50–M

[OPPE-FRL 2572-5]

Intent To Form Advisory Committee To Negotiate Nonconformance Penalty Regulations

SUMMARY: EPA announces its intent to establish an Advisory Committee under the Federal Advisory Committee Act (FACA) to negotiate issues leading to a Notice of Proposed Rulemaking on Nonconformance Penalties under Section 206(g) of the Clean Air Act. The committee will consist of representatives of the parties interested in or affected by the outcome of the proposed rule.

DATE: EPA must receive comments and suggestions by May 24, 1984. Anyone interested may examine the comments and suggestions in public docket A–84–13, Central Docket Section, on weekdays, except Federal holidays, from 8:00 a.m. to 4:00 p.m. The Docket Section is located in the lobby of EPA's West Tower; 401 M St.; SW, Washington, D.C.

ADDRESS: Mail two copies of comments or suggestions concerning committee membership, issues the committee should consider, interests affected, procedures that should be followed, or any other matters relating to the committee, to: Central Docket Section, U.S.E.P.A. (LE–131), 401 "M" St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Chris Kirtz, Director, Regulatory Negotiation Project, U.S.E.P.A. (PM–223), 401 "M" St., SW., Washington, D.C. 20460, (202) 382–7565.

SUPPLEMENTARY INFORMATION:

Outline of Announcement:

I. Project Background

A. The Concept of Regulatory Negotiation.
B. Reasons for Selecting Nonconformance Penalties as the First Negotiation Item.
C. Key Issues for Negotiation.

II. Negotiation Procedures

A. *Formal Negotiation Procedures:*
1. Notice of Intent to Establish Advisory Committee and Request for Comment.
2. Participants.
3. Request for Representation.
4. Final Notice.
5. Agency Action.
6. Tentative Schedule.
7. Failure of Advisory Committee to Agree on Recommendations.
B. *Internal Negotiation Procedures:*
1. Convenor/Facilitator.
2. Feasibility.
3. Good Faith Negotiation.
4. Administrative Support and Meetings.
5. Consensus Definition.
6. Record of Meetings.
7. Committee Procedures.
8. Interests Involved.
9. Potential Participants.

Appendix

I. Project Background

A. *The Concept of Regulatory Negotiation:* The increasing complexity of Government regulations, compounded by what some see as an increased formalization of the rulemaking process, can make it difficult for an agency to develop sound regulatory solutions to the problems that it is mandated to address. The traditional rulemaking process often leads to adversarial relationships among participants. They may take extreme positions, withhold information, or attack the legitimacy of opposing positions. In addition, the traditional rulemaking process of comment and reply fails to foster the give and take of information and ideas conducive to developing workable solutions. Public comments often focus on finding fault with the proposals of others rather than on helping to develop creative solutions. Further, the views or comments of one party are not subject to open discussion with other parties where each has an opportunity to probe and understand the other.

As the Administrative Conference of the United States (ACUS) noted in its recent Recommendation 82–4:

Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

On February 22, 1983, EPA announced in the **Federal Register** that it was beginning a "Negotiated Rulemaking" project to explore the extent to which face-to-face negotiations among interested parties could serve as a useful supplement to its current rulemaking process.

EPA is optimistic that this process can produce a better regulation, use all parties' resources more wisely, and reduce litigation and uncertainty. The Agency has engaged the Harvard Negotiation Project to document the project.

The project's stated purposes are to test:

- The value of developing regulations by negotiation;
- The types of regulations which are most appropriate for negotiated rulemakings; and
- The procedures and circumstances which best foster negotiations.

EPA's February 1983 announcement also listed criteria for selecting regulations for negotiation and invited the public to suggest candidates. (The Appendix lists the criteria and discusses the comments received and candidates suggested.)

Selection of items to negotiate: Since the project's inception, we have assessed over fifty potential candidates proposed by the public and the Agency in light of our selection criteria. To qualify, an item must, among other things:

- Be at the pre-proposal stage of development;
- Have a relatively small number of identifiable parties who will come to the table to negotiate in good faith;
- Present a limited number of specific issues for which sufficient information/technology, etc., is at hand for resolution;
- Have a time factor which lends some urgency to the issuance of the proposed regulation.

Having carefully evaluated the suggested candidates in light of the published selection criteria, we have chosen Nonconformance Penalties (NCPs) under Section 206(g) of the Clean Air Act, as amended (Act), as our first item for negotiation.

Unless it is inconsistent with our statutory requirements, or is otherwise

unjustified, we plan to use any consensus reached through the negotiation process as the basis of the Notice of Proposed Rulemaking (NPRM).

B. *Reasons for Selecting Nonconformance Penalties as the First Negotiation Item:* The nonconformance penalty rulemaking meets EPA's selection criteria. It is at the pre-proposal phase of development; affected stakeholders are limited in number and readily identifiable; we have contacted them and they are interested in negotiating this item in good faith; and EPA's lead program office has identified at least five basic issues for which sufficient information is in hand for resolution. Finally, time is a factor since NCPs may be appropriate in light of our upcoming rulemaking on heavy duty engine (HDE) and light duty truck (LDT) oxides of nitrogen (NOx) and diesel particulate motor vehicle emission standards.

Nonconformance Penalties: Under Section 206(g)(1) of the Act, where any class of HDEs or heavy duty vehicles (HDVs) exceed an emission standard, a certificate of conformity must be issued and remain in effect for the class if the manufacturer pays the nonconformance penalty established by EPA regulations. (LDTs above 6,000 lbs. gross vehicle weight, called heavy light duty trucks (HLDTs), fall within the Act's definition of HDVs.)

The purpose of NCPs is to permit the Agency to set technology-forcing motor vehicle emission standards by providing temporary relief for manufacturers who may lack the technological capability to meet those standards initially. This procedure will allow manufacturers to certify, produce, and sell nonconforming engines if they pay the established penalties.

The Act provides guidance in determining the amount of the penalty. Penalties under this provision must:

- Relate to the degree of nonconformity;
- Periodically increase to inhibit the use of NCPs as a permanent substitute for compliance; and
- Ensure that manufactuers complying with standards are not placed at a competitive disadvantage.

The penalty may vary from pollutant to pollutant and by class or category of vehicle or engine.

In February 1979, EPA proposed an NCP approach in an NPRM for certification of 1984 and later model year HDEs. In July 1979, the NCP concept for HLDTs was proposed in another NPRM. In the final rulemakings resulting from these proposals—45 FR 4143 (January 1980) and 45 FR 63740 (September 25, 1980)—EPA stated that the NCP approach would be developed in a separate rule. In April 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the economic impact of government regulations on the industry. Elements of this program included the revision of hydrocarbon (HC) and carbon monoxide (CO) emission standards that would require catalysts for gasoline HDEs. It was expected that these regulatory relief initiatives would ease pressure on the manufacturers. Thus no NCPs were issued at that time since the manufacturers did not need relief from the standards.

On November 12, 1983, EPA promulgated revisions to the HC and CO standards for HDEs in the 1985/86 and 1987 and later model years. Certain classes of gasoline HDEs will require the use of catalysts beginning in the 1987 model year. Although EPA believes that manufacturers will be able to meet these future standards, developing the new technology required by these standards may make NCPs necessary for some manufacturers. Therefore, EPA is considering NCP rulemaking for gasoline HDEs subject to the HC and CO standards in the 1987 model years, and for future NOx and particulate standards.

C. *Key Issues for Negotiation:* We anticipate that key issues to be addressed as part of these negotiations will include the following:

1. On what basis will EPA provide NCPs? (Should the need for development of new technology to comply with a standard be a condition for an NCP application?)
2. How will upper limits be set for standards for which NCPs are available?
3. How should the penalty be determined so as to remove any competitive disadvantage to manufacturers whose engines/trucks conform to standards?
4. How should compliance levels be determined on production engines/trucks? (Should EPA use the procedures described in 44 FR 9490, February 13, 1979?)
5. How will the penalty be periodically increased in order to create incentives for manufacturers to develop conforming engines/trucks?

The committee will consider other issues as they arise or in response to comments on this announcement.

II. Negotiation Procedures

This notice announces EPA's intent to:

- Create a Federal advisory committee;
- Identify interests we believe are affected by the key issues listed above;
- Identify participants who we have initially determined will adequately represent those affected interests in the negotiations;
- Ask for public comment on the use of regulatory negotiation for this rulemaking, and the extent to which the issues, parties, and procedures are adequate and appropriate; and
- Announce the date, time, location, and what will be covered at the first meeting.

The following proposed procedures and guidelines would apply to this process. They may be modified as a result of comments received on this notice or during the negotiating process.

A. *Formal Negotiation Procedures:* 1. *Notice of Intent to Establish Advisory Committee and Request for Comment.* As a general rule under FACA, an agency of the federal government is required to comply with the requirements of FACA when it establishes and uses a group of non-federal people as a preferred source of advice. This document is intended to satisfy the FACA "notice" requirement.

2. *Participants.* The negotiating group should not exceed 20 participants, excluding the convenor. A larger number than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the rule being developed would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization must have its own representative. However, each interest must be adequately represented.

3. *Requests for Representation:* If, in response to this notice, an additional person or interest requests membership or representation on the negotiating group, the Agency, in consultation with the convenor, will determine whether that interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group; or
- Should be added to the group.

4. *Final Notice:* After evaluating the comments on this announcement and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal advisory committee unless, after reviewing the comments, EPA determines that such an action is inappropriate. The negotiation process will begin once the committee is appropriately chartered and notice is published in the Federal Register.

5. *Agency Action:* As noted above, the Agency intends to use committee

consensus as the basis for the NPRM. EPA will issue the proposed rule unless the consensus is inconsistent with EPA's statutory authority or is not appropriately justified. In that event, the Agency will explain the reason for its decision.

6. *Tentative Schedule:* EPA intends to have the first meeting of the advisory committee, if established, on June 14, 1984, at the American Arbitration Association, 1730 Rhode Island Ave., NW. Suite 507. It will start promptly at 10:00 a.m. and run until completion—probably around 4:00 p.m. (If interested in attending, please contact Chris Kirtz at (202) 382–7565.) The first meeting will focus largely on procedural matters. These will include agreement on: dates, times, and locations of future meetings; protocols for conducting future meetings and the use of the Resource Pool; and identification of, and determination of how best to address the principal issues for resolution.

To prevent delays which might postpone timely issuance of the proposal, we intend to terminate the committee's activities if it does not reach consensus within six months of the first meeting. (If the committee first meets on June 14, as planned, it would have until December 14, 1984, to reach consensus.) The process may end earlier if the convenor so recommends, or if EPA determines that the process will not result in NCPs being available for that first model year for which they are needed.

7. *Failure of Advisory Committee to Agree on Recommendations:* In the event the committee is unable to reach consensus on a proposal, EPA will promptly develop its own proposal.

B. *Internal Negotiation Procedures:* 1. *Convenor/Facilitator.* EPA has engaged an experienced contractor to act as convenor/facilitator. He will not be involved with the substantive development or enforcement of the regulation. As convenor/facilitator, his role is to:

- Help the negotiation process run smoothly;
- Help participants define and reach consensus;
- Chair the actual negotiations; and
- Determine the feasibility of negotiating particular issues.

2. *Feasibility:* EPA and the convenor have examined the issues and interests involved and have made a preliminary inquiry among representatives of the identified interests to determine whether it is possible to reach agreement on:

- Individuals to represent those interests;
- The preliminary scope of the issues to be addressed; and
- A schedule for developing a notice of proposed rulemaking. (Currently identified issues were listed earlier. Potential participants and interests are listed later in this document.) On the basis of this preliminary inquiry, the convenor and EPA believe that negotiation can be successful on this rule, and that the potential participants listed below can adequately represent the affected interests.

3. *Good Faith Negotiation:* Since participants must be willing to negotiate in good faith and have authority to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and the Agency has designated the Director of the Manufacturers Operations Division, or his alternative, as its representative.

4. *Administrative Support and Meetings:* The convenor and EPA's Regulation Management Staff will supply support. Meetings, at least initially, will be held in the Washington area. To support the negotiations, EPA has pledged funds to a resource pool which the American Arbitration Association will administer. EPA expects that matching funds from private foundations will also be available. These funds may be used for such activities as training, technical support, computer simulations, and other support which the parties request. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

5. *Consensus Definition:* The goal of the negotiating process is consensus. Although traditionally consensus has meant that each interest concurs in the result, we expect the participants to fashion their own seeking definition of this term.

6. *Record of Meetings:* In accordance with FACA's requirements, EPA will keep a record of all advisory committee meetings. This record will be placed in the public docket for this rulemaking. Committee meetings will be announced in the **Federal Register** and will generally be open to the public.

7. *Committee Procedures:* Under the general guidance and direction of the convenor, and subject to any applicable legal requirements, the committee will establish the detailed procedures for committee meetings which it considers most appropriate.

8. *Interests Involved:* EPA has tentatively determined that the following interests should be represented in these negotiations:

- Manufacturers.
- Trade associations.
- The Federal Government.
- Public interest/consumer groups.
- State and/or local Government officials.

EPA invites comments and suggestions on this list of interests.

9. *Potential Participants:* The committee is attempting to reach consensus that can serve as the basis of the notice of proposed rulemaking. Therefore, it is important that the participants have substantial expertise and differing viewpoints on the various recommendations and issues presented for discussion. They must also adequately represent their interests and be able to speak for them to the fullest extent possible. The following is a list of possible parties which EPA and the convenor have tentatively identified:

Light Duty Truck/Heavy Duty Engine Manufacturers:

Caterpillar
Chrysler
Cummins
Ford
General Motors
International Harvester Company
Isuzu
Iveco-Fiat
Mack
Mercedes
Volvo-White

Industry Associations:

AIA (Automobile Importers Association)
ATA (American Truckers Association)
EMA (Engine Manufacturers Association)
MECA (Manufacturers Emission Controls Association)
MVMA (Motor Vehicle Manufacturers Association)

Environmental Groups/Others:

NRDC (Natural Resources Defense Council)
National Clean Air Coalition
STAPPA (State and Territorial Air Pollution Program Administrators)
CARB (California Air Resources Board)

Comments and suggestions on this tentative list of representatives are invited. Anyone wishing to be included should explain the interests they represent and why those interests are not already represented. The listing of a potential party does not necessarily mean that the party has agreed to participate.

Dated: April 18, 1984.

William D. Ruckelshaus,

Administrator.

Appendix—Suggestions and Comments in Response to the February 22, 1983 Announcement

A. Suggested Candidates for Negotiated Rulemaking

The public submitted a number of suggestions, all of which we found useful in identifying candidate regulations. Most candidates failed to meet the published selection criteria, however, for the following reasons:

1. *They were outside the allowable time limits.* We sought regulations at the preproposal stage where EPA was still defining issues and in the early stages of exploring solutions. This meant we could not use regulations being prepared for final promulgation or proposals which were fully developed and close to publication. To encourage timely resolution of the negotiation process, we wanted candidates with a near-term deadline for issuance. This excluded regulations that were years from proposal, or subject area the agency does not feel need to be addressed by rulemaking. Suggested candidates rejected for "timing" reasons include:

TSCA 8(c) Reporting Rule for Significant Adverse Effects
CERCLA Reportable Quantities
Standards for Control of Uranium Byproducts
NPDES General Permit Regulations
Water Quality Standards
Definition of "harmful discharge of oil"
CAA Visibility Regulations
RCRA Definitions for Uses/Recycling of Hazardous Waste and "small quantity" generators
TSCA Rules for Confidential Business Information

2. *They involved too many parties or issues.* Our criteria stated that the regulation should involve a limited number of related issues and a readily identifiable, reasonably small group of parties. That excluded regulations that affected too many different groups or those that involved complex, unsettled questions of science. Suggested candidates rejected under these criteria include:

TSCA Rules for Inadvertent Production of PCBs
RCRA Financial Responsibility Rules
CERCLA Definition of "clean" Reclaimed Hazardous Waste Sites

3. *They involved generic "groups" of rules or policy issues rather than individual regulations.* Eventually, EPA may choose to negotiate these types of rulemakings. At present, however, they are too complex to be broken down into negotiable components. Suggested candidates rejected on this account include:

National Emission Standards for Hazardous Air Pollutants
New Source Performance Standards
Effluent Guidelines
TSCA 6 Rules Authorizing EPA To Take Action Against Specific Chemicals

B. Comments

EPA also received comments on the procedural aspects of negotiated rulemaking. These comments generally fell into two categories—those dealing with EPA's *management* of the process, and those dealing with the *negotiating process itself.*

1. *EPA's management of the negotiating process.*

• Public notice. Most of the comments on EPA's role strongly advocated our providing clear and timely public notice of the project, including information on how to participate in the negotiations. At a minimum, comments suggested notice of the project in the **Federal Register.** Some also suggested public notices in local newspapers if the project involved substantial local interests.

EPA has done its best to identify and contact all potentially affected stakeholders. EPA has already given notice of the project in the **Federal Register.** We will continue to provide all the notices normally associated with EPA rulemakings as well as any additional FACA required notices and announcements.

• *Financial arrangements.* Several commenters recommended that EPA finance the negotiations; others suggested that EPA reimburse participants. As discussed above, EPA plans to establish a resource "pool" with funds to be used at the discretion of the parties, subject to applicable legal restrictions. EPA will also provide administrative support for the negotiations.

• *EPA's management role.* Several comments expressed concern with EPA's dual role in the negotiations and suggested that EPA not act as facilitator because of potential conflicts of interest. One commenter suggested instead that the participants choose a knowledgeable facilitator for the negotiations. To test the proposition of whether an office that manages regulatory development can act as an honest broker, EPA intends to conduct a second negotiated rulemaking with a member of the Agency's Regulation Management Staff acting as the facilitator. This first negotiation, as discussed earlier, will be led by an outside contractor.

2. *The negotiating process itself.*

• Several commenters raised questions about procedures during the negotiations, including procedures for:

Protecting confidential business information;
Establishing deadlines for completing negotiations;
"Opting out" during negotiations or after their completion; and
Precluding matters raised during the negotiations from possible future court consideration.

The project design anticipates that participants will determine how to resolve these procedural questions. We emphasize, however, that participation in the negotiations is voluntary and does not preclude a party from taking whatever actions it feels necessary to protect its interests, including withdrawing from the negotiations or instituting litigation.

Selection Criteria

Because negotiation is not suitable for every situation, it is important to screen potential rulemakings to identify instances where this approach has a high probability of successful use. The following criteria can be used to select appropriate items. (These criteria were developed after a thorough review of the considerable literature on the use of negotiation to resolve a wide range of environmental disputes.)

Criteria for the Regulation

• The proposal should require the resolution of a limited number of interdependent or related issues. There should be several ways in which the issues can be resolved. The relevant legislation should accommodate these alternative outcomes. There should be no serious obstacles to implementing a negotiated solution.

• To promote timely resolution and to limit a participant's ability to gain from delay, there should be a legislative or judicially imposed deadline or some other mechanism forcing publication of a rule in the near term, i.e., 8 to 12 months.

• Some or all of the parties should have common positions on one or more of the issues to be resolved which might serve as a basis for additional agreements during the course of negotiations.

• The costs and benefits should be narrowly concentrated on a few identifiable entities.

Criteria for the Participants

- Those participants interested in or affected by the outcome of the development process should be readily identifiable and reasonably few in number. They should have sufficient resources to take an active role in negotiations, and should have relatively equal power to affect the outcome.
- The parties should be likely to participate in negotiations as an alternative to litigation. They should feel more likely to achieve their overall goals using negotiation rather than existing alternatives.

[FR Doc. 84-11050 Filed 4-23-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1455]

Petitions For Reconsideration and Clarification of Actions In Rule Making Proceedings

April 12, 1984.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure. (CC Docket No. 78-72, Phase I)

Filed By: Randall B. Lowe, Attorney for Allnet Communication Services, Inc., on 3-7-84. T. W. Irwin, President for Rural Telephone Company on 3-9-84. Robert S. Halford, Manager for Clear Lake Independent Telephone Company on 3-19-84. Judith A. Maynes, Joseph J. Strelkoff & Daniel Stark, Attorneys for American Telephone and Telegraph Company on 4-2-84. F. Thomas Tuttle, Kevin H. Cassidy, J. Manning Lee & Richard M. Singer, Attorneys for Satellite Business Systems on 4-2-84. Joseph M. Kittner & James S. Blaszak, Attorneys & William Page Montgomery, Economic Consultant for Ad Hoc Telecommunications Users Committee on 4-2-84. Arthur H. Simms, Attorney for the Western Union Telegraph Company on 4-2-84. Raymond F. Scully, Robert L. Barada, Diane M. Bieneman & Stanley J. Moore, Attorneys for Pacific Bell and Nevada Bell on 4-2-84. Martin W. Bercovici, Attorney for Mobile Marine Radio, Inc., on 4-2-84. Thomas J. Reiman, Conrad R. Reddick & Alfred Winchell Whittaker, Attorneys for Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company & Wisconsin Bell (The Ameritech Operating Companies) on 4-2-84. Joseph P. Markoski & Ann J. LaFrance, Attorneys for National Data Corporation on 4-2-84.

Subject: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board. (CC Docket No. 80-286)

Filed By: Procter J. Hug, Vice President for Nevada Telephone-Telegraph Company on 3-15-84. Howard Davenport, General Counsel & James L. Sinston & Walter E. Diercks, Attorneys for District of Columbia Public Service Commission on 3-16-84. John E. Hayes, Vice President-Revenues and Public Affairs & William C. Sullivan, Linda S. Legg & Mary Whitten Marks, Attorneys for Southwestern Bell Telephone Company on 4-2-84. Joseph P. Markoski and Ann J. LaFrance, Attorneys for National Data Corporation on 4-2-84. Joseph M. Kittner & James S. Blaszak, Attorneys & William Page Montgomery, Economic Consultant for Ad Hoc Telecommunications Users Committee on 4-2-84. Kevin H. Cassidy & Jeffrey H. Matsuura, Attorneys for Satellite Business Systems on 4-2-84. David Thomy, Sec./Treas., for Able Communications Inc., on 4-2-84. Kathryn Marie Krause, Attorney for The Mountain States Telephone and Telegraph Company on 4-2-84.

Subject: Amendment of Part 83 of the rules to delete and simplify requirements governing spare parts, tools, test equipment, instruction books and circuit diagrams for compulsory ship stations in the maritime mobile service. (PR Docket No. 82-677)

Filed By: David B. Poplin on 3-7-84.

Subject: Amendment of Parts 2 & 74 of the Commission's Rules to permit use of the frequencies 161.7 and 161.75 MHz by the U.S. Coast Guard. (GEN Docket No. 83-425)

Filed By: J. I. Maloney, Capt. for the United States Coast Guard on 3-15-84.

Subject: Amendment of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Cellular Applications using Random Selection or Lotteries Instead of Comparative Hearings. (CC Docket No. 83-1096)

Filed By: Thomas J. O'Reilly, Attorney for The Lincoln Telephone & Telegraph Company, Illinois Consolidated Telephone Company & Rock Hill Telephone Company on 3-14-84.

William I. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-10904 Filed 4-23-84; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

California; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA-682-DR), dated May 5, 1983, and related determinations.

DATE: April 16, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of California dated May 5, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 1983: The Orange Cove Irrigation District, the Tranquility Irrigation District, and the Westlands Water District, all located in Fresno County, for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-10689 Filed 4-23-84; 8:45 am]
BILLING CODE 6718-02-M

[FEMA-702-DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major

disaster for the State of New York (FEMA–702–DR), dated April 17, 1984, and related determinations.

DATED: April 17, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: Notice is hereby given that, in a letter of April 17, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage resulting from severe storms, coastal storms and flooding in certain areas of the State of New York beginning on or about March 28, 1984, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Gerald J. Connolly of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

For Individual Assistance and Public Assistance: Nassau, Orange, Rockland, and Suffolk Counties.

For Public Assistance Only: Sullivan, Ulster and Westchester Counties, and the City of Yonkers.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718–02.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–10890 Filed 4–23–84; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 10500.

Title: Nippon Yusen Kaisha/Showa Line Space Charter Agreement.

Parties:

Nippon Yusen Kaisha
Showa Line, Ltd.

Synopsis: The proposed agreement would establish a new space chartering agreement which the parties describe as a "mirror image of Agreement No. 10457" which was previously approved by the Commission and which is proposed to be replaced by Agreement No. 10500. The net effect of the new agreement is described to be to substitute Showa Line as a party to the agreement in place of Korea Marine Transport Co., Ltd., the latter carrier having tendered its resignation from Agreement No. 10457 on March 9, 1984, said resignation to be effective 90 days later.

Filing Party: George A. Quadrino, Esquire, Warren and Associates, 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

By Order of the Federal Maritime Commission.

Dated: April 19, 1984.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84–10910 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Damco Offshore (Texas) Inc., One Allen Center, Suite 500 Dallas Street, Houston, TX 77002. Officers: Anton Jurjen Rouwenhorst, President/Director, Jacobus Johannes van Steenbergen Director, Frank J. Gennaro, Treasurer/Director, Johannes Willem Heldring, Director, Laurus Kreune, Executive Vice President

Denver Moving & Storage Inc. DMS International Division, 2030 So. Dahlia Street, Denver, CO 80222. Officer: R. G. Dameron, Jr., President

Luis G. Gonzalez and Jose Castano, d.b.a. On Board International, 1513 Broadmoor Avenue, West Covina, CA 91790

Harry C. Bennett, 950 Woodcrest Road, Abington, PA 19001

By the Federal Maritime Commission.

Dated: April 19, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–10909 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public, Financial Responsibility To Meet Liability Incurred for Death or Injury to Passenagers or Other Persons on Voyages; Issuance of Certificate [Casualty]; Crown Cruise Line Ltd., et al.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to

Passenagers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540): Crown Cruise Line Ltd., Crown Cruise Line S.A., Crown Cruise Line Inc., c/o Grundstad Maritime Overseas, Inc., P.O. Box 4009, Boca Raton, Florida 33429.

Dated: April 19, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–11010 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Fourth Transoceanic Shipping Co. Ltd., et al.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR 540): Fourth Transoceanic Shipping Co. Ltd. trading as Chandris Lines/Chandris Cruises, c/o Chandris, Incorporated, 666 Fifth Avenue, New York, New York 10019.

Dated: April 19, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–11011 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Fifth Transoceanic Shipping Co. Ltd., et al.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR 540): Fifth Transoceanic Shipping Co. Ltd. trading as Chandris Lines/Chandris Cruises, c/o Chandris, Incorporated, 666 Fifth Avenue, New York, New York 10019.

Dated: April 19, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–11012 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2615]

Jefscott International, Inc.; Order of Revocation

On April 6, 1984, Jefscott International, Inc., c/o Schneider, 45 Cannonade Drive, Marlboro, NJ 07746, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2615.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwader License No. 2615, be revoked effective April 6, 1984 without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Jefscott International, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–10971 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1885]

Keith International Corp.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Keith International Corp., P.O. Box 522293, Miami, FL 33152 was cancelled effective April 11, 1984.

By letter dated March 19, 1984, Keith International Corp. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1885 would be automatically revoked unless a valid surety bond was filed with the Commission.

Keith International Corp. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1885 be and is hereby revoked effective April 11, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 1885 issued to Keith International Corp. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Fedeal Register** and served upon Keith International Corp.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–10972 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2675]

Kana Dobbs Castleberry and Don Scott d.b.a. K.D. Pacific; Order of Revocation

On April 9, 1984, Kana Dobbs Castleberry and Don Scott d.b.a. K.D. Pacific, 5313 Bakman Avenue, #241, North Hollywood, CA 91601, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2675.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 2675, be revoked effective April 9, 1984, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Kana Dobbs Castleberry and Don Scott d.b.a. K.D. Pacific.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–10973 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 286–R]

Penn Shipping & Forwarding Co., Inc.; Order of Revocation

On April 11, 1984, Penn Shipping & Forwarding Co., Inc., c/o Jonathan David Bachrach, Esquire, 11 E. 44th

Street, New York, NY 10017 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 286–R.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 286–R, be revoked effective April 11, 1984.

It is further ordered, that Independent Ocean Freight Forwarder License No. 286–R issued to Penn Shipping & Forwarding Co., Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Penn Shipping & Forwarding Co., Inc.

Robert G. Drew,

Director Bureau of Tariffs.

[FR Doc. 84–10974 Filed 4–23–84; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Amended System of Records

AGENCY: General Services Administration.

ACTION: Notification of amended system of records.

SUMMARY: The purpose of this document is to give notice, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to amend a system or records maintained by GSA. The system of records, Investigation Case Files GSA/ADM–24, will be amended to change the location of the data base.

DATES: Any interested party may submit written comments regarding this amended system. To be considered, comments must be received on or before May 24, 1984. The amended system or records shall become effective as proposed without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary determination.

ADDRESS: Address comments to General Services Administration (ATRAR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Hiebert, Records and Forms Management Branch, Information Management Division, (202) 535–7647.

Background

The system of records, Investigation Case Files GSA/ADM–24 (23–00–0024), is being revised to reflect the change of the data base to computers operated by the Food and Drug Administration in Rockville, Maryland. This system of records notice GSA/ADM–24, Investigation Case Files, was published in the Federal Register on November 7, 1980, 45 FR 74051.

The amended system of records notice GSA/ADM–24 will read as follows:

GSA/ADM–24 (23–00–0024)

SYSTEM NAME

Investigation Case Files.

* * * * *

SYSTEM LOCATION

The system is located in the Office of Inspector General, 18th and F Streets, NW, Washington, DC 20405. The data base for this system is on computers at the Parklawn Computer Center operated by the Food and Drug Administration in Rockville, Maryland.

* * * * *

Dated: April 16, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–10911 Filed 4–23–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0239]

Availability of Interpretation of the 1982 Model Retail Food Store Sanitation Code Entitled "Customer Self-Service of Bulk Food"

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an interpretation of the 1982 model Retail Food Store Sanitation Code entitled "Customer Self-Service of Bulk Food." This interpretation supplements and clarifies the general public health safeguards of the Retail Food Store Sanitation Code. It provides criteria necessary to ensure that bulk food for customer self-service is made available in a safe and sanitary manner. The interpretation was prepared by FDA's Retail Food Protection Branch (RFPB) with the assistance and cooperation of the Association of Food and Drug Officials (AFDO).

ADDRESSES: The interpretation entitled "Customer Self-Service of Bulk Food" and the "Report on the Bulk Food Written Comments" along with the original comments are available for review at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the interpretation are available from the Center for Food Safety and Applied Nutrition, Retail Food Protection Branch (HFF–342), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0140. Requests should identify the document as "Customer Self-Service of Bulk Food * * * Interpretation."

FOR FURTHER INFORMATION CONTACT: Arthur L. Banks, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–342), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0140.

SUPPLEMENTARY INFORMATION: The interpretation, entitled "Customer Self-Service of Bulk Food," sets forth procedures that will help control potential public health problems, specifically: spread of communicable disease, outbreaks of foodborne illness, and unintentional contamination of food. These problems can occur because customers may have direct contact with bulk food and help package it. The interpretation provides criteria as to the types of storage and dispensing equipment and operational practices needed to minimize product contamination.

These criteria supplement the more general sanitation requirements found in the 1982 model Retail Food Store Sanitation Code.

FDA published a notice of availability of the model code in the Federal Register of July 23, 1982 (47 FR 31964). The model code provides uniform national sanitation standards for operators of retail food establishments to use as guidelines. The code was also intended as a model ordinance for local and State governments to provide greater uniformity in the sanitation standards used to regulate retail food stores.

FDA and the Association of Food and Drug Officials (AFDO) developed the 1982 model code jointly in response to requests from local and State regulatory agencies, the retail food store industry, and manufacturers of retail food equipment that such a code be issued. AFDO is an international organization of food, drug, and consumer product safety enforcement officials engaged in the development and enforcement of uniform consumer protection laws.

Subsequently, the agency and AFDO received requests from State and local regulatory agencies to explain how the

model code related to bulk food merchandising.

FDA prepared and distributed a draft interpretation of the model code to AFDO, State regulatory officials, industry, and other interested persons on September 16, 1983. The agency received approximately 150 separate responses containing over 800 individual comments. The comments were generally favorable and supportive of the attempt to provide guidance. However, there were many requests for specific changes, and FDA, in cooperation with AFDO, has adopted some of the suggested changes in the interpretation that is being made available. As stated above, FDA has placed on file in the Dockets Management Branch all comments received, and a report summarizing and responding to each significant comment.

FDA encourages State and local authorities to adopt and accept this interpretation of the model code.

Dated: April 16, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10777 Filed 4-23-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-0118]

Dow Corning Wright; Premarket Approval of CMW Bone Cement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of CMW Bone Cement sponsored by Dow Corning Wright, Arlington, TN. After reviewing the recommendation of the Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 24, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20957.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On February 29, 1980, Dow Corning Wright, Arlington, TN 38002, submitted to FDA an application for premarket approval of CMW Bone Cement for the use of this device in arthroplastic procedures of the hip, knee, and other joints to fix plastic and metal prosthetic parts to living bone in orthopedic musculoskeletal surgical procedures. CMW Bone Cement is indicated for use when reconstruction is necessary because of osteoarthritis, rheumatoid arthritis, traumatic arthritis, avascular necrosis, nonunion of fractures of the neck and of the femur, sickle cell anemia, osteoporosis, secondary severe joint destruction following trauma, or other conditions (also for fixation of unstable fractures in metastatic malignancies), and revision of previous arthroplasty procedures. The application was reviewed by the Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel, an FDA advisory committee, which recommended approval of the application. On February 22, 1984, FDA approved the application by a letter to the sponsor from the Acting Director of the Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 24, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 17, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10893 Filed 4-23-84; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members of Public Advisory Committee; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a typographical error in its notice that requested nominations for nine voting members to serve on the Ad Hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in Food in FDA's Center for Food Safety and Applied Nutrition (49 FR 15021; April 16, 1984).

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-10158 appearing at page 15021 in the **Federal Register** of Monday, April 16, 1984, in the third column, the first sentence of the Supplementary Information is corrected to read "FDA requests nominations for nine voting members on the Ad Hoc Advisory

Committee on Hypersensitivity to Sulfiting Agents in Food.

Dated: April 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10891 Filed 4-23-84; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority for the Office of Human Development Services was published at 49 FR 5682 on Tuesday, February 14, 1984. The introduction of that statement is correct but its text on pages 5683 through 5694 contains duplicate language as well as several omissions. The Department is republishing the entire statement of organization, function, and delegation of authority and is making any necessary corrections. The republished and corrected statement reads as follow:

This notice amends Part D of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services (OHDS) (45 FR 64253). It is intended to (1) revise the statement for the Immediate Office of the Assistant Secretary for Human Development Services (ASHDS) with the addition of a new Office of Regional Operations, (2) consolidate the functions of the Regional Offices of the Office of Human Development Services by abolishing the regional Office of Program Coordination and Review (regional program office statements remain as published at 45 FR 64267, 46 FR 63386 and 48 FR 49698), (3) replace the Office of Program Coordination and Review with a new Office of Policy and Legislation (OPL) having responsibility for policy, legislation, and special program activities, (4) rename the Office of Policy Development to the Office of Program Development (OPD) with the addition of program systems, evaluation, and statistical analysis responsibilities, (5) revise the Office of Management Services (OMS) with the addition of formula grant management functions, (6) reorganize the Administration for Children, Youth, and Families (ACYF) into three program bureaus and one unified staff office, and (7) make minor modifications to the Administration on Aging (AoA) (47 FR 54552) to move responsibility for short range plans and internal staff development to the Division of Management and Budget, to move the statistical analysis function from the Division of Program Analysis to the Division of Technical Information and Dissemination, and to remove the separate public liaison function. The following changes are to be made to implement the above:

1. Part D, Chapter DA, "The Office of the Assistant Secretary for Human Development Services", as published in the **Federal Register** on September 29, 1980 (45 FR 64256), is to be deleted in its entirety and replaced by the following:

DA.00 Mission. The Office of the Assistant Secretary for Human Development Services (HDS) advises the Secretary and Under Secretary on and provides leadership and direction to human services programs for such groups as the elderly, children, youth, families, Native Americans, persons living in rural areas, handicapped persons, and public assistance recipients. Recommends to the Secretary actions and strategies which improve coordination of human services programs among HHS programs, other Federal agencies, State and local government, and private sector organizations. Directs, coordinates, manages and provides leadership in planning and developing HDS programs; supervises use of research and impact evaluation funds; and promotes the development of simplified and coherent human services delivery systems. Provides support and coordination for key advisory bodies. Controls equal employment opportunity and civil rights policies and programs for HDS. Directs public affairs, regional operations, and correspondence and assignments tracking activities.

DA.10 Organization. The Office of the Assistant Secretary for Human Development Services is headed by the Assistant Secretary for Human Development Services (ASHDS), who reports directly to the Secretary, and consists of: Immediate Office of the Assistant Secretary for Human Development Services, Office of Public Affairs, Office of Regional Operations, Executive Secretariat, Office of Equal Opportunity and Civil Rights, President's Committee on Mental Retardation, Federal Council on Aging.

DA.20 Functions. A. The Immediate Office of the Assistant Secretary for Human Development Services provides executive direction, leadership and guidance to all HDS headquarters and regional components. ASHDS jointly administers the WIN program with the Assistant Secretary for Employment and Training, Department of Labor. Together, they form the Work Incentive Program (WIN) National Coordinating Committee (NCC) to effectively administer WIN nationally. The NCC establishes and clarifies policies, uniform reporting procedures and other requirements for the joint HHS and Department of Labor program. Serves as the Director of Equal Employment Opportunity for HDS. The Deputy Assistant Secretary (DASHDS) acts as the Assistant Secretary in the absence of the ASHDS.

B. Office of Public Affairs assists the ASHDS, Program Commissioners, and Staff Office Directors in the formulation and development of policy having public information and education implications. Provides advice on strategies and approaches to be used to improve public understanding of and access to HDS programs and policies. Represents the ASHDS and Program Commissioners in discussions of major policy issues relating to public affairs. Directs the preparation of speeches, statements, and other information materials. Develops and implements a comprehensive public affairs plan for HDS. Reviews and evaluates the effectiveness of public information and education programs in HDS and recommends improvements in scope, operational approach, and policy direction of such programs. Provides technical leadership and services on public information, printing, mailing and education to HDS staff and programs in both central and regional offices. Recommends approaches for meeting internal and external communications needs of the HDS. Acts as focal point for clearance of all publications and audio-visual projects whether produced in house or by contract or grant.

Plans, organizes and administers the HDS public information program consistent with policy direction established by the Assistant Secretary for Public Affairs and serves as liaison with that office. Coordinates HDS public affairs activities with other parts of the Department of Health and Human Services, Federal agencies, States and local organizations, and other interested parties with related functions. Works to ensure sound and effective relations with the public served or affected by the activities of HDS and to encourage participation in HDS programs through effective public information programs. For the development and execution of public communications of concern to HDS, serves as the HDS liaison to the press, radio, TV, professional journals, the White House, the Office of the Secretary/HHS, OASPA, and other government and non-government agencies.

Directs the audio-visual and publication management and distribution system for HDS. Reviews and approves requests for proposals for contracts and grants which involve publications, audio-visual materials, and/or public information and education activities. Provides centralized marketing, printing, distribution, management and graphics design services to HDS. Serves as the Freedom of Information Office for HDS.

C. Office of Regional Operations serves as HDS national focal point for regional liaison and central office coordination on region-related matters; develops and manages processes for liaison between HDS regional offices and the Assistant Secretary and program and staff offices in headquarters; supervises and supports the Regional Administrators in administering regional office activities and establishing and implementing cross-cutting program initiatives.

Monitor regional involvement in operational planning initiatives and maintains liaison with central office/regional office activities to assure fulfillment of HDS and HHS goals and objectives; collects and analyzes information on program status and administrative issues from the regional and central office staff for submission to the ASHDS; advises ASHDS of problems that prevent the regional offices from carrying out the mission of HDS and the Department.

Develops and implements systems and procedures for communicating with the regional offices and monitoring and evaluating regional office operations; collects and analyzes information and justifications prepared by the regions for personnel, salaries and expenses, and general management decisions; establishes coordinative arrangements and procedures to assure that the RAs' can oversee operations, fulfill reporting burdens, and have access to needed information; develops performance appraisal standards for the Regional Administrators and collects and provides information to ASHDS and the ORO Director on RAs' performance.

Develops and maintains HDS master calendar of field events and compiles briefing material for site visits by the ASHDS, the ORO Director, and other HDS and HHS officials; schedules and participates in regional management conferences.

D. Executive Secretariat ensures that issues requiring the attention of the ASHDS, DASHDS, or HDS Executive Staff are developed on a timely and coordinated basis. Facilitates decisions on matters requiring immediate action including White House and Secretarial assignments. Serves as HDS liaison to HHS Executive Secretariat. Receives, assesses, and controls incoming correspondence and assignments and delegates them to the appropriate HDS unit(s) for response and action. Provides assistance and advice to HDS staff on the development of responses to correspondence and on the content and style of special assignments. Tracks development of periodic reports and facilities Departmental clearance. Exercises quality control for all major written products for the ASHDS and DASHDS signature.

E. Office of Equal Opportunity and Civil Rights provides direction and leadership on equal employment opportunity and civil rights policies and programs for the HDS; plans, develops and evaluates programs and procedures designed to eliminate discrimination in employment, training, incentive awards, promotion, and career opportunities. Assures non-discriminatory implementation and operation of Federally supported HDS programs and projects; assures the prompt and fair adjudication of discrimination complaints and provides staff support to the ASHDS in processing and preparing final decisions on EEO complaints. In cooperation with HDS program and staff offices, develops, implements and monitors the HDS affirmative action plan. Develops and implements evaluations designed to assess overall EEO program progress. Maintains liaison with various non-Federal organizations and State and local governments concerned with equal opportunity and civil rights; represents minorities, handicapped individuals and women by identifying particular problems and recommending solutions related to their employment, career development, and upward mobility.

Implements the Disadvantaged Enterprise program as mandated under the section 8(a) program through conferences, seminars and presentations. Develops, in conjunction with HHS Office for Civil Rights (OCR), a civil rights operating plan that delineates civil rights management responsibilities and monitoring activities to assure civil rights compliance by all recipients of HDS funds. Develops civil rights procedures for implementing Departmental civil rights policies in HDS program reviews and audits to assure that benefits and services are delivered equitably to eligible minorities, women, and handicapped persons. Serves as HDS liaison with the HHS Office for Civil Rights, the HHS EEO Office, the HHS Office of Small and Disadvantaged Business Utilization, and the Assistant Secretary for Personnel on related responsibilities.

F. The President's Committee on Mental Retardation Staff provides general staff support for a Presidential-level advisory body, the President's Committee on Mental Retardation. Coordinates all meetings and hearing arrangements. Provides such advice and assistance in the areas of mental retardation as the President or Secretary may request. Prepares and issues an annual report to the President concerning mental retardation and such additional reports or recommendations as the President may require or as PCMR may deem appropriate. Evaluates the national effort to combat mental retardation. Works with other Federal, State, and local government and private sector organizations to achieve Presidential goals in mental retardation. Develops and disseminates information to raise public awareness of mental retardation, to reduce its incidence, and to ameliorate its effects.

G. Federal Council on aging staff provides general staff support for a Presidential-level advisory body, the Federal Council on Aging. Provides all meeting and hearing arrangements. Prepares an annual report for Congress and such other reports as are authorized by the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

2. Part D, Chapter DD, Sections DD.00, DD.10, and DD.20 A and B of "The Regional Offices of the Office of Human Development Services", as published in the **Federal Register** on September 29, 1980 (45 FR 64266), are to be deleted and replaced by the following:

DD.00 Mission. The Regional Offices of the Office of Human Development Services constitute an intermediate operatonal level in the administration of programs for older Americans, children, youth, families, the developmentally disabled, and Native Americans between the central office and State and local governments and other organizations. Award grants and contracts dirctly or recommend approval/disapproval to the appropriate central office organization to carry out the HDS mission. Assist State and local governments and other organizations in the administration of HDS programs; and monitor such administration to assure adherence to fiscal and program objectivs and applicable policies, regulations, and procedures.

Coordinate HDS program activities with other components of HHS and with

other Federal programs so maximum benefit can be derived from the programs for the recipients of services. Make recommendations to HDS central office on fiscal matters, on program priorities, and on policy or procedural changes based on operating experience gained from the vantage point close to the actual delivery of services. Provide consultation and technical information on HDS matters to State and local units of government, State and local agencies, provider agencies, national organizations, educational institutions, and public interest groups in the region. Provide assistance to help States improve effectiveness and efficiency of program operations and meet program requirements. Promote comprehensive social and human services planning and services delivery in the region. Represent the Assistant Secretary for Human Developement Services (ASHDS), as appropriate and as assigned, on activities related to the HDS mission.

DD.10 Organization. The Regional Office of the Offices of Human Development Services are each headed by a Regional Administrator (RA), who reports to the Director, Office of Regional Operations, and consist of: Office of the Regional Administrator, Office of Fiscal Operations, Office on aging, Office for Children, Youth, and Families, Office on Developmental Disabilities (Regions III, VI, VII, And IX only), Office for Native Americans (Regional X only).

DD.20 Functions A. Office of the Regional Administrator, as the representative of the ASHDS in the Regions, provides executive leadership to the HDS regional office by interpreting and implementing ASHDS policy. In accordance with delegations, regulations, and policies established by the Central Office, oversees the administration of the Social Services Block Grant (SSBG) and programs of the Administration for Children, Youth, and Families, the Administration on Developmental Disabilities, and, in Region X, the Administration for Native Americans. Provides Departmental oversight and administrative and other support to the Administration on Aging; integrates AoA activities into other regional operations. Serves as a member of the Work Incentive Program (WIN) Regional Coordinating Committee, with the Regional Administrator of the Employment and Training Administration, Department of Labor, and reviews and approves State WIN plans consistent with directives of the National Coordinating Committee.

Serves as the focal point for interaction with the other HHS regional units, HDS central office, and State Agencies. In concert with the Regional Director and HDS program units, represents the ASHDS in establishing working relationships and coordinating with other Federal agencies, State and local governments and public and private interest groups. Tracks State legislation related to HDS program interests.

Coordinated with private organizations, the volunteer community and other public entities to identify and prioritize community needs and mobilize private sector and volunteer resources; stimulates new and expanded projects between the public/private sectors and volunteer groups. Serves as the focal point in HDS for such concerns as volunteer development, consumer affairs and other special emphases programs.

Provides leadership to HDS units in the development and implementation of long range plans and the regional joint operating plan. In cooperation with the regional program units, develops and implements cross-cutting initiatives; assesses their effectiveness; and reports to the ASHDS through the Director, Office of Regional Operations, on implementation. Manages the regional Management Review System in support of the HDS Operational Planning System and other cross-cutting and program specific initiatives. Coordinates special projects with the HHS Regional Director and other appropriate organizations.

In coordination with regional and headquarters staff, develops a strategy for regional program reviews and leads/participates in cross-cutting program reviews of financial management and program operations in States and grantee organization with the regional program staff. As requested, provides assistance to States in program administration, management systems, training needs and policy implementation. Identifies exemplary manangement techniques and provides leadership in the transfer of technology between States.

Provides program supervision and applies policy and other requirements to the regional administration of the block grants, formula grants, and other Administration on Developmental Disabilities, Administration for Children, Youth and Families, and, in Region X, Administration for Native Americans programs. Promotes linkages with other HHS and HDS programs in support of the SSBG. Within policies and delegations, is responsible for review of the Social Services Block Grant pre-expenditure report and for review and/or approval of ACYF, ADD, and ANA grants delegated to the regions.

Manages discretionary grants process for the regional office including providing front end technical assistance, directing the panel review process, and carrying out post award administration activities for all grants except those of the Administration on Aging. Negotiates interagency and cooperative working agreements in support of HDS program goals.

In accordance with applicable Departmental, Office of the Regional Director, and HDS policies, provides general management oversight and centralized administrative support, information systems, fiscal, grants management, procurement, and records management services to HDS regional program components. Assists in the development of the regional salaries and expenses accounts. Is responsible for the execution and monitoring and control of all allowances made to the Regional Administrator's office. Prepares justifications, studies and analyses for negotiations with Headquarters oversight offices. Serves as the regional focal point for personnel ceiling control and general personnel management. Facilitates managerial training and staff development. Directs and supervises planning for and implementation of regional HDS Equal Employment Opportunity, Affirmative Action, and Civil Rights programs.

In coordination with headquarters Division of Data Processing and program units, develops regional program information data system for use by the States and regional office program units; assesses need for new word processing/data processing applications; and implements and monitors procedures for automation of priority applications.

In certain regions, some of the above functions will be carried out by a discrete management unit in the RA's office.

B. Office of Fiscal Operations provides financial management services for all HDS discretionary, formula, and block grant programs under the direct supervision of the RA. Participates in joint planning, development, and operations for program and cross-cutting fiscal activities and performs financial management services. Carries out HDS national and regional fiscal initiatives under the regional Management Review System.

In coordination with regional program components, reviews estimates and budget projects for all HDS formula

grant programs for the RA, including WIN-SAU grants and financial expenditure reports, which are jointly reviewed by the Department of Labor as part of the WIN RCC. Reviews State cost allocation plans in coordination with the Regional Administrative Support Center (RASC). Coordinates with regional program components to develop strategies for joint monitoring of grantee compliance with fiscal and financial management requirements. Recommends resolution of audit exceptions. Maintains liaison with the RASC, regional HHS Audit staff, and other appropriate public and private groups.

Conducts financial reviews in coordination with regional program components. Makes recommendations to the RA, program offices, and other appropriate HDS officials to approve, defer, or disallow claims for Federal financial participation by grantees under all HDS formula grant programs and approves or disallows costs under HDS discretionary grant programs. Initiates alerts of impending formula grant disallowance from regional office for forwarding to the Under Secretary's office. Prepares HDS support materials for disallowed claims being reconsidered by the Departmental Grants Appeals Board.

Plans, directs, monitors and provides assistance on financial management activities for all HDS regional grants. Provides guidance to grantees, State and local agencies, and others on interpreting financial management policies and regulations; determining allowability of expenditures; planning and implementing reviews; conducting studies; and providing assistance to State and local agencies on management reporting and contracting. Conducts studies and provides guidance on reporting systems, purchase of services practices, business and economic development activities, and the adoption of improved management and administrative methods and practices. Assures compliance of financial management activities with the HHS Grants Administration Manual, laws, regulations, policies, and procedures.

3. Part D, Chapter DE, "The Office of Program Coordination and Review", as published in the **Federal Register** on September 29, 1980 (45 FR 64259), is to be deleted in its entirety and replaced by the following:

DE.00 Mission. The Office of Policy and Legislation (OPL) serves as the principal policy arm to the Assistant Secretary for Human Development Services (ASHDS). As such has lead responsibility for policy, legislation and special programs. Proposes and manages private sector and other policy initiatives on behalf of ASHDS. Makes recommendations to and advises the ASHDS on all matters of policy in HDS. Ensures consistency with overall Administration, Departmental, and HDS policies for all HDS programs, including discretionary activities. Indentifies, analyzes and recommends solutions to policy issues affecting HDS programs. Reviews and clears all policy relevant material. Develops and implements policies to administer the Social Services Block Grant. Serves as the principal manager for Congressional and legislative activities affecting HDS. Manages all activities necessary to carry out HDS responsibilities for emergency preparedness programs.

DE.10 Organization. The Office of Policy and Legislation is headed by a Director, who reports directly to the ASHDS, and consists of: Office of the Director, Division of Policy, Legislative Support Staff, Emergency Preparedness Staff, Office of Private Sector Initiatives.

DE.20 Functions. A. Office of the Director provides direction and executive leadership to OPL in the administration of its responsibilities. Is the principal advisor to the ASHDS on all policy-related matters in HDS. Serves as the focal point for legislative activities affecting HDS, development and coordination of program policies, policy analysis and control, private sector initiatives and emergency preparedness planning. Reviews the policy implications of all discretionary grant priority statements, grant announcements, preapplications and applications, and makes recommendations on funding decisions.

B. Division of Policy serves as the focal point for developing HDS policy and for reviewing and ensuring consistency of policies among program administrations and staff offices; implements HDS policy responsibilities for the Social Services Block Grant (SSBG); proposes and manages major policy initiatives; and acts as representative of ASHDS in conducting liaison duties relating to the functions of this division.

Reviews and coordinates final HDS clearance of all regulations; reviews and coordinates HDS review and resolution of problems concerning regulations from other HHS operating divisions and other Federal agencies; and represents ASHDS at Departmental meetings on regulatory matters including participation in the Secretary's regulation review panels or task forces. Implements special HDS and HHS regulatory reform initiatives and prepares regulatory budget information and other reports concerning HDS regulatory activities. Analyzes, coordinates and prepares HDS comments on major Departmental policy documents.

Assists HDS offices in the preparation of regulations and other policy documents for publication in the **Federal Register** to assure that Federal Register, HHS, and OMB requirements are met. Serves as the HDS contact with HHS Office of General Counsel (OGC) for securing all written legal advice and opinions; serves as liaison with the OGC in HDS court ordered compliance matters.

Manages the HDS policy issuance system; maintains a central register of all HDS policy issuances; issues and updates HDS Policy Procedures Manual; and provides orientation and assistance to program/staff offices, regional offices, and HDS constituencies on policy and procedures for issuing HDS policy materials.

Represents HDS in the Department in matters relating to the implementation of all HHS block grant programs. Identifies policy/regulation issues for regulatory/legislative proposals and participates with other OPL staff in the analysis and development of legislative proposals pertaining to SSBG. Writes regulations pertaining to the SSBG and other cross-cutting areas. Responds to policy related complaints and requests for waivers under the SSBG. Analyzes and disseminates findings concerning SSBG pre-expenditure and other reports; proposes SSBG initiatives; and serves as contact point for all inquiries regarding SSBG.

Identifies, analyzes, writes issue papers, and recommends solutions to cross-cutting policy issues affecting HDS programs; responds to a variety of policy related requests for information on HHS programs; reviews and recommends action on all HDS inter-agency agreements; is responsible for HDS' environmental review activities; and coordinates the implementation of HDS Privacy Act requirements.

C. Legislative Support Staff serves as the principal manager of Congressional liaison and legislative development activities in HDS; counsels and advises ASHDS and Program Commissioners on various aspects of Congressional relations and legislative policy, and provides technical assistance and support to HDS program and staff offices; represents HDS in Departmental legislative development activities; manages legislative planning cycle for HDS, including the development of HDS legislative options; manages the preparation of testimony and backup material on HDS programs, policies, and

legislative proposals for presentation before the Congress; monitors hearings and other Congressional activities which affect HDS, and initiates legislative policy development in response. Manages requests for information generated in Congressional hearings.

Serves as HDS liaison with the Office of the Assistant Secretary for Legislation and coordinates Congressional relations activities with that Office; coordinates development of information and technical assistance provided to Congressional committees, members of Congress and their staffs; and clears all materials going to the Congress for consistency with HDS legislative policy; coordinates development of HDS policy on legislative issues in response to requests from the Department, including bill reports and other legislative position papers sent to HDS for response; assists in responding to constituent group concerns about legislation which affects HDS programs; assists in implementation of legislative initiatives and identifies policy issues for ASHDS and program resolution. Provides briefing materials and other staff support for ASHDS meetings with Congressional members and staff.

D. Emergency Preparedness Staff in cooperation with related Federal Departments, manages and directs activities relating to the internal planning, coordination and implementation of the Emergency Preparedness program. Serves as the focal point to the ASHDS for staff work to the Principal Working Group on Social Services, a component of the Emergency Mobilization Preparedness Board, and manages the ongoing responsibilities of that Principal Working Group. In coordination with related Departments, raises issues and develops and recommends plans of action that provide the President options for meeting Federal requirements during natural disasters and other national emergencies. Develops policies and procedures for use in responding to the emergency welfare needs of persons that are currently considered dependent and those that are temporarily dependent due to the emergency. In cooperation with HDS program offices, designs and coordinates the Emergency Preparedness response to Executive Order 11490 for National Emergencies through HHS Emergency Coordinators Offices. Develops plans for approval and manages emergency teams required to support the Department's response procedures.

E. Office of Private Sector Initiatives as representative of the OPL Director and the ASHDSs, serves as the principal HDS resource for information and expertise on the private sector initiative within HDS. Increases the participation of private sector organizations and individual volunteers or volunteer agencies in meeting human service needs within their communities by working to strengthen communication and successful partnerships between private sector leaders to identify and prioritize community needs. Stimulates new and expanded private sector and volunteer resources and projects by publicizing and promoting models and examples of successful public/private partnerships.

Provides technical assistance, training, guidance, and leadership in the administration and management of the private sector initiative. In cooperation with HDS central and regional office units, develops strategies and plans to mobilize private sector staff and resources to support human service programs which encourage and foster individual self-reliance and economic independence.

When HDS target populations and programs are affected, maintains liaison and participates with the Office of the Secretary, other Federal agencies, State and community agencies, service providers, private sector organizations, and volunteers in the implementation of public/private sector initiative activities.

Reviews HDS discretionary fund applications for private sector implications. Recommends candidates for employee volunteer awards and recommends profit, non-profit, individual, and group awards for community private sector projects within the HDS program areas.

Represents within HDS such concerns as volunteer development, consumer affairs, and other areas of special emphasis related to the private sector initiative; provides leadership and direction to HDS regional offices in the implementation of State and local activities designed to address these concerns; responds to inquiries on the goals, objectives, and activities of the HDS private sector initiative; prepares or provides input to reports or reporting requirements.

4. Part D, Chapter DU, "The Office of Policy Development", as published in the **Federal Register** on September 29, 1980 (45 FR 64257), is to be deleted in its entirety and replaced by the following:

DU.00 Mission. The Office of Program Development (OPD) is a staff office for the ASHDS, responsible for managing the planning, research, evaluation, program systems, statistical analysis and reporting activities within HDS. Plans, develops and monitors strategies for promoting HDS program and management directions; manages agency-wide planning systems for determining organizational goals and objectives and for setting priorities.

Recommends HDS programmatic activities and formulates crosscutting HDS initiatives; establishes and implements a management review and decision-making system for monitoring progress on priority activities; and establishes strategies for HDS planning system needs; coordinates HDS plans with other Federal agencies; analyzes information produced by State agencies and other sources and provides information to assist program offices in better planning.

Oversees the planning and management of all HDS program discretionary resources; manages all phases of the Coordinated Discretionary Program (for research, demonstration, evaluation, training and technical assistance funds); advises the ASHDS on research and demonstration issues; coordinates the development of priority areas for funding; reviews all unsolicitied proposals; oversees the awards processs; disseminates project results; develops and monitors compliance with the annual HDS procurement plan; reviews all 8–15 consultant services contracts for procurement policy compliance; coordinates international interests with HDS programs.

Provides broad HDS statistical, economic, operations research and system analyses; promotes grantee management systems improvements; develops discretionary funds program priorities for management systems improvements; assists State and local providers to improve their human services management information and evaluation systems, forecasting models, data bases, statistical activities, and approves State and local systems efforts using Federal funds. In coordination with program units, plans, develops, and submits the HDS Information Collection Budget (ICB) to the Department and OMB and controls the ICB passback and burden hour ceiling allocations; develops the HDS evaluation plan based on ASPE guidance; coordinates HDS evaluation activities with HHS and other Federal agencies; monitors program system and evaluation activities; with the HDS Senior Staff, develops the scope of analysis activities and manages such activities after implementation decisions.

DU. 10 Organization. The Office of Program Development is headed by a Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of: Office of the Director, Division of Planning, Division of Research and Demonstration, Divison of Program Analysis and Evaluation.

DU. 20 Functions. A. Office of the Director provides executive leadership to OPD in the administration of its responsibilities. Provides advice to the ASHDS and HDS Senior Staff on all matters related to agency-wide planning, research, evaluations, demonstration systems, and statistics; performs special projects and analysis in support of the ASHDS; serves as representative of ASHDS to outside groups on all matters related to the OPD mission.

B. Division of Planning develops and overseas HDS-wide planning systems and priorities aimed at improving coordinated use of Federal resources; conducts special investigations and analyses on cross-cutting planning and programmatic issues of special conern to the ASHDS; identifies and proposes new or revised planning options or priorities; identifies and proposes new or revised long-term objectives and crosscutting initiatives for HDS; develops alternative strategies for achieving these objectives; represents HDS in identifying, developing, or recommending program development and/or planning strategies for inter- and intra-departmental initiatives. As requested, represents HDS in negotiations with the department or other Federal agencies regarding these issues.

Develops, recommends and implements an HDS-wide comprehensive and coordinated planning system for use by HDS, including strategic and operational planning for HDS program and management activities and accommodating key milestones related to programmatic, budgetary, and legislative planning, discretionary funding and other operational planning requirements; develops draft annual planning guidance for the ASHDS.

Provides guidance and technical assistance to HDS in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance.

Develops, recommends and implements a management review system for the purpose of assessing organizational progress in implementing priorities and encouraging appropriate action by managers at all levels; provides analysis of individual organizations and HDS-wide progress; identifies problems and issues for action by the ASHDS and Senior Staff; suggests alternatives for resolving issues where progress is unsatisfactory and provides the ASHDS with recommendations to facilitate decision-making.

Identifies and recommends strategies aimed at promoting improved practices in State and local government planning and priority setting systems; initiates transfer of exemplary State/local planning strategies, system and models; interacts with national planning organizations and other relevant bodies to promote the development of innovative and effective planning systems and creative use of resources; manages discretionary funds projects with significant planning implications, analyzed results and disseminates findings within HDS and to outside planning networks; coordinates activities among HDS programs and other Federal agencies to promote and strengthen cooperative planning for the improved use of Federal human services resources in priority areas of interest to HDS; represents HDS interest and negotiates with planning staff and program managers of other Federal agencies on behalf of HDS and its agenda.

C. Division of Research and Demonstration manages the HDS Coordinated Discretionary Program and provides guidance and oversight to other HDS programs in the conduct of categorical discretionary programs; provides advice to the ASHDS, Program Administrations and grantees on R&D issues and methodologies; identifies major human services issues which may require R&D intervention. In cooperation with program offices, develops the R&D and discretionary funds planning guidance to be used by those offices in developing their discretionary plans; reviews and recommends approval of R&D and discretionary plans prepared by the Program Administrations; prepares the annual HDS discretionary funds plan; with OMS and OPL, reviews and clears all HDS discretionary program announcements for compliance with the discretionary funds plan; develops for publication in the **Federal Register**, the annual program announcement for the HDS Coordinated Discretionary Program; reviews, approves and tracks all contracts requiring 8–15 clearance; reviews and recommends action on all unsolicited proposals received within HDS; manages the process for receipt, review, and selection of applications for funding under the HDS Coordinated Discretionary Program; insures the compliance of all grant awards with the Discretionary Plan; tracks overall progress of projects funded under the HDS Coordinated Discretionary Program.

Provides Government Project Officers for R&D projects of special interest to the ASHDS; insures that products of R&D projects are disseminated to human service providers.

Develops management systems to improve the efficiency and quality of HDS Discretionary programs. Directs the HDS International Affairs Programs to: transfer knowledge through research and demonstration; promote the exchange of experts (U.S. and International); and coordinate HHS involvement in international organizations and meetings. Insures that all international activities supported by HDS address the ASHDS' goals and objectives.

D. Division of Program Analysis and Evaluation provides national leadership and expertise for the human services field through the development, formulation and application of advanced analytical techniques to complex statistical and programmatic data bases incorporating analysis of these data against national HDS policies and related U.S. economic variables; directs and manages the HDS national program systems and evaluation activities. Formulates national decision analyses, applying quantitative and evaluative methods to a wide range of policy success indicators, including socio-demographic characteristics, social service allocations, client population targeting and program cost-effectiveness; conducts research to discover the economic impact of HDS programs on locatities and to study HDS policy in relation to economic trends.

Develops and manages major economic studies which generate statistical socio-economic population data for all HDS programs and interprets the results of these studies in terms of economic theory; creates an integrated data base management system, provides national statisitical expertise in the analyses of crosscutting HDS programs, furnishes technical support to HDS staff, regions and States, and advises HDS personnel on the economic implications of their particular programs; considers both the economic well-being of HDS services recipients and the related aspects of the development of the U.S. economy; evaluates HDS programs and provides input for budget recommendations; conducts research on the relationship of HDS programs and socio-economic dependency within the context of

national economic policy in those program areas.

Develops broad HDS program systems strategy/policy; manages national systems conferences/workshops and evaluation guidelines; reviews and manages the State and local program systems development requests for Federal financial participation and coordinates efforts with OS, HCFA, SSA, PHS, and program bureaus; manages award process for selected areas including systems and evaluation grants and consults on grants managed by others.

Chairs the HDS Statistical Coordination Group and participates in inter and intra-agency statistical conferences and committees involving national and State levels as well as the Federal agencies of OMB and Census Bureau; directs and manages the HDS Statistical Budget process including justifications and coordination of all requirements for HDS programs.

Serves as the primary HDS control point with the Department and OMB for all matters pertaining to OMB reports clearance functions and Pub. L. 96–511, the Paperwork Reduction Act; maintains national leadership with outside groups for human services statistical reporting matters and economic analyses; insures HDS representation at Departmental/Agency meetings including ASPE and ASMB regarding statistical, microsimulation, evaluation and information systems matters.

5. Part D, Chapter DB, "The Office of Management Services", as published in the **Federal Register** on September 29, 1980 (45 FR 64262), is to be deleted in its entirety and replaced by the following:

DB.00 Mission. The Office of Management Services (OMS) advises the Assistant Secretary for Human Development Services in the areas of internal administrative and management of HDS and of Federal financial participation with State and local grantees. Under guidance from and with the approval of the ASHDS and in collaboration with the HDS program administrations, provides leadership and direction to administration and management activities throughout HDS, including: budget, finance, personnel, grants and contracts, procurement, material and facilities management, management systems, data processing, and similar administrative supporting services. In response to ASHDS priorities and instructions, develops HDS policies and procedures for effective and efficient administration and management of financial and personnel resources and directs all centralized administrative and management services. Conducts management analysis and systems development activities for HDS. Provides technical assistance and guidance to Central and Regional Office units in the development, implementation and maintenance of administrative systems.

DB.10 Organizations. The Office of Management Services is headed by a Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of: Office of the Director, Management Systems Analysis Staff; Division of Budget, Division of Grants and Contracts Management, Division of Personnel, Division of Administrative Services, Division of Data Processing.

DB.20 Functions. A. Office of the Director directs and coordinates all elements of the Office of Management Services; provides guidance and services to all programs and components of HDS, in accordance with HHS and other federal policy, in the areas of grants and contracts, budget, finance, personnel, management systems, data processing, and administrative services. Initiates new and revised operational plans for OMS activities and ensures program coordination to maximize the use of HDS resources. Serves as the HDS liaison with the Assistant Secretary for Management and Budget and the Assistant Secretary for Personnel Administration.

1. Management Systems Analysis Staff, with cooperation and input from affected program units or staff offices, plans, organizes, and conducts surveys and management reviews of administrative processes and functions in HDS program and staff components. Serves as the principal HDS staff examining the HDS organization. Studies structural, functional and management problems of particular interest to the Assistant Secretary. Conducts studies and makes recommendations on the integration of Automated Office System capabilities into HDS management processes. Acts as liaison with ASMB in coordinating preparation of organizational proposals requiring Secretarial approval and maintains official organization files for HDS. Serves as HDS committee management office. Prepares formal program, administrative, and personnel delegations of authority for the ASHDS and the Director, OMS. Develops work measurement and reporting systems. Develops and circulates administrative manuals.

Provides advice and technical assistance to all HDS headquarters and regional components on general office systems and procedures, organization and functional problems, and reporting. With program and staff office imput, performs assessments of information, word processing, paper work processing, reporting and other systems needs in HDS components. Conducts planning, scheduling, and review of OMS management improvement projects.

B. Division of Budget in coordination and consultation with other staff offices and program units, consolidates, formulates, and presents budget estimates and forecasts of resources relating to the direction and coordination of the financial resources of HDS; executes apportionment documents; participates in planning, directing, and coordinating financial and budgetary programs of HDS. Provides guidance to HDS staff units and program administrations in preparing budgets, justifications, and other budgetary materials. Coordinates with HDS offices on individual budgets for preparation of a single budget document for presentation to the ASHDS, Departmental management, OMB, and the Congress. Assists in planning for and presenting the budget before OMB and the Congress; requests, receives, and consolidates materials from HDS programs for testimony at hearings before these bodies in coordination with the Legislative Support Staff/OPL. Reviews the budget as approved by Congress, obtains input from program administrations and recommends for ASHDS approval a financial plan for its execution; makes allotments to HDS offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both funds and personnel; maintains commitment records against allowances, and certifies funds availability for HDS Staff Offices and certain Program Administrations as requested. Prepares requests for apportionment of appropriated funds. Maintains control of allotted funds against current obligations, including separate plans for each of the Regional Offices. Prepares spending plans and status-of-funds reports for the ASHDS. Provides analysis and coordinates accounting reports for HDS. In response to ASHDS priorities and instructions, and with appropriate input from HDS program units, develops financial operating procedures and manuals, including assuring implementation within HDS (headquarters and regions) of Departmental and Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications;

serves as the HDS liaison with HHS and OMB in all budgetary matters.

C. Division of Grants and Contracts Management provides centralized management and administration of discretionary grants, formula grants, block grants and contracts for HDS headquarters staff units and program administrations. Assures that all grants and contracts awarded conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate HDS and HHS organizations to assure consistency between HDS discretionary, formula and block grant and contract award activities, and the Department's various payment systems for grants and contracts.

For discretionary grants, serves as the principal office within HDS for assuring that the business aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents, negotiates grant budgets, and makes all contract awards for HDS Central Office units. Reviews discretionary grants and contracts and, after input from HDS programs, coordinates HDS financial management matters as necessary with appropriate HHS and HDS units.

For the Social Services Block Grant (SSBG/Title XX of the Social Security Act) and for the WIN program, prepares grant awards, and background and supplemental information, special reports, and State tables for use at Departmental, OMB and Congressional presentations. Prepares documentation for Title XX/SSBG allotment limitations to States.

Maintains financial control over and makes adjustments to previously issued formula grant awards to States for Social Services and Personnel Training and Retraining under Title XX of the Social Security Act, WIN, and for Social Services under Titles I, IV, X, XIV, and XVI (AABD) of the Social Security Act for Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. Controls the Title XX deferral actions process as it impacts on previously issued grant awards and regulatory time limits.

In coordination with the HDS program administrations and staff offices, reviews and assesses HDS formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among HDS programs; and establishes priorities and develops procedures for financial monitoring and review activities at the regional level for all HDS discretaionary and formula grant programs.

After consultation with program administrations and with the approval of the ASHDS and, where appropriate, the AoA Commissioner, develops HDS regulations, instructions, and procedures for the administration of all discretionary grants, formula grants, block grants and contracts, including those issued in HDS Regional Offices. Provides training and technical assistance to staff of HDS program administrations and staff offices regarding grants and contracts, and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of business and fiscal management of grants.

Reviews all proposed HDS regulations and policy issuances pertaining to fiscal, POS and procurement matters which are derived from Departmental, OMB or government-wide issuances to assure consistency within the HDS program.

Serves as HDS liaison with GAO, HHS Audit Agency, and the Department's Office of Grants and Procurement on grant and contractual matters. Assists at discretionary and formula grant hearings held by the Departmental Grant Appeals Board in response to claims by grantees. Manages the Departmental disallowance alerting system for the HDS and HHS units and provides assistance and guidance relative to the reconsideration process. Implements procedures and activities related to HDS contracts hearings held by the Defense Contract Appeals Board in response to requests by contractors for reconsideration of disallowed HDS contract claims.

D. Division of Personnel administers the centralized personnel management and administration program for HDS. Provides advice to HDS officials on matters relating to the development and execution of personnel policies and programs. Subject to the approval of the ASHDS, and with input from HDS program units, as appropriate, develops personnel management objectives, policies, standards and procedures for personnel operations. Responsible for the development of an HDS-wide personnel policy framework. Within delegated authorities, is responsible for such areas as placement and staffing, position classification, employee relations, labor relations, employee development and training and position and pay management. Coordinates and provides advice and assistance to HDS Central and Regional Office elements on position classification, recruitment, and placement. In collaboration with Regional HHS personnel offices, provides assistance to the HDS Regional Offices through the development and classification of standard position descriptions, the administration of certain incentive awards and through the administration of certain training activities. Participates in personnel matters relating to labor-management relations and coordinates career development activities. Serves as the contact in HDS on personnel matters with the Office of Personnel Management, ASPER, and OMB. Conducts special studies on personnel matters at the request of the Director/OMS.

E. Division of Administrative Services provides administrative services and technical staff support to meet the operational needs of offices that comprise HDS. May provide services directly or through HDS program administration and staff office administrative personnel. In collaboration with HDS program administrations, designs, implements, monitors and reports on systems relating to forms management, records maintenance and disposition, and files management. In collaboration with HDS program administrations develops, implements and evaluates the HDS space management and planning program and provides advice and assistance to responsible individuals in program offices. Provides travel advice and assistance to HDS offices. Provides direct special mail and messenger services and coordinates HHS mail service to HDS. Projects and monitors HDS postal costs working with the OMS Division of Budget, HHS, and the U.S. Postal Service. Provides and controls use of franked envelopes by HDS staff, contractors, and grantees. Develops, in coordination with program units and staff offices, broad HDS telecommunications plans and places orders for voice and data communication services. Provides training and technical assistance to HDS program administrations and staff office personnel responsible for such requests. Provides liaison with HHS, GSA, and private communications firms on all telecommunications matters. Provides liaison and guidance with HHS, General Services Administration, Labor Department, other Federal agencies, and outside vendors on building security, occupational health and safety programs, labor services, equipment repair services, loan of audio-visual equipment, and conference room control; and, as necessary, maintains contracts for provision of above

services. Maintains supply, equipment, and materiel inventories for excess items in storage and for items allocated to HDS program administrations and staff offices. Controls and reviews all purchase requests against Departmental and Federal requirements. Acts as liaison with OS procurement office on small purchases and with the Department's Office of Grants and Procurement on materiel management matters. Provides technical assistance and training to program administration and HDS staff office administrative personnel on materiel management. Conducts personnel property surveys. In response to ASHDS priorities and instructions and with input from program administrations, develops, issues and maintains HDS internal manuals and directives on administrative management delegations, policies and procedures and develops and monitors all budgetary projections for Standard Level User's Charge funds, telecommunications costs, and other administrative expenditures. Controls central HDS funding for equipment, furniture, laboring services, and certain other object class categories. Assists the HDS Regional Offices in the development of budget projections and cost estimates for space and property utilization and telecommunications services. Provides technical assistance to the HDS Regional Offices on records management, safety, and mail.

F. Division of Data Processing provides policy direction, planning, and technical support services to HDS Central and Regional Office units in the area of automatic data processing, word processing, and office automation matters. Represents HDS on Departmental task forces and review boards concerned with ADP matters. Acts as primary contact with other Departmental computer centers.

Provides requirements analyses, feasibility studies, systems design, programming, documentation, user's manuals, training and ongoing operational and administrative support for all HDS hardware and software.

Is responsible for the acquisition of equipment, development of software, and procedures for implementation and management of the HDS Automated Office System (AOS). Operates and maintains the HDS computer facility through direct support and contractual services. Provides AOS operational support and technical assistance to central office users and satellite centers in each regional office.

Formulates standards and determines requirements for procurement of all Central and Regional Office ADP hardware and software. Gives HDS-level approval for central and regional office requests for ADP equipment and services. Investigates, recommends and negotiates contractual ADP sharing services through intergovernment, interdepartment and interagency agreements. Consults, initiates, and negotiates similar services with private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the HDS central data base system. Designs and institutes procedures for the protection, security and integrity of the HDS data base.

6. Part D, Chapter DC, "The Administration for Children, Youth, and Families", as published in the **Federal Register** on January 27, 1981 (46 FR 8744), is to be deleted in its entirety and replaced by the following:

DC.00 Mission. The Administration for Children, Youth, and Families (ACYF) advises the Secretary/HHS through the Assistant Secretary/HDS on matters relating to children, youth and families. Is the principal advisor at the Federal level concerning; and serves as the focal point in the Department to: support and encourage the sound development of children, youth, and families by planning, developing and implementing a broad range of activities.

Administers State grant programs under title IV–B, IV–E and title IV–A Foster Care and the Social Security Act. Manages the Adoption Opportunities program. Administers discretionary grant programs providing Head Start services and Runaway Youth facilities. Administers the Child Abuse Prevention and Treatment Act. Supports and encourages services which prevent or remedy the effects of abuse and/or neglect of children and youth. Manages the National Clearinghouse on Child Abuse and Neglect. Administers the Child Abuse and Neglect State grant programs.

In concert with other units of HDS, develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of children and youth and to strengthen families. Administers Child Welfare Services Training and Child Welfare Services research and demonstration programs authorized by title IV–B of the Social Security Act. Administers the Runaway and Homeless Youth Act authorized by title III of the Juvenile Justice and Delinquency Prevention Act. Manages initiatives to involve the private and voluntary sectors in the areas of children, youth, and families.

DC.10 *Organization. The Administration for Children, Youth, and Families* is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services (ASHDS) and consists of: Office of the Commissioner; Office of Planning and Management: Planning, Research, and Evaluation Division, Management Support Division; Head Start Bureau: Program Operations Division, Program Support Division; Children's Bureau: Program Operation Division, Program Support Division, National Center for Child Abuse and Neglect; Family and Youth Services Bureau: Program Operations Division, Program Support Division.

DC.20 Functions. A. The Immediate Office of the Commissioner serves as the principal advisor to the Assistant Secretary/HDS, the Secretary/HHS, and other elements of the Department in the areas of children, youth, and families. Provides executive direction and management strategy to Administration for Children, Youth, and Families' component units. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner.

B. Office of Planning and Management recommends policy direction and serves as the central control for the following activities: operational and long range planning; planning and management of ACYF research, demonstration, and evaluation activities; the development, operation, and analysis of data from management information systems; formulation and management of the program, and salary and expenses budgets; and provision of administrative and personnel services. Provides leadership and coordination for the activities of two subordinate divisions.

1. Planning, Research, and Evaluation Division manages the processes for long range and operational planning, discretionary funds planning and implementation, legislative and regulatory analysis, HDS and HHS management conferences on ACYF, and data systems management.

Serves as the focal point for the formulation and management of ACYF operational planning objectives, initiatives and indicators, including regional input as appropriate. Reviews, negotiates, and provides policy interpretation on development of plans and ACYF component submissions. Oversees individual units' performance on initiatives; recommends changes to facilitate timely completion.

In coordination with HDS, establishes schedules and material requirements for ACYF headquarters management conferences, prepares materials for HDS and OS management conferences, and

assures follow-up tasks are accomplished. Directs the preparation of briefing material for ACYF and HDS senior staff for testimony, speeches, and regional office visits.

Reviews all legislative proposals, specifications, bill reports and position papers affecting ACYF activities. Reviews and makes recommendations to the Commissioner on all regulations, policy and guidance issues for which the Commissioner is responsible.

Controls the ACYF discretionary funds planning process and formulation of the discretionary funds plans covering research, demonstration, evaluation, training and technical assistance, and other discretionary activities managed by ACYF. Assures that all ACYF program units contribute to and recommends proposed changes to the discretionary plan in areas including funding schedules, minority and small business set-asides, and development of material for HDS joint announcements. Develops final priority areas and projects lists for approval by the Commissioner. Oversees the schedule for completion of grant announcements and requests for contracts, develops and maintains annual contract procurement plans, and assures that all funded projects are managed according to ACYF, HDS, and Departmental policies and procedures.

Assists ACYF components in developing research and demonstration priorities and projects, crafting research and evaluation methodologies, and assuring that ACYF projects are properly managed. Recommends projects to be included in the discretionary funds plan.

Develops the specifications for and manages all ACYF evaluation projects. Manages ACYF crosscutting research and demonstration projects rising from HDS joint funding activities and other sources not assigned to one of the Bureaus. Analyzes project results; recommends policy and program changes and innovative developmental projects as a result of information gained from projects and analyses; and develops dissemination and utilization strategies in coordination with other ACYF program units.

2. Management Support Division provides or coordinates all headquarters' management support services including personnel, contracts and grants, budget formulation and execution, financial management, executive secretariat, and administrative services.

In conjunction with HDS/Office of Management Services, is responsible for budget formulation and execution and financial management. Manages the annual ACYF budget formulation and presentation process for program funds and salary and expense resources; coordinates development of necessary budget documents, exhibits, and support materials.

For ACYF programs in the regions and in headquarters, recommends allowances; develops apportionment materials; maintains commitment registers; and reconciles monthly accounting reports from the DHHS accounting system. Develops the annual plan for obligation of grant and contract funds; monitors funding units for compliance with those plans. Manages the central office salaries and expenses budget. Develops policy for and is responsible for the grants management activities including analyzing State estimates and making awards for three formula grant programs authorized by the Social Security Act, Child Welfare Services, IV–B, Adoption Assistance, IV–E, and Foster Care, IV–A and IV–E. Develops procedures for the regional office to use in acting on State requests for funds. Receives, analyzes, and makes recommendations on deferral and disallowance actions; manages technical and procedural activities incident to the resolution of audit questions, deferrals, disallowances and appeals to the DHHS Grants Appeal Board. Assists regional offices and the Head Start Brueau in the appeals and hearings process related to suspension or termination of Head Start grants.

Provides Executive Secretariat services to ACYF; receives, assigns and tracks all controlled mail; and assures timely and accurate responses. Serves as the primary ACYF liaison with HDS offices in administrative areas of personnel, payroll, training, word/data processing systems, and equal opportunity and civil rights. Manages the Merit Pay and Employee Performance Management System process in ACYF headquarters; serves as an advisor to the Commissioner in this area for ACYF regional employees.

Develops and manages management information systems and other data analysis systems handling data which report on or affect ACYF programs; analyzes data from these systems and other sources; and provides assistance and services on data systems to ACYF units. Serves as the ACYF/OMB Forms Clearance Officer.

C. Head Start Bureau serves as the principal advisor to the Commissioner on Head Start, child development, and child care issues. Develops legislative and budgetary proposals; develops areas for research, demonstration and developmental activities; presents operational planning objectives and initiatives relating to Head Start to the Office of the Commissioner and oversees the progress of approved activities. Provides leadership and coordination for the activities of the Head Start program in headquarters and the regional offices. Represents Head Start in inter-agency activities with other Federal and non-Federal organizations. Directs the management of the joint Head Start-Appalachian Regional Commission programs.

1. Program Operations Division develops and coordinates program and administrative management regulations and policy for the Head Start program; provides guidance to the regional offices in carrying out these policies and monitors regional offices' implementation.

Manages the Indian and Migrant Head Start program. Reviews applications and makes awards for programs serving Native American children and children of migratory workers. Monitors and assesses the programs and assures provision of training and technical assistance to all Head Start programs funded for Indian and migrants. Assures consideration of needs of Native American and migrant workers' children. Represents Head Start in negotiations over Head Start-Appalachian Regional Commission joint programs' content, policy, and management.

Manages discretionary projects assigned to the Bureau which are designed to investigate and improve the operation and management of the Head Start program. Coordinates planning for training and technical assistance activities in Head Start; develops the annual T&TA plan.

2. Program Support Division provides technical expertise in the component areas of Head Start—education, health (medical, dental, mental and nutrition), social services, parent involvement, services to handicapped children, and career development for Head Start program staff and in related child development/child care areas. Establishes program performance standards and other regulations and policy in these areas; recommends methods for monitoring and enforcing them. Develops manuals, guidance, and other policy materials aimed at improving the performance review provided to Head Start children by the centers.

Develops areas for research and demonstration activities to improve the quality and levels of services provided to Head Start children and to examine the other related child care/child development issues. Manages

discretionary projects assigned to the Bureau which are related to the Head Start component and other related areas. Develops training and technical assistance strategies to improve Head Start programs' performance in specific component areas for inclusion in the annual T&TA plans.

D. Children's Bureau advises the Commissioner in child welfare, foster care, and adoption matters. Recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities. Represents ACYF in initiating and implementing inter-agency activities and projects affecting children. Provides leadership and coordination for the programs, activities, and subordinate units of the Bureau in headquarters and regional offices.

1. Program Operations Division generates policies and procedures for developing State child welfare program plans authorized under titles IV–A Foster Care, IV–B, and IV–E of the Social Security Act including child welfare services, foster care and adoption assistance; develops and interprets regulations, guidelines, and instructions. Coordinates child welfare services with other Federal agencies and non-Federal groups.

Monitors regional offices administration of State grant programs and provides technical direction; reviews State plans for compliance with legislative and regulatory requirements, make recommendations for approval or disapproval by regional offices; develops policy and procedures for on-site reviews of State compliance with regulatory and legislative requirements; leads or participates in these reviews.

2. Program Support Division manages the Title IV–B Child Welfare Training Program and the Adoption Opportunities Program. Provides technical expertise in specific, substantive program areas for developing programmatic policies, standards, model laws, regulations and guidelines for child welfare services. Provides expert advice and assistance to a broad array of public and private agencies in these areas. Develops areas for research, demonstration, and evaluation activities to investigate the current status of child welfare practices and to improve the quality and levels of service provided to children. Manages discretionary projects assigned to the Bureau which are related to child welfare services and related areas. Reviews current practices and problems; recommends action to meet special needs of children at risk; and promotes successful models.

Develops and implements training and technical assistance plans. Analyzes regional Children's Bureau training and technical assistance reports and provides technical guidance to the regional offices. Develops model curricula and other materials for training persons engaged in child welfare programs.

3. National Center on Child Abuse and Neglect develops policies and plans on programs relating to the prevention, identification, and treatment of child abuse and neglect. Proposes budgetary and legislative initiatives. Develops regulations, guidelines and instructions to assist State grant programs on child abuse and neglect. Develops and implements, through grants and contracts, approved research and demonstration programs and plans to prevent, identify and treat child abuse and neglect. Plans and implements training and technical assistance activities by directly managing grants and contracts and by monitoring such regional office activities. Manages the Child Abuse and Neglect State Grant Program.

Develops, maintains, and updates the information clearinghouse on child abuse and neglect research programs and other related activities. Through surveys and other information collection activities, provides information on research programs directed at preventing, identifying and treating child abuse and neglect. Compiles, analyzes, and disseminates publications and other materials on child abuse and neglect. Provides assistance to government agencies, public and private service organizations, and the general public concerning information on child abuse and neglect. Studies the trends of incidence of child abuse and neglect and assists in the development of central registries and forms for reporting child abuse and neglect. Provides staff support to the Advisory Board on Child Abuse and Neglect in developing and updating Federal standards, preparing special reports, coordinating Federally funded programs, and other activities of the Board.

E. Family and Youth Services Bureau recommends to the Commissioner policy direction and programs to address youth and family issues. Assesses policies, legislation, research and demonstration, and programs which affect youth and families; recommends budgetary and legislative proposals and areas of research and demonstration discretionary activity for funding; coordinates efforts with departmental and other Federal agencies; and develops program initiatives to address the needs of youth and families. Represents HHS on the Coordinating Council on Juvenile Justice and Delinquency Prevention and on the Committees of the National Institute for Corrections. Manages the family initiatives in ACYF and coordinates these initiatives with other HDS offices and administrations. Provides leadership and coordination to the operating divisions.

1. Program Operations Division develops and strengthens coordinated networks of State and local agencies or centers designed to meet the needs of runaway or homeless youth and their families. Develops and implements policy, guidelines and regulations concerning the funding and management of projects serving runaway and homeless youth funded under the Runaway and Homeless Youth Act. Oversees regional management of the receipt, review, and award of applications for grants Monitors regional management of center grants and provision of technical assistance to funded projects. Funds and monitors the national communications system.

Provides assistance to professional and provider organizations and State and local governments in planning, developing, implementing, and evaluating programs affecting the family.

2. Program Support Division identifies the conceptual and policy framework to address issues facing families and adolescents. Examines programs for responsiveness to the needs of families and youth. Develops methodologies and systems for review of family-related legislation and regulations of other programs. Obtains information, recommendations and potential strategies to meet the needs of families and youth from various sources.

Develops areas for research, demonstration, and evaluation activities in family and youth matters; identifies problems and defines critical issues for investigation. Recommends plans and programs to increase public awareness and education about activities affecting families and youth that are run by or are in conjunction with other Departmental efforts, and assists in providing information to the intended audiences. Coordinates the collection and dissemination of information about families and youth in conjunction with HHS offices and other agencies.

Manages discretionary projects assigned to the Family and Youth Services Bureau which increase understanding of family and youth

problems and methods of alleviating them.

7. Part D, Chapter DG, "The Administration on Aging", as published in the Federal Register on December 3, 1982 (47 FR 54552), is to be amended by making the following changes:

a. Section DG.10 Organization. The Administration on Aging- delete the phrase "Public Liaison staff [DG–1]".

b. Section DG.20 Functions., A.1. Public Liaison Staff-delete the phrase "A.1 *Public Liaison staff* (DG–1)" and capitalize the subsequent "serves", which continues the functions of the Office of the Commissioner.

c. Section DG.20 Functions., B. "Office of Planning, Evaluation and Dissemination" is to be deleted and replaced in its entirety with:

B. *Office of Planning, Evaluation and Dissemination* (DGP) analyzes, synthesizes and interprets all issues related to AoA program policy; prepares and interprets AoA long range, and discretionary plans; develops and interprets AoA goals and objectives; performs statistical analyses related to the aging; plans and manages the AoA evaluation program, considering appropriate subject matter input from other AoA units; performs systems analysis on aging related problems; manages a program for the collection, analysis, and dissemination of information related to the aging.

d. Section DG.20 Functions., B.1. "Division of Program Analysis" is to be deleted and replaced in its entirety by:

B.1. *Division of Program Analysis* (DGP) conducts policy studies on a wide range of basic program issues affecting AoA programs and the general needs of the aging; reviews legislation, and research, evaluation and demonstration findings for planning and program implications; works with groups in the field of aging that have an evaluation capacity to obtain special needs analyses; prepares detailed position papers which include policy objectives, analyses of existing data, and possible strategies for achieving objectives as a preface to the development and recommendation of priorities to the Commissioner; develops and issues AoA goals and objectives; prepares the AoA long range plan and the discretionary funding plan with appropriate subject-matter input from other AoA units; provides interpretation and guidance for implementation of the long range plan to all AoA units; and reviews all AoA policy documents for consistency with the long range plan. Coordinates with the Office of Program Development (AoA), staff offices of the Office of Human Development Services and Departmental staff offices on long range planning issues and development. Coordinates preparation of annual AoA reports to the President and Congress.

Administers evaluation of AoA programs and other related national programs affecting older people as authorized by Title II, Section 202(a)(14) and Section 206(a), of the OAA. Develops AoA plans and priorities for evaluation of programs in consultation with appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA divisions.

e. Section DG.20 Functions., B.2. "Division of Technical Information and Dissemination" is to have the following paragraph inserted at its conclusion:

Advises the central and regional offices of AoA, State and Area Agencies on Aging, and other agencies and organizations on their statistical data needs, uses of data, and methods of collecting the data; maintains a knowledge of data generated by a wide range of agencies and organizations; provides chairperson and secretariat services to the Task Force on Statistics; in support of planning and program requirements, performs routine and special analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

f. Section DG.20 Functions., C. "Office of Management and Policy Control" is to be deleted and replaced in its entirety by:

C. *Office of Management and Policy Control* (DGQ) is responsible for policy control and coordination, regulations development and coordination, analysis and development of legislation, preparation of required reports, budget development, preparation of justifications for the annual budget request, provision of guidance to other AoA units concerning their technical input to policy and regulations development; preparing the annual, AoA short-range plan; coordinating the annual operational planning including detailed work plans, Merit Pay performance plans, employee performance plans; management of the Merit Pay and Employee Management Performance Systems, and execution of a variety of administrative management tasks including the AoA personnel and executive secretariat functions; plans and manages the internal staff development activity. Coordinates with appropriate staff offices of the Office of Human Development Services (HDS) in carrying out these functions. Provides liaison with HDS on Equal Employment Opportunity matters. Responds to inquiries from the public in the form of letters and telephone inquiries.

g. Section DG.20 Functions., C.2 "Division of Management and Budget" is to have its first paragraph deleted and replaced by:

C.2 *Division of Management and Budget* (DGQ2) prepares and interprets the AoA short range plan; translates the long and short range plans into procedural guidance for AoA units concerning performance appraisal planning, work planning and budget preparation. By means of this system which incorporates the Secretary's Operational Management System, coordinates the development of strategies for action and subsidiary plans as well as processes for monitoring and reporting on progress toward achieving stated objectives. Coordinates with the Office of Human Development Services' and Departmental staff offices on the development of the short range plan. Plans and manages the internal AoA staff development activity. Works with the HDS Office of Policy Development in the formulation, review and reporting of operational objectives.

h. Section DG.20 Functions., E.2. "Division of Education and Training" is to have deleted that part of the statement which reads, "including the AoA internal staff development activity" and "Plans and manages the internal AoA staff development activity."

Dated: March 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–10978 Filed 4–23–84; 8:45 am]

BILLING CODE 4110–92–M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, May 17 and Friday, May 18, 1984 at 9:00 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from its Subcommittees on minimum health data sets, classification of diseases, and the vital statistics cooperative program.

There will be separate Subcommittee meetings on the afternoon of May 17.

Further information regarding the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7051.

Dated: April 16, 1984.

Robert A. Israel,

Acting Director, National Center for Health Statistics.

[FR Doc. 84–10999 Filed 4–23–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Guidelines and Forms

Final guidelines for Implementation of Natural Gas Policy Act (NGPA) of 1978 and Form DI–1918, Supplementary Application for Natural Gas Category Determination, were approved by the Office of Management and Budget (OMB) on January 25, 1984 (approval number 1004–0149).

Category determinations for wells located on onshore Federal and Indian lands will be processed by the Bureau of Land Management (BLM). Category determinations for wells located on offshore Federal leases (Outer Continental Shelf) will be processed by the Minerals Management Service (MMS).

Copies of the above captioned guidelines, form, and explanatory material may be obtained from the BLM State Office, NGPA section (for onshore) in each State, and from the MMS Regional Supervisor for Field Operations (for offshore) in each Region.

Dated: April 18, 1984.

James M. Parker

Acting Director, Bureau of Land Management.

[FR Doc. 84–10887 Filed 4–23–84; 8:45 am]

BILLING CODE 4310–84–M

California; Realty Action Sale of Public Land in Calaveras County, California

The following described land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (90 Stat. 2750; 43 U.S.C. 1713). Parcels 1 through 5 will be offered for sale June 29, 1984, at no less than the appraised fair market value. The parcels will be sold using modified competitive bidding procedures with the adjoining landowners as the designated bidders. Bids from other than the adjoining landowners will not be accepted. Parcels 6 and 7 will be offered by direct sale at no less than the fair market value to Robert D. Solomon and Fricot Funding, a general partnership, respectively.

Parcel No.	Serial No.	Legal description	Acres	Fair market value	Designated bidders.
1	CA 15611	T.3 N., R. 13 E., sec. 29, Lot 3	.55	$825	David Cosgrave, Albert Eickhoff, et al.
2	CA 15612	T.3 N., R. 13 E., sec. 29, Lot 6	.56	825	Olive Beth Osborne, Albert Eickhoff, et al.
3	CA 15629	T.3 N., R. 13 E., sec. 29, Lot 12	1.67	2,500	Robert Solomon, Albert Eickhoff, et al.
4	CA 15639	T.3 N., R. 13 E., sec. 29, Lot 26	5.0	15,000	Tad Folendorf, Benjamin Lewis, Etna King Mining Co.
5	CA 13441	T.5 N., R. 13 E., sec. 18, Lot 9	4.57	15,000	Stark Realty Inc.
6	CA 15613	T.3 N., R. 13 E., sec. 29, Lot 11	.55	825	Robert Solomon, (Direct Sale).
7	CA 14589	T.4 N., R. 13 E., sec. 27, Lot 12	1.67	3,400	Fricot Funding (Direct Sale).

Sale terms and conditions are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. Parcel 6 will be offered by direct noncompetitive sale to Robert D. Solomon, owner of the adjoining tract and improvements suspected to lie partially on the subject parcel. Disposal by direct sale will protect his equity investment in improvements and resolve a suspected trespass situation.

4. Because of size, shape, character and existing use of the adjacent land, Parcel 7 will be offered by direct sale to Fricot Funding, a General Partnership and owner of the surrounding 250 acres known as Fricot City.

Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2440.4, the above lands will be segregated from appropriation under the mining laws but excepting the mineral leasing laws for period of not to exceed two years, or until the lands are sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of termination notice in the **Federal Register** prior to the expiration of the two year period.

Parcels 1 through 5 will be separately offered for sale by sealed bid to the adjoining landowners so designated above. Refusals or failure to meet the high bid shall constitute a waiver of such bidding provisions. The sealed bids for Parcels 1 through 5 will be opened at 10:00 a.m. on June 29, 1984, at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on June 29, 1984. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior-BLM for not less than one-fifth of the bid. The sealed bid envelopes must be marked on the front lower left corner "Folsom Resource Area, June 29, 1984, Land Sale, Parcel Number ————." After opening all sealed bids, if two or more offer the identical amount for high bid, then a subsequent round of oral bids will determine the high bid among those qualified. The oral bidding, if needed, will be conducted by the authorized officer immediately following the opening of the sealed bids. The person declared to have entered the highest qualifying oral bid shall submit payment of not less than one-fifth of the bid in cash, or as specified above, immediately following the close of the sale.

The successful bidder shall submit the remainder of the full purchase price without 30 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

If unsold, all the parcels will remain available for sale over the counter on a

first come, first served basis until December 31, 1984.

It has been determined that the lands are without known mineral value and a successful bid will constitute a simultaneous request for conveyance of the reserved mineral estate. As such, the successful high bidder will be required to deposit a $50.00 nonreturnable filing fee for conveyance of the mineral estate plus the one-fifty of the bid as mentioned at the sale.

Detailed information concerning the sale, including the land report and environmental assessment report, is available for review at the Folsom Recource 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.

D. K. Swickard,

Area Manager.

[FR Doc. 84-10901 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-84-M

[M-59923, M-60141-5]

Montana; Order and Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Opening Public Lands and Notice of Conveyance.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public lands laws and minerals in other lands segregated through publication of the related notice of realty action to the operation of the public land and mining laws. It also informs the public and interested state and local governmental officials of the issuance of conveyance documents.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, MT 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. The following described lands were reconveyed to the United States pursuant to the provisions in Sec. 205 of FLPMA (43 U.S.C. 1715):

All in Principal Meridian, Montana

M-59923—Part 1:

T. 31 N., R. 29 E.,
Sec. 3, lots 2, 3, and 4, and SW¼NW¼;
Sec. 4, lot 1.
T. 32 N., R. 29 E.,
Sec. 27, W½SW¼;
Sec. 28, SW¼NE¼, SE¼NW¼, and SE¼;
Sec. 31, S½N½ of lot 1, S½ of lot 1, and lot 2, NE¼, and E½NW¼;
Sec. 32, SW¼NE¼, NW¼NW¼, S½NW¼, and N½S½;
Sec. 33, SW¼, N½NE¼, and SW¼SE¼;
Sec. 34, N½SW¼ and SW¼SE¼.

Aggregating 1,554.11 acres.

M-59923—Part 2:

T. 31 N., R. 29 E.,
Sec. 5, lots 2, 3, and 4, SE¼NW¼ and NE¼SW¼.
T. 32 N., R. 29 E.,
Sec. 31, lots 3 and 4, E½SW¼, and SE¼;
Sec. 32, SW¼SW¼;
Sec. 34, NW¼SE¼.

Aggregating 605.57 acres.

2. No minerals were acquired through this exchange as those in the lands described in paragraph 1, Part 1, were reserved by the grantor's predecessors and the United States has always owned those in the lands described in paragraph 1, Part 2.

3. In exchange for the lands described in paragraph 1, the following described lands were conveyed or (reconveyed) by patent or (quit claim deed) under the provisions of Sec. 206 of FLPMA (43 U.S.C. 1716) to the parties listed:

All in Principal Meridian, Montana

M-60141 to Larry Matthews and Dewain Matthews by quit claim deed:

T. 29 N., R. 28 E.,
Sec. 25, N½NE¼.
T. 28, N., R. 29 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Sec. 3, lot 1 and 2, S½NE¼, and SE¼;
Sec. 10, NE¼.
T. 29 N., R. 29 E.,
Sec. 18, lots 2, 3, and 4, SW¼NE¼, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 28, SW¼;
Sec. 30, lot 1, NE¼ and NE¼NW¼;
Sec. 33, NW¼.

Aggregating 1,644.85 acres.

M-60142 to Martha Kelly by quit claim deed:

T. 29 N., R. 31 E.,
Sec. 5, S½SW¼ and SE¼;
Sec. 6, lots 5 to 12 inclusive, and S½SE¼.

Aggregating 637.14 acres.

M-60143 to Larry Matthews and Dewain Matthews by patent:

T. 29 N., R. 28 E.,
Sec. 25, SW¼SW¼.

Containing 40 acres.

M-60144 to Martha Kelly by patent:

T. 29 N., R. 31 E.,
Sec. 6, lots 1, 2 and 3.

Containing 66.98 acres.

M-60145 to John R. Cloud by patent:

T. 30 N., R. 32 E.,
Sec. 33, SE¼NW¼, NE¼SW¼, and S½SW¼.

Containing 160 acres.

4. The segregation of the public lands described in paragraphs 1 and 3 created by the notice of realty action published in the **Federal Register** on January 3, 1984 (49 FR 34738), terminated on issuance of the patents and deeds. Of those public lands, the reserved mineral interest in the following described lands is at 9 a.m. on May 30, 1984, open to the operation of the mining laws:

Principal Meridian, Montana

T. 29 N., R. 28 E.,
Sec. 25, N½NE¼.
T. 29 N., R. 29 E.,
Sec. 28, SW¼;
Sec. 30, lot 1 and NE¼;
Sec. 33, NW¼.
T. 31 N., R. 29 E.,
Sec. 5, lots 2, 3, and 4, SE¼NW¼ and NE¼SW¼.
T. 32 N., R. 29 E.,
Sec. 31, lots 3 and 4, E½SW¼, SE¼;
Sec. 32, SW¼SW¼;
Sec. 34, NW¼SE¼.

Aggregating 1,206.55 acres.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attemtped appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rigths since Congress has provided for such determinations in local courts.

5. At 9 a.m. on May 30, 1984, the public lands described in paragraph 1 and the reserved minerals interest in the lands described in paragraph 4 shall be open to the operation of the public land laws subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

Dated: April 16, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84-10900 Filed 4-23-84; 8:45 am]

BILING CODE 4310-DN-M

[AA-6688-A

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec.

14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Ouzinkie Native Corporation for approximately 29,415 acres. The lands involved are within the Seward Meridian, Alaska:

T. 27 S., R. 20 W.
T. 26 S., R. 21 W.
T. 27 S., R. 21 W.
T. 28 S., R. 21 W.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the KODIAK DAILY MIRROR upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 24, 1984, to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Ouzinkie Native Corporation, P.O. Box 89, Ouzinkie, Alaska 96644.

Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615.

Retained Lands Unit, Division of Land and Water Management, Alaska Department of Natural Resources, Pouch 7–005, Anchorage, Alaska 99510.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–10956 Filed 4–23–84; 8:45 am]

BILLING CODE 4310–JA–M

[F–14838–A]

Alaska Native Claims Selection

In accordance with departmental regulation 43 CFR 2650.7(d) notice is hereby given that the decisions to issue conveyance to Bethel Native Corporation published in the **Federal Register** on September 20, 1983, and November 3, 1983, are modified as to page 42871 and page 50802, respectively.

The time limits for filing an appeal are extended to May 24, 1984.

Copies can be obtained by contacting the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513.

Except as modified by this decision, the decisions published September 20, 1983, and November 3, 1983, stand as written.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–10957 Filed 4–23–84; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft comprehensive conservation plan, wilderness review, and environmental impact statement (CCP/EIS) for the Becharof National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four alternative strategies for long-term management of the 1.5-million-acre refuge. The plan also classifies about 695,000 acres of non-wilderness lands on the refuge as to their suitability under each management alternative for addition to the National Wilderness Preservation System.

DATES: Comments on the draft CCP/EIS must be submitted on or before July 16, 1984 to receive consideration in the preparation of the final CCP/EIS.

One formal public hearing and two public meetings will be held as scheduled below to receive comments on the draft CCP/EIS:

Public Hearing: May 30, 1984; 7:30 pm; Central Junior High School; Multi-purpose Room, 18th Avenue and E Street. Anchorage, Alaska

Public Meetings: May 22, 1984; 7:30 pm; Bristol Bay Borough Building. Naknek, Alaska; May 23, 1984; 2:00 pm; Brown Schoolhouse. Egegik, Alaska.

Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments also will be accepted at the public meetings. All comments and testimony, both oral and written, received prior to the above date will be considered in preparation of the final CCP/EIS.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Respurces, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786–3399.

A summary of the draft CCP/EIS has been prepared for general distribution. Copies of this summary will be sent to all persons and organizations who participated in scoping or received editions of the planning bulletin. The summary is available upon request from Mr. William Knauer.

Copies of the draft CCP/EIS have been sent to all agencies that participated in the scoping process and to agencies and persons that have already requested copies. Those wishing to review the full technical draft may obtain a copy by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Becharof National Wildlife Refuge Office, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C. Streets, NW, Department of the Interior, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Alburquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Becharof National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317 of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include fish and wildlife management, access, recreation and public use, oil and gas exploration and leasing, and wilderness management. The draft CCP/EIS addresses four alternatives for long-range management of the refuge including one that would continue current management (the no-action alternative). The other alternatives cover a broad spectrum of management emphasis ranging from maximum to minimum use of refuge resources. A preferred alternative, representing an intermediate or balanced approach to management of the refuge, is identified.

The plan also describes the general wilderness suitability of 695,000 acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the October 29, 1981 **Federal Register**. Public meetings were held, in conjunction with the Bristol Bay Cooperative Management Plan, in 17 communities in Alaska from November, 1981 to January 1982.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final EIS.

The plan also describes the general wilderness suitability of 695,000 acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the October 29, 1981 **Federal Register**. Public meetings were held, in conjunction with the Bristol Bay Cooperative Management Plan, in 17 communities in Alaska from November 1981 to January 1982.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final EIS.

Dated: April 12, 1984.

Jan E. Riffe,

Acting Regional Director, Region 7.

[FR Doc. 84-10886 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group Committee; Meeting

AGENCY: Minerals Management Service, Alaska OCS Office, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; Notice and Agenda for Meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Alaska Regional Technical Working Group Committee (RTWG) of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 9 a.m. to 4:30 p.m., May 23, 1984, and 9 a.m. to 11:30 a.m., May 24, 1984, in the Yukon Room at the Sheraton Hotel, 401 East 6th Avenue, Anchorage, Alaska 99501. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provide advice to the Director, Minerals Management Service, on technical matters of regional concern regarding OCS prelease and postlease sale activities.

Major agenda items for May 23 will include the following topics: (a) Organization of the Minerals Management Service; (b) The status of Alaskan OCS oil and gas lease sales; (c) Overview of activities in MMS Regional OCS office.

Major agenda items for May 24 will include the following topics: (a) Overview of activities in MMS Regional OCS office (cont'd); (b) Geological and geophysical activities; (c) Exploration activities.

The Alaska RTWG meeting will be open to the public. Public seating may be limited. Interested persons may make oral or written presentations to the Committee. Such requests should be made no later than May 11, 1984, to Alan D. Powers, Regional Manager, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99501, (907) 261-2307. Requests to make oral statements should be accompanied by a written summary of the oral statement. Written statements should be submitted by May 17, 1984.

Minutes of the meeting will be available 30 days after the meeting for public inspection and copying at the Minerals Management Service, Alaska OCS Region, 800 "A" Street, Anchorage, Alaska, and at the Office of Offshore Information Services, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: April 16, 1984.

Alan D. Powers,

Regional Manager.

[FR Doc. 84-10879 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Plan of Operations and Environmental Analysis for the Purpose of Drilling the Rafferty No. 12 Exploratory Oil and Gas Well; Arco Oil and Gas Co., Big Thicket National Preserve, Texas

Notice is hereby given in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from ARCO Oil and Gas Company a Plan of Operations for the purpose of drilling the Rafferty No. 12 Exploratory Oil and Gas Well within the Neches Bottom/Jack Gore Baygall Unit of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; the Jefferson County Courthouse, in Beaumont, Texas; and the Southwest Regional Office, National Park Service 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Copies of the documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: April 17, 1984.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-10984 Filed 4-23-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 13, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 9, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Etowah County

Gadsden, *Eleventh Street School*, 1026 Chestnut St.

Greene County

Forkland vicinity, *Thornhill*, NW of Forkland

CONNECTICUT

Litchfield County

Winsted, *Camp, Moses, House*, 682 Main St.

FLORIDA

Dade County

Homestead vicinity, *Rock Gate (Coral Castle)*, 28655 S. Federal Hwy.

DeSoto County

Arcadia, *Arcadia Historic District*, Roughly bounded by Lee and Miles Aves., Imogene, Cypress, Pine, and Magnolia Sts.

Monroe County

Key West, *Western Union (schooner)*, Pier A, Truman Annex

Palm Beach County

West Palm Beach, *Hibiscus Apartments*, 619 Hibiscus St.

Seminole County

Longwood, *Longwood Hotel*, Old Dixie Highway

GEORGIA

Dougherty County

Albany, *Albany District Pecan Growers' Exchange*, 211-213 Roosevelt Ave.

Fulton County

Atlanta, *Ford Motor Company Assembly Plant*, 699 Ponce de Leon Ave.
Palmetto, *Arnold, Thomas P., House*, 518 S. Main St.

HAWAII

Honolulu County

Honolulu, *Palm Circle Historic District*, Roughly bounded by Carter Dr., Richardson and Funston Rds., A and B Sts.

INDIANA

Rush County

Rushville vicinity, *Hall-Crull Octagonal House*, N of Rushville

MINNESOTA

Otter Tail County

Fergus Falls, *Fergus Falls City Hall*, 112 W. Washington Ave.
Fergus Falls, *Otter Tail County Courthouse*, Court St. at Junius Ave.
Phelps, *Phelps Mill District*, SR 45

Polk County

Crookston, *Crookston Carnegie Public Library*, N. Ash St. at Second Ave.
Crookston, *Davis, E.C., House*, 406 Grant St.

Stevens County

Morris, *Morris Industrial School for Indians Dormitory*, University of Minnesota campus

MISSISSIPPI

Lauderdale County

Meridian, *U.S. Post Office and Courthouse*, 2100 9th St.

Missouri

Harrison County

Bethany vicinity, *Slatten House*, MO 4

Pike County

Clarksville, *Clifford-Wyrick House*, 105 S. Second St.

NEW MEXICO

Sandoval County

Amoxiumqua Site (FS-530, LA481)(Jemez Springs Pueblo Sites TR),
Archeological Site FS-18, LA-5920 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-199, LA-135 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-3 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-535, LA-385 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-554, LA-386 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-574 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-575 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-580, LA-137 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-647, LA-128 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-688 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-689, LA-403 (Jemez Springs Pueblo Sites TR),
Archeological Site FS-8 (Jemez Springs Pueblo Sites TR),
Astialakwa Archeological District (FS-360, LA-1825)(Jemez Springs Pueblo Sites TR),
Boletsakwa Site (FS-2, LA-136)(Jemez Springs Pueblo Sites TR),
Guacamayo Site (FS-572, LA-189) (Jemez Springs Pueblo Sites TR),
Hanakwa Site (FS-578) (Jemez Springs Pueblo Sites TR),
Hot Springs Pueblo (FS-505, Bj-73) (Jemez Springs Pueblo Sites TR),
Kiashita Site (FS-1, LA-484) (Jemez Springs Pueblo Sites TR),
Kiatsukwa Site (FS-31 and 504, LA-132 and 133) (Jemez Springs Pueblo Sites TR),
Kwastiyukwa Site (FS-11, LA-482) (Jemez Springs Pueblo Sites TR),
Nanishagi Site (FS-320, LA-541) (Jemez Springs Pueblo Sites TR),
Patokwa Site (FS-5, LA-96) (Jemez Springs Pueblo Sites TR),
Pejunkwa Site (FS-571, LA-130) (Jemez Springs Pueblo Sites TR),
Totaskwinu Site (FS-579, LA-479) (Jemez Springs Pueblo Sites TR),
Tovakwa Site (FS-576, LA-483) (Jemez Springs Pueblo Sites TR),
Tovakwa Site (FS-7, LA-483) (Jemez Springs Pueblo Sites TR),

Unshagi Site (FS–337, LA–123) (Jemez Springs Pueblo Sites TR),
Wabakwa Site (FS–400, LA–478) (Jemez Springs Pueblo Sites TR),
Wahajhamka (FS–573) (Jemez Springs Pueblo Sites TR)

NEW YORK

Kings County

New York City, *Weir Greenhouse,* 750—751 Fifth Ave.

New York County

New York City, *Riverside Drive-West 80th-81st Streets Historic District,* Riverside Dr., W. 80th and W. 81st Sts.

Onondaga County

Shaneateles, *Skaneateles Historic District,* Jordan, Fennell, E. and W. Genesee Sts.

Sullivan County

Glen Wild, *Glen Wild Methodist Church,* Old Glen Wild Rd. Narrowsburg, *Kirk House,* Kirk's Rd.

Westchester County

Yonkers, *Sherwood House,* 340 Tuckahoe Rd.

NORTH DAKOTA

Burleigh County

Bismarck, *Van Horn Hotel (Prince Hotel),* 114 N. Third St.

PENNSYLVANIA

Allegheny County

Guffy Site (36AL33),

Berks County

Maxatawney vicinity, *Siegfried's Dale Farm,* Siegfried's Rd.

Bucks County

Hartsville vicinity, *Bridge Valley Bridge (Pettit's Bridge),* Spans Neshaminy Creek N of Hartsville.

Fayette County

Deffenbaugh Site (36FA57),
Francis Farm Petroglyphs Site (36Fa35),
Dawson, *Cochran, Phillip C., Memorial United Methodist Church,* Howell and Griscom Sts.

Greene County

Holbrook vicinity, *Foley, Richard T., Site (36Gr52), W of Holbrook.*

Lancaster County

Duncan Island (36La60,61),
Lititz, *Werner, William, House,* 66 E. Main St.

Lehigh County

Catasauqua, *Catasauqua Residential Historic District,* Roughly bounded by Howertown Rd., Railroad Ave., Oak and Bridge Sts.

Philadelphia County

Philadelphia, *Wesley Building,* 1701–1709 Arch St.

Venango County

Indian God Rock Petroglyphs Site (36VE26),

York County

Spring Grove, *Spring Grove Borough Historic District,* Roughly bounded by College Ave., Jackson, Water, East, and Church Sts.

RHODE ISLAND

Newport County

Middletown, *Bailey Farm,* 373 Wyatt Rd.

Providence County

Foster, *Hopkins Mills Historic District,* Old Danielson Pike, U.S. 6, Maple Rock and Rams Tail Rds.
Johnston, *Cornell-Randall-Bailey Roadhouse,* 2737 Hartford Ave.
Lonsdale, *Lonsdale Historic District,* Lonsdale Ave., Blackstone Ct., Front, Main, Cook, Broad, Mill, Cross, and Blackstone Sts.
Providence, *Rhode Island Medical Society Building,* 106 Francis St.

Washington County

Narragansett, *Gladstone Springhouse and Bottling Plant,* 145a Boon St.

TENNESSEE

Davidson County

Nashville, *Elm Street Methodist Church (Nineteenth Century Churches of South Nashville TR),* 616 Fifth Ave. S.
Nashville, *Lindsley Avenue Church of Christ (Nineteenth Century Churches of South Nashville TR),* 3 Lindsley Ave.
Nashville, *Primitive Baptist Church (Nineteenth Century Churches of South Nashville TR),* 627–629 Third Ave. S.
Nashville, *St. Patrick's Catholic Church and Rectory (Nineteenth Century Churches of South Nashville TR),* 1219 Second Ave. S.
Nashville, *St. Paul's AME Church (Nineteenth Century Churches of South Nashville TR),* 400 Fourth Ave. S.

TEXAS

Austin County

Nelsonville vicinity, *Roesler House,* W of Nelsonville on TX 159

Bell County

Temple, *Barclay-Bryan House,* 804 S. 25th St.

Bexar County

San Antonio, *Stevens Building,* 315 E. Commerce St.

Cook County

Gainesville, *Davis, William and Anna, House, 505 S. Denton St.*

Harris County

Houston, *Barket House (Houston Heights MRA),* 121 E. 16th St.
Houston, *Fuller House (Houston Heights MRA),* 220 Rutland St.
Houston, *House at 122 East Fifth Street (Houston Heights MRA),* 122 E. 5th St.
Houston, *House at 444 West 24th Street (Houston Heights MRA),* 444 W. 24th St.
Houston, *House at 921 Heights Boulevard (Houston Heights MRA),* 921 Heights Blvd.
Houston, *Keller House (Houston Heights MRA),* 1448 Heights Blvd.
Houston, *Wisnoski House (Houston Heights MRA),* 1651 Columbia St.

Tarrant County

Fort Worth, *Johnston-Elliott House,* 3 Chase Court
Fort Worth, *St. Mary of the Assumption Church,* 501 W. Magnolia Ave.

WISCONSIN

Jefferson County

Fort Atkinson, *Hoard Mound Group (47–Je–33),* Koshkonong Mounds Rd.

VIRGINIA

Stafford County

Accokeek Furnace Archeological Site (44ST53)

WYOMING

Hot Springs County

Thermopolis, *Downtown Thermopolis Historic District,* Broadway, 5th and 6th Sts.

[FR Doc. 84–10083 Filed 4–23–84; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Reclamation

Santa Margarita Project, San Diego County, California; Public Hearings on Draft Supplemental Environmental Statement—Change of Time and Location

Pursuant to section 102(2)(C) of the National Environmental Policy act of 1969, as amended, the Department of the Interior has prepared a supplemental draft statement for the Santa Margarita Project. This statement (INT DES 84–19, dated April 5, 1984), filed with the Environmental Protection Agency, is available to the public as specified in the Notice of Availability.

The purpose of the proposed construction of two dams and reservoirs on the Santa Margarita River is to supply supplemental irrigation and municipal and industrial water to the Fallbrook Public Utility District and supplemental municipal and industrial water to the Marine Corps Base at Camp Pendleton. In addition, the project would provide regulation of imported water, flood control, recreation, fishing and wildlife mitigation.

Public hearings to receive comments on the draft statement will be held in Fallbrook, California, on May 17, 1984, at 4 p.m. and 7:30 p.m. in the Potter Junior High School Auditorium located at 1743 Reche Road.

Oral statements at the hearings will be limited to 5 minutes or less. Speakers may not trade time to obtain a longer oral presentation; however, the presiding officer conducting the hearings may allow any speaker additional time for oral comment after all persons

wishing to make comment have been heard.

Requests for scheduled presentations at the hearings will be accepted until 4 p.m., May 10, 1984. Speakers will be scheduled according to the time preference mentioned in their letters or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled at the end of the scheduled speakers. Nonscheduled speakers will be handled on a first-come, first-serve basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearings should contact the Office of Environment, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, Nevada 89005, telephone (702) 293–8464, and announce their intention to participate. Written comments from those unable to attend the hearings, or from those wishing to supplement their oral presentations, will be accepted until May 21, 1984. Written comments should be sent to the address above, and should specify that they are to be included in the hearing record.

Dated: April 18, 1984.

Robert A. Olson,

Acting Commission.

[FR Doc. 84–10678 Filed 4–23–84; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 452]

Railroad Cost of Capital—1983

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file rebuttal statements in limited revenue adequacy proceeding.

SUMMARY: In the **Federal Register** notice of December 27, 1983 (48 FR 57027), the due date for filing rebuttal statements by the railroads was established as April 19, 1984. At the request of the Association of American Railroads, the due date has been extended to May 3, 1984. Additional time is needed for the AAR to prepare and coordinate its rebuttal statement.

DATES: Rebuttal statements by the railroads are due May 3, 1984.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275–7489.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–10881 Filed 4–23–84; 8:45 am]

BILLING CODE 7035–01–M

[Section 5a Application No. 25; (Amendment No. 7)]

The New England Motor Rate Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comments.

SUMMARY: New England Motor Rate Bureau has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since several modifications are required before the agreement receives final approval, and because of the new and complex questions involved, the Commission is soliciting public comment on specific rate bureau provisions in the MCA and whether the agreement is consistent with such provisions. Copies of NEMRB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., N.W., Washington, DC 20423, and from NEMRB's representatives: Curtis L. Wood or Leonard J. Duggan, P.O. Box 380, 14 New England Executive Park, Burlington, MA 01803

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 1227, Interstate Commerce Commission Building, 12th St., and Constitution Ave., N.W., Washington, DC 20423 or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

DATES: Comments from interested persons are due May 24, 1984. Replies are due June 8, 1984.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 25, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Charles R. Jones, (202) 275–7711,

or Howell I. Sporn, 202–275–7691

SUPPLEMENTARY INFORMATION: New England Motor Rate Bureau (NEMRB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by Section 14(e) of the Motor Carrier Act of 1980 (MCA), Pub. L. 96–296 (1980). During the time the proposed amended agreement was prepared for, submitted to, and considered by the Commission, NEMRB has been obligated to observe the requirements of Section 14 of the MCA and the standards set forth in our decision implementing Section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981), in order to enjoy antitrust immunity for certain activities.

We provisionally approve NEMRB's agreement as being consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), *supra*, subject to certain conditions and modifications including the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meetings; and final disposition of cases; general standards for member-carrier voting and discussion of collectively established rates; Section 10721 rates; and zone of freedom and released rates. We also offer comments and impose requirements concerning the agreement generally. NEMRB is directed to file a revised agreement conforming to the imposed conditions by September 21, 1984 provisionally approving the agreement.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of whether NEMRB compiled with the controlling statutory and administrative criteria. A copy of any comments filed shall also be served on NEMRB, which shall have 15 days from the expiration of the comment period to reply.These comments will be considered in conjunction with our review of the modifications that NEMRB must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice is issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 554.

Decided: April 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and

Gradison. Vice Chairman Andre concurred. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-10882 Filed 4-23-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 9-84]

Privacy Act 1974; Matching Program

AGENCYS: Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC), Justice.

ACTION: Privacy Act of 1974; NCIC Computer Matching Program Report.

DESCRIPTION OF THE MATCH: This matching program will involve computer matches of data contained in the NCIC Wanted and Missing Person File records with data contained in various Federal, State, or local agency data bases to facilitate the apprehension of fugitives and/or the location of missing persons. These matches will be performed only pursuant to a request from an authorized law enforcement official of a Federal, State, or local agency (i.e., "the requesting agency") and only for the purpose stated above. Data factors to be compared consist of physical descriptors and numerical descriptors. Information regarding "hits" will be furnished to the requesting agency for further investigation and any necessary dissemination to another appropriate law enforcement agency. (A "hit" is the identification, through a matching program, of a specific individual.) Data exchanges began in January 1984, and will continue as such requests are received.

RECORDS TO BE MATCHED: NCIC Wanted and Missing Person File records, as described in a system of records entitled "National Crime Information Center (NCIC), JUSTICE/FBI-001," will be matched with data contained in various Federal, State, or local agency data bases, e.g., State Department of Motor Vehicle Registration records, to facilitate the apprehension of fugitives and/or the location of missing persons. The NCIC system of records describes all information pertinent to the NCIC, including the "Routine Uses * * *" of such records. The system was most recently published on December 8, 1982 (47 FR 55343).

PERIOD OF THE MATCH: The matching began in January 1984, and will continue as such requests are received.

PRIVACY PROTECTION AND DATA SECURITY: Privacy safeguards pertaining to the NCIC as publised in the Federal Register on December 8, 1982 (47 FR 55343) will apply. Information resulting from matching programs is used only for official purposes and in accordance with the "Routine Uses * * *" as published.

DISPOSITION OF RECORDS: Records will not become part of the NCIC data base. Data received will be returned to the requesting agency after completion of the matching program. Information regarding hits will be conveyed to the requesting agency for follow-up review and investigation by the requesting agency.

AUTHORITY: 28 U.S.C. 534.

FOR FURTHER INFORMATION CONTACT: Vincent A. Lobisco (202-633-4414).

ADDRESS: Vincent A. Lobisco, Assistant Director, Administrative Services Staff, Justice Management Division, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

Dated: April 10, 1984.

Kevin D. Rooney,

Assistant Attorney General for Administration.

[FR Doc. 84-10941 Filed 4-23-84; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. The LTV Corp., et al.; Correction to Publication of the Competitive Impact Statement

The publication of FR Doc. 84-9133 in Volume 49, Number 67 on Thursday, April 5, 1984, contains an error on page 13609 (column one). The telephone number there printed as (202) 633-6347 is incorrect. The correct number is (202) 724-6347.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 84-10930 Filed 4-23-84; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 83-20]

Louis J. Weinstein, M.D., Revocation of Registration

On June 30, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Louis J. Weinstein, M.D., (Respondent) of Arnaudville, Louisiana, an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration, AW3416410. By letter dated September 13, 1983, Respondent, through counsel requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in New Orleans, Louisiana, on November 15, 1983. Administrative Law Judge Francis L. Young presided. On January 31, 1984, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. No exceptions were filed and on February 29, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent had a medical practice in Arnaudville, Louisiana. Respondent stocked medicines himself so he could directly dispense medication to his patients. In October 1981, the Louisiana State Police Diversion Investigation Unit (DIU) commenced an investigation of Respondent. This investigation was initiated after DIU had received from DEA several reports of excessive purchases of controlled substances by Respondent. The DIU also had received information from DEA concerning problems which DEA had had with Respondent as to security and recordkeeping of his controlled substances. Also, a State Police captain who lived in Arnaudville had alleged that Respondent was supplying large quantites of drugs to people in the area. Finally, a DIU informant who was a "physician shopper" (one who visited numerous physicians to obtain controlled substances for abuse), identified Respondent as one whom she frequently visited. The informant stated that Respondent was very free in dispensing controlled substances, particularly anorectics.

DIU Agents, acting in undercover capacities, visited Respondent's office on several different occasions. Respondent took the agents' blood pressure, and listened to their chests with a stethoscope. Respondent did not weigh the agents or elicit any sort of medical histories from them. Respondent dispensed various controlled substances to the agents. The agents were not given any instructions as to taking any of the medication, although there were some instructions written on the labels on the vials. The Respondent told each agent that he could return to the office about ten times

and simply bring the bottles back to the nurse for a refill.

Specifically, on November 5, 1981, Agent Roy Frusha visited Respondent. When he met with Respondent, Frusha stated that he was a jogger and had been taking street pills. Respondent asked the agent if he wanted to lose weight, to which question Frusha answered that he was a jogger and wanted some pills to help him with his jogging. Respondent then dispensed various medicines to Agent Frusha, one of which was subsequently analyzed and found to be phentermine, a Schedule IV controlled substance. Agent Frusha is in his early 30's and is not overweight.

On November 24, 1981, Agent Doug Peters visited Respondent. Peters told Respondent that he was a truck driver who drove long hours and that he had been taking "truck stop pills." He told Respondent that he needed something to stay up while driving and to come down when he was finished. Respondent told Peters that he, Respondent, had to stay up a lot himself and that he would give Peters the same thing that he was taking. At that time, Respondent took a vial from his pocket and proceeded to ingest a tablet. Respondent also warned Peters to be careful with the drugs that he was going to give him because people would rob and steal in order to get them. After this discussion, Respondent took Agent Peters' blood pressure and then gave him some phendimetrazine, a Schedule III controlled substance, and some Valium, a Schedule IV substance.

On January 13, 1982, Agents Frusha and Peters returned to Respondent's office where they saw one of Respondent's employees and obtained refills of the drugs they had previoulsy received from Respondent. About two weeks later, several Agents went to Respondent's office. Respondent told the Agents that the law was on to him and he no longer gave out medication.

On or about May 21, 1982, a grand jury of the United States District Court for the Western District of Lousiiana indicted Respondent on nine counts of knowingly and intentionally dispensing controlled substances in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2. On January 21, 1983, following a jury trial, Respondent was convicted as charged on three counts. These counts were based on the visits of Agent Frusha on November 5, 1981 and January 13, 1982 and the visit of Agent Peters on November 24, 1981. Therefore, there is a lawful basis for the revocation of Respondent's registration under 21 U.S.C. 824(a)(2).

Respondent was placed on probation for five years. The trial judge imposed certain special terms and conditions on Respondent's probation. Essentially Respondent is not to maintain an inventory of any controlled substances for dispensing to patients and he is not to dispense or administer directly any controlled substance to patients. Furthermore, he may not prescribe any Schedule II substances at all, except for one of his patients when admitted to a hospital as an inpatient. Another exception is that Respondent may administer a Schedule II substance in a medical emergency requiring it. Finally, Respondent is permitted to have on hand a small supply of four named substances to administer in medical emergencies.

The Louisiana State Board of Medical Examiners summarily suspended Respondent's license to practice medicine in mid-February 1982. Respondent submitted a request for reinstatement with supporting documentation. After considering all of the material before it, the Board, on April 9, 1983, reinstated Respondent's license, subject to certain restrictions. These restrictions were the same as those that were later imposed as conditions of probation by the trial judge.

Prior to the administrative hearing in this proceeding, Respondent asserted several legal arguments in opposition to revocation of his DEA registration and denial of his pending application. They include: Whether the correct medical practice standard was applied during his criminal trial; whether the prosecutor's alleged requests that the sentencing judge revoke Respondent's DEA registration makes this administrative proceeding "double jeopardy"; whether the trial judge's alleged refusal to revoke the DEA registration renders the question of such revocation *res judicata;* and whether any Federal action impacting on Respondent's right to practice medicine is in violation of the Tenth Amendment to the Federal Constitution. The Administrative Law Judge dealt with these objections and overruled them in his Memorandum And Order dated November 1, 1983 which is included in the record of these proceedings.

After finding that there was a lawful basis for revocation of Respondent's registration under 21 U.S.C. 824(a)(2), the only issue remaining before the Administrative Law Judge was whether the Administrator in his discretion should revoke Respondent's registration. Judge Young stated that DEA cannot grant any Respondent a Federal registration beyond the scope of authority permitted him by the State Board. 21 U.S.C. 823(f). Therefore, the Administrative Law Judge might have been inclined to recommend that restrictions be placed on Respondent's registration, similar to those restrictions imposed by the Federal District judge and by the State Board. However, Judge Young did not recommend the imposition of such restrictions. Instead, Judge Young recommended complete revocation.

The Administrative Law Judge noted that Respondent made no acknowledgment that what he had done was wrongful, nor did Respondent give adequate assurances that he would scrupulously observe the drug laws in the future. Judge Young further stated that the evidence presented justifices the inference that these were not exceptional occasions, but rather illustrative of Respondent's common practice. Therefore, the Administrative Law Judge has recommended that Respondent's registration be revoked. The Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and having further concluded that under the facts and circumstances presented in this case, the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW3416410, previously issued to Louis J. Weinstein, M.D., be, and it hereby is, revoked. Any pending applications for registration or reregistration are hereby denied.

Dated: April 16, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-10952 Filed 4-23-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 30, 1984, Syncates Associates, Inc., 9307-M Harwin, Houston, Texas 77036, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pentobarbital (2270).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance

may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 24, 1984.

Dated: April 16, 1984.

Gene R. Haislip,

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

[FR Doc. 84-10951 Filed 4-23-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of labor Statistics
Local Area Unemployment Statistics Reports 6-8, 10-12
1220-0043; LAUS 6-8 11-12
Annually and biennially: LAUS 10
State and local Governments
779 total responses: LAUS 6 and 7, 4 hours; LAUS 8, 1.9 hours; LAUS 10, 7.8 hours; LAUS 11, 80 hours, LAUS 12, 80 hours; 6 forms

These reports provide essential technical management information regarding (1) quality, consistency, and conformance to BLS standards of the data and procedures used in LAUS estimation, and (2) proposed contractual research in LAUS estimation and UI data analysis and improvement.

Extension

Bureau of Labor Statistics
Report on Occupational Employment
1220-0042, BLS 2877
Annually
State and local governments; businesses or other for profits; non-profit institutions; small businesses or organizations
191,474 responses; 5 hours; 1 form

The OES Survey program is a Fed/State sample survey of employment by occupation in nonfarm establishments that is used to produce data on current occupational employment and is a component in the development of employment training programs and occupational information systems.

Extension

Employment Standards Administration
Annual Report Earnings
CM-777
Annually
Individual or households
750 responses; 125 hours, 1 form

Black Lung beneficiaries annual report of earnings is used to adjust benefits disbursed for the preceeding year and to estimate adjustments, if any, for the following year due to excess earnings.

Employment and Training Administration
In-Season Farm Labor Report
1205-0006; ETA 223
On Occasion
State or local governments; Farms
20,900 responses; 6,175 hours; 1 form

The collected information is used as a basis for recruitment and placement of seasonal farmworkers, including migratory workers. Also, the report shows the impact of H-2 foreign workers when they are used.

Employment and Training Administration
Request for Readmission
1205-0031; ETA 660
On occasion
State or local governments; non-profit institutions
5,000 responses; 1,250 hours; 1 form

This form is necessary for the documentation of information on Job Corps readmissions. It can be used after 6 months have passed since the applicant first termination from Job Corps. It documents reason for termination and from which center. It is only used when the Job Corps screener can provide substantive evidence that the applicant has the motivation and potential to complete the program if readmitted.

Extension

Mine Safety and Health Administration
Qualification and Certification Program
1219-0069
Semi-annually; annually
Businesses and other for profit; small businesses or organizations
7,300 responses; 1,210 hours

Title 30, Parts 75 and 77 contain sections which state that the Secretary of Labor may temporarily qualify certain persons to perform tests and operate hoists. The sections detail the procedures and requirements necessary for qualification and certification. MSHA Forms 5000-4 and 5000-7 provide the mining industry with an expeditious and nationally uniform method for compliance with the law.

Signed at Washington, D.C. this 19th day of April 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-11006 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-24-M; 4510-30-M

Employment and Training Administration

[TA-W-13,645]

Bethlehem Steel Corp., Johnstown Plant; and Conemaugh and Black Lick Railroad, Johnstown, Pennsylvania; Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 on March 1, 1983, the Department of Labor issued a determination regarding eligibility to apply for adjustment assistance to all workers of the Johnstown plant of Bethlehem Steel Corporation and the Conemaugh and Black Lick Railroad, Johnstown, Pennsylvania.

Subsequent to the determination, the Office of Trade Adjustment Assistance received an inquiry regarding coverage of workers at the coke ovens at the Johnstown plant. Further investigation of that workers at the coke plant were adversely impacted by imports, and should have been specifically mentioned in the certification.

The coke produced at the Johnstown plant's coke ovens from August 1981 until the ovens' shutdown in April 1982 was primarily shipped to Bethlehem's Burns Harbor facility for use in the production of basic steel. Workers at the Burns Harbor facility engaged in the plant's output of finished steel products, were certified as eligible to apply for adjustment assistance benefits on October 29, 1982 (TA-W-13,181). The impact date of the certification is July 1, 1981 and the termination date is December 31, 1982. The certification, therefore, is revised to specifically state that workers at the Johnstown plant of Bethlehem Steel Corporation engaged in employment related to the production of furnace coke who became totally or partially separated from employment on or after July 8, 1981 and before December 31, 1982 are eligible to apply for adjustment assistance benefits under Section 223 of the Trade Act of 1974.

The revised certification applicable to TA-W-13,645 is hereby issued as follows:

All workers of the Johnstown plant of Bethlehem Steel Corporation Johnstown, Pennsylvania engaged in employment related to the production of wire, wire rod, basic and semi-finished steel, and all employees of the Conemaugh and Black Lick Railroad, Johnstown, Pennsylvania who became totally or partially separated from employment on or after July 8, 1981 and all employees of the Johnstown plant of Bethlehem Steel Corporation, Johnstown, Pennsylvania engaged in employment related to the production of coke who became totally or partially separated from employment on or after July 8, 1981 and before December 31, 1982 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all workers of Johnstown plant of Bethlehem Steel Corporation, Johnstown, Pennsylvania engaged in employment related to the production of hot rolled carbon and alloy bars, railroad freight cars, railroad axles, circular forgings, and rail accessories be denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of April 1984.

Harold A. Bratt,

Deputy Director, Office of Program Mangagement, UIS.

[FR Doc. 84-11001 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,873]

Adirondack Steel Casting Company, Inc., Watervliet, New York; Affirmative Determination Regarding Application for Reconsideration

By an application dated March 19, 1984, the United Steelworkers of America and the subject company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Workers Adjustment Assistance on behalf of workers and former workers of the Adirondack Steel Casting Company, Inc., Watervliet, New York. The determination was published in the **Federal Register** on February 22, 1984 (49 FR 6580).

The application claims, among other things, that the Department's survey of Adirondack Steel's customers was not adequate. It is claimed, in particular, that Adirondack Steel was dropped as a supplier of castings by one of its customers because of imports from the Orient.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this 11th day of April 1984.

Robert O. Deslongchamps,

Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 84-11003 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,249]

Tobin-Hamilton Co, Inc., Birchtree, Missouri; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 12, 1984 in response to a worker petition received on February 29, 1984 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Tobin-Hamilton Company, Incorporated, Birchtree, Missouri. An active certification covering the petitioning group of workers remains in effect [TA-W-12,984 and 12,984-A). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 11th day of April 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-11002 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-30-M

Alco Power, Inc. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than May 4, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 4, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 16th day of April 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alco Power, Inc. (USWA)	Auburn, NY	4/9/84	4/5/84	TA-W-15,294	Engines—diesel.
American Watch Case Corp. (workers)	Providence, R.I.	4/9/84	4/6/84	TA-W-15,295	Watch case parts.
Ampspec Chemical Corp. (OCAWIU)	Gloucester City, NJ	4/9/84	4/4/84	TA-W-15,296	Antimony trioxide.
Bethlehem Steel Corp., Buffalo Tank Division (USWA)	Buffalo, NY	4/9/84	4/5/84	TA-W-15,297	Tanks and hollow items.
Eimco Mining, Machinery International (wkrs)	Salt Lake City, UT	4/9/84	3/30/84	TA-W-15,298	Machinery—mining, underground.
Elegante Creations, Inc. (ILGWU)	Weehawken, NJ	3/23/84	3/20/84	TA-W-15,299	Dresses—ladies'.
Johnson Steel & Wire Co. (USWA)	Worchester, MA	4/9/84	4/5/84	TA-W-15,300	Wire—Steel.
U.S. Steel Corp., South Works (USWA)	Chicago, IL	4/9/84	4/5/84	TA-W-15,301	Plate, slab, structural, rods.
Westmoreland Coal Co., Imperial Smokeless Division, Mine No. 7 (UMWA).	Quinwood, WV	4/6/84	4/1/84	TA-W-15,302	Coal—metallurgical.
Cathy Anna, Inc. (ILGWU)	E. Newark, NJ	4/9/84	4/3/84	TA-W-15,303	Sportswear—ladies.

[FR Doc. 84-11004 Filed 4-27-84; 8:45 am]

BILLING CODE 4510-30-M

Schwinn Bicycle Co.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 9, 1984—April 13, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15, 043; Stearns Magnetics, Inc., Cudahy, WI

Affirmative Determination

TA-W-15, 042; Schwinn Bicycle Co., Chicago, Il.

A certification was issued covering all workers separated on or after September 23, 1982.

I hereby certify that the aforementioned determinations were issued during the period April 9, 1984—April 13, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated. April 17, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-11005 filed 4-23-84; 8:45 am]

BILLING CODE 4510-30-M

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential

impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, N.W., Room 8000, Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 19th day of April 1984.

Joseph Seiler,

Director, Office of Program Opeartions.

Applications Received During the Week Ending April 21, 1984

Name of applicant and location of enterprise: Maple Leaf Home Industries, Inc., Avon Park, Florida.

Principal product or activity: A modular home manufacturing facility.

[FR Doc. 84-10970 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Application No. D-3986, et al.]

Proposed Exemptions: Bruce J. Rice, M.D., and Barry R. Weiss, M.D., Inc., Employees' Money Purchase Pension Plan and Trust, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notice of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION:

The proposed exemptions were requested in applications filed pursuant to section 408(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bruce J. Rice, M.D., and Barry R. Weiss, M.D., Inc., Employee's Money Purchase Pension Plan and Trust

[Exemption Application No. D-3986]

Bruce J. Rice, M.D., and Barry R. Weiss, M.D., Inc., Employees' Profit-Sharing Plan and Trust (collectively, the Plans), Located in Oakland, California

[Exemption Application No. D-3987]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed sale by the individual participant accounts (the Accounts) of Bruce J. Rice, M.D. (Rice) and Cathie Davis (Davis) in the Plans of certain residential real property to Rice, a party in interest with respect to the Plans; and (2) the proposed extension of credit by the Accounts to Rice, provided that the price paid in such sale is no less than the fair market value of the subject property at the time of such sale, and provided that such extension of credit is on terms at least as favorable to the Accounts as could be expected in dealing with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution benefit plans with four participants maintained by Bruce J. Rice, M.D. and Barry R. Weiss, M.D., Inc. (the Employer). The Plans are managed by two co-trustees (the Trustees), Rice and Barry R. Weiss, M.D. (Weiss), each of whom owns 50% of the outstanding stock of the Employer. Pursuant to the Plans' documents, a segregated account in the Plans, such as each of the Accounts, is maintained for each participant in the Plans and each participant is specifically authorized to direct the investment of his or her own segregated account balance. On September 24, 1979, one of the Plans' participants, Davis, delegated to Rice her authority to direct the investment of her own Account in the Plans. As of September 30, 1982, the individual Account balances of Rice and Davis in the Plans were $168,353.27 and $18,824.00, respectively.

2. On June 24, 1981, pursuant to Davis' delegation to Rice and Rice's right to

direct the investment of his own Account, a total of $22,000 of the Plans' funds attributable exlusively to the Accounts were loaned (the Loan) to an unrelated party. The Accounts' funds used for the Loan were deducted from the Accounts proportionately on the basis of each Account's respective balances at the time of the Loan. Accordingly, approximately 91% of the Loan was deducted from Rice's Account and approximately 9% was deducted from Davis' Account. A promissory note (the Note) evidencing the Loan terms was executed and provided for interest at 20% per annum amortized over 13 equal monthly payments. The Note was secured by a recorded third deed of trust (the Third Trust) against the borrower's personal residence (the Property) located at 4101 Fairway Drive in Oakland, California. At the time of the Loan the Property had an appraised fair market value of $152,000 and was subject to two prior encumbrances (the First and Second Trusts) totalling $69,000. The borrower defaulted on the payments under the Note and the Trustees purchased the Property on behalf of the Accounts on November 8, 1982 at a sale of the Property held pursuant to the foreclosure terms of the Third Trust. On behalf of the Accounts the Trustees obtained the Property, subject to the First and Second Trusts, by "bidding in" $22,000, which was the amount of the outstanding principal balance of the Note, and by paying a foreclosure fee of $883.00 in cash. By "bidding in" $22,000, the Trustees received credit in that amount and the Property was obtained for the Accounts without the expenditure of any cash except the foreclosure fee of $883.00. The holders of the First and Second Trusts are not related to Davis, Rice or the Employer. The Second Trust became fully due and payable in September, 1982 in the principal amount of $25,000. In order to prevent a foreclosure of the Second Trust the Accounts have made monthly payments of interest to the unrelated holder of the Second Trust at the rate of 20 percent per annum. The First Trust was assumed by the Accounts upon acquisition of the Property through foreclosure of the Third Trust. Since the acquisition of the Property the Accounts have made payments of interest and principal to the unrelated holder of the First Trust in the amount of $480.00 per month.

3. Rice is requesting an exemption to permit him to purchase the Property from the Accounts. In a written statement to the Department, Davis has approved the purchase of the Property as proposed by Rice. Rice and Davis each represent that they never intended the Accounts to invest in a direct ownership interest in real property and that the Trustees purchased the Property at the directions of Rice and Davis merely as a means of protecting the original Loan investment. Rice and Davis further represent that it is their desire for the Accounts to divest of the Property to enable the Accounts to invest in more liquid assets. Rice proposes to pay for the Property a purchase price consisting of the appraised fair market value of the Property plus $8,897 to reimburse the Accounts for maintenance costs of the Property since its acquisition by the Accounts on November 8, 1982. These maintenance expenses consist of the costs of necessary repairs and improvements of the Property's furnace, roof, plumbing and floors. The Property was appraised on November 23, 1982 by Peter M. Iversen, M.A.I. (Iversen) whose office is located in San Franciso, California. Iversen represents that as of that date the fair market value of the Property was $137,000. Concurrently with the sale of the Property to Rice, Iversen will update his appraisal of the Property as of the date of the sale and the total purchase price paid by Rice will be increased by the excess, if any, of the updated valuation of the Property over the valuation as of November 23, 1982.

4. Rice will pay the Accounts 20% of the total purchase price in cash and will execute a promissory note (Rice's Note) in favor of the Accounts in the amount of the balance of the purchase price. Rice's Note will be payable in 120 equal monthly payments of principal and interest at the rate of 2% above the prime rate of the San Francisco Branch of the Bank of America as of the closing date of the sale. The proceeds of the sale of the Property to Rice will be allocated between the Accounts proportionately in the same ratio as each Account had contributed toward the original Loan, with approximately 91% allocated to Rice's account and approximately 9% allocated to Davis' account. Concurrently with the sale and pursuant to the direction of Rice and Davis, with funds from the Accounts the Trustees will discharge and pay off the Second Trust in the amount of $25,000 in principal plus all accrued interest as of the date of the sale of the Property to Rice. Rice's Note will be secured by a recorded second deed of trust on the Property which will be subordinate only to the First Trust, which has an outstanding principal balance of $41,731.64 as of April 1, 1983, and which will be assumed by Rice. As additional security, Rice's Note will be secured by a recorded third deed of trust (the Third Lien) on a parcel of improved residential real property (Rice's Residence) which is owned and occupied by Rice and located at 5849 Merriewood in Oakland, California. Rice's Residence has been appraised by E. Parker, I.F.A. (Parker), an independent professional real estate appraiser whose office is located in Oakland, California. Parker represents that as of September 17, 1983 Rice's Residence had a fair market value of $120,000. The Third Lien will be subordinate to two prior encumbrances in principal amounts totalling $70,500 as of October 5, 1983, leaving Rice's Residence with an unencumbered value of $49,500. Rice represents that the Plan's recorded interests in the Property and Rice's Residence will exceed 150 percent of the principal amount of Rice's Note.

5. Rice represents that the terms of the proposed sale of the Property are more favorable to the Accounts than could reasonably be expected in a sale to an unrelated party, in view of the current state of the real estate market in Oakland, California. Rice further represents that unless the Accounts sell the Property the Accounts will continue to incur maintenance costs on the Property to the detriment of the interests of Rice and Davis in the Accounts. The proposed terms of Rice's Note and its proposed security by recorded trusts on the Property have been reviewed and evaluated by Jerald L. Barnes (Barnes), Manager and Vice President of the Bank of California (the Bank) in Berkeley, California. Barnes, who certifies that the Bank is not in any way related to the Employer or to Dr. Rice, represents that the proposed terms and conditions of Rice's Note are at arm's length and consistent with the terms and conditions under which the Bank would approve a loan to Dr. Rice in an identical transaction. Additionally, Barnes represents that in his opinion the proposed sale of the Property by the Accounts to Rice is on terms and conditions which are better than the Accounts could reasonably expect in a sale of the Property to an unrelated party. The Oakland, California law firm of Wendel, Lawlor, Rosen and Black (the Law Firm), which is not related to the Employer, has agreed to protect and represent the interests of the Accounts with respect to Rice's Note and for the duration of the term of Rice's Note will monitor Rice's obligations thereunder and will pursue appropriate remedies on behalf of the Accounts in the event of default or other deficiencies in performance.

6. In summary, the applicant represents that the criteria of section 408(a) of the Act will be satisfied because: (1) The proposed sale of the Property by the Accounts to Rice will be pursuant to the express directions of Rice and Davis, participants in the Plans, in accordance with provisions in the Plan's documents providing for directed investments of the Accounts; (2) the purchase price to be paid by Rice for the Property will pay the Accounts the full appraised fair market value of the Property as determined at the time of the sale by an independent professional appraiser and will also reimburse the Accounts for the maintenance costs incurred by the Accounts with respect to the Property; (3) the sale of the Property by the Accounts is necessary to prevent additional costs of maintenance of the Property to the detriment of the interests of the participants in the Accounts; (4) Rice's Note in favor of the Accounts will be secured by recorded interests in real property totalling more than 150 percent of the principal amount of Rice's Note; (5) an unrelated senior officer of the Bank of California, Barnes, finds that the proposed sale of the Property is on terms which are better than the Accounts could reasonably expect in a sale of the Property to an unrelated party and that the terms of Rice's Note are at arm's length and consistent with terms under which the Bank of California would approve a loan to Rice in an identical transaction; and (6) the interests of the Plan will be protected and represented by the Law Firm, which is unrelated to the Employer, and which will monitor Rice's performance under Rice's Note and will pursue appropriate remedies on behalf of the Plan in the event of deficient performance.

For further information contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Texas International Airlines, Inc., Employees Retirement Trust (the Plan), Located in Houston, Texas

[Application No. D-4632]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continued leasing beyond June 30, 1984 of certain real property (the Property) by the Plan to Texas International Airlines, Inc. (the Employer), the sponsor of the Plan, provided that the terms and conditions of such leasing are at least as favorable to the Plan as those which the plan could receive in a similar transaction with an unrelated party.

Effective Date: If the exemption is granted, the effective date will be the date of the grant.

Summary of Facts and Representations

1. The Plan is the funding vehicle for certain defined benefit plans which have been established and are maintained by the Employer. Such defined benefit plans are the Texas International Airlines, Inc. Retirement Plan for Administrative Employees and Dispatchers; Texas International Airlines, Inc. Fixed Pension Plan for Pilots; Texas International Airlines, Inc. Fixed Pension Plan for Stations and Related Employees; Texas International Airlines, Inc. Fixed Pension Plan for Maintenance and Related Employees; and Texas International Airlines, Inc. Pension Plan for Flight Attendants. As of December 31, 1982, the Plan had net assets of $57,260,483 and 3990 participants. The trustee of the Plan is the Bank of the Southwest National Association (the Bank) which is located in Houston, Texas. As a part of its assets, the Plan owns the Property. The Property, which represents less than 3% of the assets of the Plan, consists of certain land and improvements located at the Houston International Airport in Houston, Texas. Since 1967, the Property has been leased to the Employer.

2. The applicant is requesting an exemption which will permit the continued leasing (the Lease) of the Property by the Plan to the Employer until January 1, 1987 with an option for an additional five years from such date. The applicant represents that the present leasing of Property by the Plan to the Employer is exempt under section 414(c)(2) of the Act.[1] The continued leasing of the Property will be subject to the terms and conditions of the existing lease with the following amendment. The initial rental shall be the greater of $2,300 per month (based on a net return basis of 12%) or the fair market rental value of the Property as determined by the appraisal of the Property by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers or other recognized association of real estate appraisers. The rental will be adjusted annually based upon an independent appraisal. In addition, the Employer will maintain an option to extend the Lease for a period of 5 years from January 1, 1987. Such option, however, is conditioned on the approval of the option by the Bank acting on behalf of the Plan.

3. The applicant represents that the Lease would benefit the participants and beneficiaries of the Plan in that it will insure the Plan a high rate of return as to future income derived from the Property, while the Property itself continues to be held as an appreciating asset of the Plan. The Bank recommends that the Plan enter into the Lease. The Bank represents that in making the determination that the Plan enter into the Lease the Bank is acting as an independent fiduciary of the Plan and is not subject to any direction or influence of the Employer. The bank does presently have a credit arrangement with the Employer in the amount of $8,291,000 which the Bank represents is less than one half of one percent of the loan portfolio of the Bank. The Bank further represents that since June 1, 1967, the Employer has performed as agreed on the existing leasing of the Property never defaulting or missing a payment. In addition, the Bank represents that the terms and conditions of the Lease are arms length terms and conditions and are in the best interests of the participants and beneficiaries of the Plan. The Bank will monitor and enforce all terms and conditions of the Lease on behalf of the Plan.

4. In summary, the applicant represents that the Lease satisfies the criteria of section 408(a) of the act as follows: (1) The terms and conditions of the Lease have been approved by an independent fiduciary of the Plan; (2) the terms and conditions of the Lease will be monitored by an independent fiduciary of the Plan; (3) the Property has been leased to the Employer since 1967 without a default or missed payment; and (4) the Plan will receive a high rate of return on an appreciating asset.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

[1] The Department expresses no opinion as to whether the existing leasing arrangement is exempt under section 414(c)(2) of the Act.

Medical Radiologic Consultants, P.C., Employee Savings & Profit Sharing Retirement and Trust (the Plan) Located in Saginaw, Michigan

[Application No. D–4644]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of $50,000 by the Plan to Medical Radiologic Consultants, P.C., (the Employer), and the guarantee of the repayment of the loan by the principal stockholders of the Employer, provided the terms of the loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party on the date of consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with nine participants. The Plan had total assets of $995,472 as of July 5, 1983.

2. The Employer is a professional corporation which provides medical disagnostic testing and evaluation. There are four shareholders of the Employer who are physicians and who perform services for the Employer.

3. The Employer has recently purchased a Model 7100 Autosector MCU for $40,000 cash from Technicare, Inc. and a billing machine for $10,000 cash. This capital investment, primarily the cash outlay for the equipment purchase, could adversely affect the Employer's cash position and its ability to make a contribution to the plan.

4. It is proposed that the Plan make a loan of $50,000 (the Loan) for the purpose of allowing the Employer to finance the recent purchase of this equipment. The Loan would represent approximately 5 percent of the total assets of the Plan. The Loan would be amortized over a five year period. The interest rate for the Loan would be 1 percent above the prime rate set by the Second National Bank of Saginaw, and in no event will the interest rate be less than 8 percent.

5. The collateral for the Loan will be perfected first security interests in certain x-ray equipment (the Equipment) owned by the Employer and the Employer's accounts receivable. An independent appraisal of the Equipment prepared by Flint X-Ray Inc. of Grand Blanc, Michigan, establishes the fair market value of the Equipment at $66,000 as of November 11, 1983. The Employer's financial statement, prepared by Yeo & Yeo, Certified Public Accounts, values the Employer's accounts receivable at $180,065 as of December 31, 1982.

6. Charles E. Mueller, M.D., Ronald Wisik, M.D., Richard P. Heuschele, M.D. and Gary Herzler, M.D., the stockholders of the Employer (the Stockholders), will sign an agreement personally guaranteeing repayment of the Loan. The aggregate net worth of the Stockholders is equal to or in excess of $280,000.

7. The Second National Bank of Saginaw will serve as the independent fiduciary for the Loan (the Independent Fiduciary). The Independent Fiduciary represents that neither the Employer nor the Stockholders own any of its stock. It further represents that the deposits of the Employer and the Stockholders represent less than 1/10 of 1 percent of the total deposits of the bank. There are no other relationships which exist between the Independent Fiduciary, the Employer and the Stockholders.

8. The Independent Fiduciary represents that it has broad experience in pension and profit sharing plan administration, and has general investment and management expertise.

9. The Independent Fiduciary represents that it has reviewed the Loan and the current investments of the Plan, and has determined that the Loan is an appropriate investment for the Plan, and in the best interests of the Plan and its participants and beneficiaries. Immediately prior to the consummation of the transaction, the Independent Fiduciary will review the then current Plan investments and the Loan. If it is not then satisfied that the Loan is an appropriate investment for the Plan, and in the best interests of the Plan and its participants and beneficiary, the transaction will not be consummated.

10. The Independent Fiduciary has closely reviewed the Loan's proposed interest rate, the proposed security for the Loan, and the term of the Loan, and determined that the provisions are appropriate, suitable, and in the best interests of the Plan and its participants and beneficiaries. It represents that the proposed interest rate is an excellent rate of return on the Plan assets because the interest rate will at all times be in excess of the prime lending rate and in no event less than 8 percent. The Independent Fiduciary will make the monthly adjustment of the Loan's interest rate and monitor all of the terms of the Loan.

11. The Independent Fiduciary has determined that the collateral for the Loan is adequate in view of the fact that the assets of the Employer pledged as security represent approximately 400% of the amount of the Loan. In the event the Bank determines additional collateral is needed because the total value of the collateral is below 150% of the outstanding Loan balance, the Independent Fiduciary will demand that additional collateral be provided. Further, the Independent Fiduciary has full authority to call the collateral in the event the Employer defaults on its repayment of the Loan.

12. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The Loan is secured with excess collateral and repayment is personally guaranteed by the Stockholders; and

(2) The Plan's Independent Fiduciary has determined that the Loan is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

New England Nuclear Corporation Pension Plan and Trust (the Plan), Located in Boston, Massachusetts

[Application No. D–4648]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1 (A) through (E) of the Code shall not apply to the sale in 1981 by the Plan to E. I. du Pont de Nemours & Company (the Parent Co.), a party in interest with respect to the Plan, of 358 shares of Conoco Inc. (Conoco) common stock, provided that the amount received was no less than the fair market value of the stock on the date of the transaction.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 24, 1981.

Summary of Facts and Representations

1. The Plan is a noncontributory defined benefit pension plan which

covers employees of the New England Nuclear Corporation (the Employer). The Employer is a wholly owned subsidiary of the Parent Co., which acquired the Employer by purchase on April 9, 1981. As of December 31, 1981, the Plan had approximately 1,100 participants and total assets whose fair market value was $8,627,046. Investments of the Plan are held by a private banking firm, Brown Brothers Harriman & Company (the Custodian), and are co-managed by Eaton & Howard, Vance Sanders, Inc. (Investment Mgr. 1) and Thorndike, Doran, Paine & Lewis.

2. The Plan assets involved in the subject transaction were under the management of Investment Mgr. 1. The investment management agreement covering the Plan assets managed by Investment Mgr. 1 provides that the assets shall be invested primarily in a diversified list of equities with the objective of long-term growth of income. The agreement further provides that Investment Mgr. 1 has full and complete discretionary authority to determine which securities are to be bought or sold; the total amount of securities to be bought or sold; and to carry out such transactions as it deems necessary or desirable without obtaining the approval or consent of clients before such transactions are effected. The applicant represents that in 1981, there was no relationship between Investment Mgr. 1 and either the Employer or the Parent Co.

3. As of April 30, 1981, Plan investments included 600 shares of Conoco common stock purchased at the direction of Investment Mgr. 1 on May 15, 1979, Novermber 3, 1980, and March 17, 1981 at an average cost of $44.48 per share for a total cost of $26,690. On May 6, 1981, Dome Petroleum Limited (Dome), through a wholly owned subsidiary, commenced an offer to purchase a maximum of 22,000,000 Conoco shares (approximately 20% of the Conoco shares then outstanding) at $65 net per share in cash. The applicant states that to the best of its knowledge, Dome was not a party in interest with respect to the Plan. Pursuant to the Dome offer, Investment Mgr. 1 tendered all 600 shares held by the Plan. Dome purchased 242 of these, for which it paid a total of $15,730 ($65 per share). After the sale to Dome, 358 shares of Conoco common stock were held in the Plan's account.

4. During the months of July and August 1981, the Parent Co., Joseph E. Seagram & Sons, Inc. (Seagram), and Mobil Corporation (Mobil) were each attempting to purchase shares of Conoco common stock by means of public tender offers and/or exchange offers. The first offer was made by Seagram. On June 25, 1981, Seagram offered to purchase, for cash, 35,000,000 shares of Conoco for $73 per share. Seagram subsequently increased its offer and ultimately offerd to purchase 44,350,000 shares of Conoco for $92 in cash per share. The offer was to expire at midnight on August 7, 1981.

5. On July 6, 1981, the Parent Co. and Conoco announced that the boards of directors of the two companies had approved an agreement for the Parent Co. to acquire 100% of Conoco's stock for common stock of the Parent Co. and cash, to be followed by the merger of the two companies. Under the agreement, the Parent Co. would make an offer for 40% of the outstanding shares (approximately 34,400,000 shares) of Conoco common stock for cash at $87.50 per share and for the remaining Conoco common stock at the rate or 1.6 shares of the common stock of the Parent Co. for each share of Conoco. Conoco shareholders were permitted to elect to receive either cash or shares of the Parent Co., subject to proration provisions and periods with respect to both cash and share elections. The agreement also gave the Parent Co. an option to purchase 15,900,000 unissued shares of common stock from Conoco at $87.50 per share. The offer was scheduled to expire August 17, unless extended. The Parent Co. subsequently increased its cash offer to $95 per share and ultimately, on August 4, 1981, agreed to purchase 45% of the outstanding Conoco shares (approximately 38,700,000) at $98 per share and 55% of the Conoco shares at the rate of 1.7 shares of the Parent Co. for each Conoco share.

6. On July 17, 1981, Mobil announced a tender offer for up to 43,500,000 Conoco shares (approximately 50%) at a price of $90 net per share in cash. Mobil's offer was conditioned upon, among other things, a minimum of 43,500,000 Conoco shares being properly tendered and not withdrawn. Mobil subsequently incrased its offer to $115 per share on August 3 and then on August 4, 1981, to $120 per share.

7. Investment Mgr. 1 tendered the 358 Conoco shares held by the Plan to the Parent Co. for cash during the period July 24 to August 3, 1981. (The applicant explains that although Investment Mgr. 1's records do not indicate the exact date the shares were tendered, they could not have been tendered before July 24, 1981, the date they were forwarded by the Custodian, and could not have been tendered after midnight August 3, 1981, as shares received after such date would not have been accepted for cash.) Investment Mgr. 1 also tendered Conoco shares on behalf of other accounts under its management. The Plan received proceeds in the amount of $35,084 ($98 per share) on August 25, 1981. The Parent Co. acquired 46.3% of the outstanding shares of Conoco by paying cash in the amount of $98 per share of pursuant to the same tender offer accepted by the Plan.

8. A letter dated July 31, 1981, signed by Mr. Ralph E. Bailey, then Chairman and Chief Executive Officer of Conoco, recommending that all Conoco stockholders promptly accept the Parent Co.'s offer, was published in major U.S. newspapers. This letter states that based on extensive analyses and independent advice, Conoco's Board of Directors (the Conoco Board) has determined that the current Parent Co. offer is the best for all Conoco stockholders. One of the reasons given in such letter for this determination is:

> Based on the advice of counsel, the Conoco Board believes that the acquisition of Conoco by Mobil would violate the United States antitrust laws. *This makes it questionable whether Conoco stockholders would ever get paid under the Mobil offer.*

9. Investment Mgr. 1 explains that it believed the Parent Co.'s cash offer represented the most attractive disposition of Conoco holdings for its clients for the following key reasons:

—Conoco stockholders not electing cash would receive in exchange for their Conoco shares, shares in the Parent Co. with a lesser market value at that time than the amount of cash offered.

—The probability that Mobil's offer would not be consummated because of anti-trust complications appeared high. The market generally came to this conclusion, especially after Mobil was delayed in its bid by the Justice Department.

—Mobil's tender offer continued to be conditional on Mobil's acquiring enough stock to control Conoco, and this condition seemed unlikely to be satisfied. Thus Mobil's nominally higher offer appeared in fact to be worth less than the Parent Co.'s cash bid which Investment Mgr. 1 accepted.

10. The applicant states that the Plan realized the greatest investment return by selling its Conoco shares to the Parent Co. at $98 per share. If the shares had been tendered to Seagram, the Plan would have received only $92 per share. Tender to Mobil would not have resulted in a sale of the shares as Mobil did not receive the requisite number of shares to make its offer binding. If investment Mgr. 1 had not accepted any

of the competing tender offers, the Conoco shares would have been subject to exchange at the rate of 1.7 shares of the Parent Co. per Conoco share. As of September 30, 1981, the effective date of the merger between the Parent Co. and Conoco, the value of 1.7 shares of the Parent Co. on the New York Stock Exchange was approximately $65.

11. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The sale was a one-time transaction for cash, requiring no further administrative oversight; (b) the Plan realized the greatest investment return by selling its Conoco shares to the Parent Co. at $98 per share; (c) an independent investment manager, without prior discussion with the Plan trustees, made the decision for the Plan to engage in the transaction; (d) the transaction involved less than ½% of the Plan's total assets; (e) the terms of the sale were the same as those offered to all Conoco stockholders and accepted by the owners of 46.3% of Conoco's outstanding shares at that time.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Hewitt & Houser Professional Association Defined Benefit Plan (the Plan), Located in Lubbock, Texas

[Application No. D–4671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of certain real property and related personal property, by the Plan to A. Lee Hewitt, M.D., a disqualified person with respect to the Plan, provided that the price paid is no less than the fair market value of the property on the date of sale. Since Dr. Hewitt is the sole shareholder of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, A. Lee Hewitt, M.D. (Dr. Hewitt). Dr. Hewitt and Roger L. Kuykendall are the trustees of the Plan. As of May 31, 1983, the Plan had total assets of $709,711.

2. Hewitt and House Professional Association (the Plan Sponsor) is a medical professional association.

3. On several occasions during 1981, Dr. Hewitt borrowed a total of $70,000 (the Loans) from the Plan pursuant to provisions of the Plan.[1] (These Loans were made on April 12th; May 16th; July 1st; and September 2nd.) On December 29, 1981, Dr. Hewitt conveyed certain real property described as Lots 8 and 9, Block 2, Fawn Ridge Subdivision, First Addition, Lincoln County, New Mexico and the improvements thereon, including a mobile home (the Property), to the Plan as a partial repayment for the Loans. The Property was valued at the amount of $53,200.

Also, on various other dates, Dr. Hewitt made certain improvements (the Personal Property) to the Property, which he conveyed to the Plan at $12,327 as further repayment of the Loans. The Loans were repaid in full on January 11, 1982 by the contribution of Carlsbad New Mexico Bancshares stock (the Stock) to the Plan at a value of $4,473. (The applicant represents that any excise tax which may be due as a result of the contribution of the Property, the Personal Property, and the Stock to the Plan as repayment for the Loans will be paid within 60 days after the granting of the requested exemption.)

4. The applicant represents that the Property has been leased to Dr. Hewitt at prevailing lease rates since December 29, 1981. As of September 26, 1983, Dr. Hewitt had paid a total of $2,200 to the Plan in rental payments. (The applicant represents that any excise tax which may be due as a result of the leasing of the Property by the Plan to the Plan Sponsor will be paid within 60 days after the granting of the requested exemption.)

5. The applicant represents that the Plan is presently not able to keep the Property rented on a full-time basis. Therefore, an exemption is requested to permit Dr. Hewitt to purchase the Property and the Personal Property from the Plan. The purchase price of the Property will be $65,526.61. This amount represents the amount at which the Property was contributed to the Plan ($53,200) and the value at which the Personal Property was contributed to the Plan ($12,326.61). An independent appraisal performed by the Anderson Appraisal Service has established the value of the Property, including the Personal Property, at $52,000 as of April 25, 1983. Therefore, the purchase price will exceed the fair market value of the Property and the Personal Property. The sales price will be paid in cash.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(1) It will be a one-time cash transaction;

(2) The Property and the Personal Property will be sold for an amount which exceeds its fair market value; and

(3) The Plan trustees have determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons: Since Dr. Hewitt is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute notice to interested persons. Comments and hearing requests are due 30 days after the date of publication of this notice of pendency in the Federal Register.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The T.L. Benson, M.D., Inc. Pension Plan and The T.L. Benson, M.D., Inc. Profit Sharing Plan (collectively, the Plans) Located in Kentfield, California

[Applications Nos. D–4698 and D–4699]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a portable airplane hangar (the Hangar) by the Plans to T. L. Benson, M.D. (Dr. Benson), a disqualified person with respect to the Plans, for $14,859.21 in cash, provided that such amount is not less than the fair market value of the Hangar at the time of the sale.[1]

Summary of Facts and Representations

1. The Plans consist of a money purchase pension plan with net assets of

[1] In this proposed exemption the Department expresses no opinion as to whether the Loans satisfy the provisions of section 4975(d)(1) of the Code.

[1] Since Dr. Benson is the sole shareholder of T.L. Benson, M.D., Inc. (the Employer) and the only participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510–3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

approximately $96,409.25 and a profit sharing plan with net assets of approximately $125,113.96 as of September 30, 1982. Dr. Benson, the sole participant in each of the Plans, is also the trustee of the Plans and the sole decision maker with respect to the Plans' investments.

2. The Hangar, which is the Executive II Model Port-A-Port Hangar, was purchased by the Plans on February 22, 1982, for $14,859.21 from Port-A-Port West, an unrelated party, for investment purposes and with the intent of producing income for the Plans. The purchase price of the Hangar was allocated proportionately between the two Plans with respect to the net assets in each Plan. Simultaneously, on February 22, 1982, the Plans entered into a month-to-month lease of the Hangar with Dr. Benson for $150 per month, providing the Plans with an annual return of over 12 percent on their investment in the Hangar.

3. The applicant acknowledges that the leasing of the Hangar by the Plans to Dr. Benson constitutes a prohibited transaction. Accordingly, the applicant represents that all excise taxes which are applicable under section 4975(a) of the Code will be paid within 60 days of the publication in the Federal Register of a final notice of the granting of the exemption proposed herein. Because the Plans would have difficulty in finding another Lessee for the Hangar, Dr. Benson has offered to purchase the Hangar from the Plans for cash in the amount of $14,859.21, which is the original amount paid by the Plans for the Hangar, including transportation charges and sales tax. No commissions will be paid with respect to the sale. The proceeds of the sale will be allocated in the same proportions to each of the Plans as the purchase price was allocated.

4. On June 3, 1983, Mr. Ken Keatts (Mr. Keatts), vice president for marketing and sales, Port-A-Port, Inc., stated that the fair market value of the Hangar as of June 3, 1983, was the original purchase price of $14,859.21, and additonally, that $150 per month represents the current fair market rental value for this Hangar in the Novato, California area. Mr. Keatts is independent of Dr. Benson and T.L. Benson, M.D., Inc. and represents that he has had fourteen years of experience in marketing hangars for resale. The applicant represents that, given the limited market for this type of property, Mr. Keatts, as a dealer in such property, is the most knowledgeable person available with regard to the fair market value of the Hangar.

5. The applicant represents that the sale of the Hangar is in the best interest of the Plans because it would be difficult to lease the Hangar to someone other than Dr. Benson; the Plans will be able to reinvest the sale proceeds and obtain a higher yield; and because it might be difficult for the Plans to obtain as high a price from an unrelated party as that which Dr. Benson has offered.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (1) The sale is to be a one-time transaction for cash and no commissions will be paid with respect to the sale; (2) the Plans will receive their original investment basis in the Hangar, which is also the fair market value of the Hangar as determined by a dealer of this type of hangar; (3) with respect to the past prohibited lease of the Hangar, Dr. Benson will fully comply with the excise tax provisions of section 4975 of the Code; and (4) Dr. Benson, as the trustee of the Plans, the sole participant of the Plans and the only person to be affected by the proposed transaction, has determined that the proposed sale is in the best interest of the Plans.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

The First National Bank of Atlanta Restricted Plan and Trust for Self-Employed Individuals (the Trust) Located in Atlanta, Georgia

[Application No. D-4798]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, for a period of five years, to the proposed contributions of common stock of First Atlanta Corporation (the Corporation) to seven individual Keogh plans (the Plans) by parties in interest with respect to the Plans. Because each sponsor of a Plan is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3 (b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Temporary Nature of Exemption: The proposed exemption is temporary in nature and, if granted, will be effective with respect to contributions of stock made within five years from the date a grant of individual exemption is published in the Federal Register.

Summary of Facts and Representations

1. The Trust is a master pension and profit sharing plan which holds the assets of the Plans. The Plans are currently self-employed retirement plans which by applicable joinder agreements have become part of the Trust. The First National Bank of Atlanta (the Bank) serves as the trustee of the Trust and maintains investment discretion with respect to Trust assets.

2. Each plan sponsor is an officer and/or director of the Corporation and/or the Bank. The Corporation owns 100% of the stock of the Bank. The only participant in each Plan is the individual sponsor of such Plan.

3. The applicant requests an exemption to allow each Plan sponsor to contribute stock of the Corporation for a five year period to his Plan. The stock of the Corporation is listed on the New York Stock Exchange and any contribution will be valued at the stock's quoted closing market price on the date of contribution. The Plans will not incur any sales commissions with respect to the contributions of any stock. The applicant represents that the contribution of the stock will cause the Plans to invest in the stock without incurring any transaction cost such as brokerage commissions or expenses.

4. Each sponsor will not take a federal income tax deduction greater than the fair market value of the stock when contributed to the Plan, plus the amount of cash, if any, contributed to the Plan. Each sponsor represents that at no time will he contribute stock to a Plan, which when added to the value of all other Corporation common stock then held by the Plan, cause the total value of stock held by the Plan to exceed 25% of its total assets.

5. Each Plan is to be amended to specifically permit contributions of the stock, thereby causing each Plan to become an individually designed Keogh plan. Each Plan will provide that the stock contributed will be credited solely to the account of the sponsor, and will not be a part of the other assets held and invested by the trustee of the Trust. The applicant represents that if there are at any time any other participants in a Plan separate accounts will be maintained for such participants, and no stock of the Corporation will be allocated to such participant's accounts. The trustee of each Plan will remain the Bank.

6. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria

of section 4975(c)(2) of the Code because (a) each sponsor of a Plan desires that the transactions be effected and they will be the only participants affected by the transactions; (b) contributions will be valued at the stock's quoted closing market price on the day of the contribution; (c) the sponsors will not take a federal income tax deduction greater than the fair market value of the stock when contributed to the Plans; (d) no sale commissions other expenses will be incurred by the Plans with respect to any contributions; and (e) the total value of the stock contributed to each Plan will not exceed 25% of the total assets of each Plan.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Colorado Automobile Dealers Association Insurance Trust (the Trust) Located in Denver, Colorado

[Application No. D-4839]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procudures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the proposed purchase by the trust of an automobile from a new car dealer who is a member of the Colorado Automobile Dealers Association (the Association), the sponsor of the Trust; provided that the terms of the proposed transaction are on terms not less favorable to the Trust than those available in transactions with an unrelated party.

Summary of Facts and Representations

1. The Trust provides insurance benefits to employees of Colorado automobile dealerships who subscribe to the Trust and are members of the Association. As of September, 1983, the Trust had approximately 14,000 participants. As of January 31, 1983, the Trust had total assets of $1,712,736. Of the total of 300 eligible new car dealers in the State of Colorado, 285 are members of the Association and 185 are subscribers to the Trust.

2. The Trust is administered by a board of twelve trustees. Each trustee is an officer, employee, proprietor and/or partner of dealerships who are members of the Association and have subscribed to the Trust. The administrative functions are performed by the Trust administrator, Mr. Robert R. Kogel, and a staff of five paid employees. Mr. Kogel is paid a salary by the Trust and also serves as a trustee of the Trust. Mr. Kogel does not represent an Association dealership but is instead a representative of the CADA Insurance Trust.

3. The duties of the administrator and his staff include maintaining records and reports, and processing all insurance claims. The applicant represents that the performance of the administrator's and the staff's functions involve extensive driving time. Automobile travel is necessary in order to meet with subscriber dealers, participating employees, potential new subscribers, health organizations, insurance companies, and various financial institutions. Currently, the administrator furnishes his own personal car for the Trust business and is reimbursed on a mileage basis. The applicant represents that mileage on an automobile used for Trust business is approximately 15,000 miles per year.

4. The applicant requests an exemption to allow the Trust to purchase an automobile from an Association dealer for cash to be used by the administrator and his staff for Trust business. The Trust proposes to purchase a new, mid-size car of domestic manufacture with a V-6 engine and certain power equipment. The trustees will obtain bids on such type of car from dealers in the suburban Denver area. The dealer who submits the lowest bid which meets the Trust's specifications will be selected. The applicant represents that because almost all of the new car dealers in the Denver area are Association members the purchase of an automobile will almost certainly be from a party in interest. Such dealer will not be a company of which any trustee is a representative, officer, employee or otherwise affiliated.

5. After purchase an agreement will be made between the administrator and the trustees to provide that the car will only be used for Trust business. The agreement will provide that use of the car for personal business by the administrator or any staff member will be prohibited. Operating expenses of the car, including gas, maintenance, repairs, insurance, licensing, etc, will be paid for by the Trust. The trustees will have the discretion to trade or sell the car when it believes its operation is no longer economically feasible.

6. Mr. W. J. Heider, a certified public accountant located in Denver, Colorado, prepared a cost comparsion analyzing the costs incurred by the Trust in purchasing and maintaining an automobile versus the cost of reimbursing the administrator on a per mileage basis. Mr. Heider's analysis used information obtained from various independent sources. Mr. Heider's analysis concluded that the purchase of a car by the Trust will, over a three period, result in anticipated savings of approximately $1,400. The purchase price of the car, at an estimated price of $10,500, will represent a very small percentage of the Trust's assets. The trustees have represented that the proposed purchase of a car is in the best interests of the Trust and its participants and beneficiaries.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the seller of the automobile will not be a dealer of which any trustee is affiliated, and will be selected by the trustees based upon the submission of the lowest, most acceptable written bid; (b) the purchase of a car by the Trust will realize savings when compared to the reimbursement of automobile expenses on a mileage basis; (c) the automobile will represent a very small percentage of the Trust's assets; and (d) the trustees represent that the proposed purchase is in the best interests of the Trust.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Northern Wire and Cable, Inc. (the Profit Sharing Plan) and Pension Plan and Trust of Northern Wire and Cable, Inc. (the Pension Plan; collectively, the Plans) Located in Troy, Michigan

[Application Nos. D-4866 and D-4867]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plans of certain unimproved real property (the Property) to Northern Wire and Cable, Inc. (the Employer), the sponsor of the Plans, provided that such sale is on terms which are at least as favorable to the Plans as those which the Plans could obtain in an arms'-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Employer is a Michigan corporation engaged in sales of various types of wire and cable in Troy, Michigan with net assets of $2,036,000 as of November 30, 1983. The Plans are a defined contribution profit sharing plan with total assets of $488,656 as of September 2, 1983 and a defined benefit pension plan with total assets of $461,002 as of September 2, 1983. The Plans each had approximately 32 participants as of September 2, 1983. Investment decisions on behalf of both Plans are made by the Plans' two trustees (the Trustees), each of whom is an officer and 40 percent shareholder of the Employer. The Trustees are James C. Hinshaw and Robert H. Brustewicz.

2. Among the Plans' assets is the Property, of which the Profit Sharing Plan owns 61.52 percent and the Pension Plan owns 38.48 percent. The Property constituted approximately 28.5 percent of the assets of the Profit Sharing Plan as of September 2, 1983 and approximately 21.7 percent of the assets of the Pension Plan as of September 2, 1983. The Property is a 4.675 acre parcel of vacant, unimproved land in Troy, Michigan, in the Detroit metropolitan area, and is zoned for industrial development. The Property was purchased by the Plans from an unrelated party on January 21, 1981 for a cash purchase price of $260,000. The Trustees represent that at the time of such purchase of the Property, industrial real property values in the Detroit metropolitan area were appreciating rapidly, and it was anticipated that the Property's value likewise would appreciate substantially. Instead, due to an area-wide depression in the industrial real property market since the Plans' acquisition of the Property, the Property's value has not appreciated substantially. The Trustees represent that the downturn in the industrial real property market is the result of a severe economic depression in the Detroit metropolitan area which continues to prevent substantial appreciation of all types of real property values in the vicinity. The Property was appraised for its fair market value on July 27, 1983 by Howard E. Krohner, ASA (Krohner), an independent professional real estate appraiser in Southfield, Michigan. Krohner represents that as of that date the Property had a fair market value of $305,000. Based on Krohner's valuation, the Property's value represents a 17 percent increase over its purchase price over a period of 32 months. After consideration of $20,138.28 which the Plans have paid in real property taxes on the Property for the same period, the annual effective yield on the Property has been 3.6 percent. The Trustees have determined that such rate of return is adverse to the interests of the Plans. In an effort to convert the Property into assets with better rates of return, the Trustees have made good-faith efforts to sell the Property, including listing the Property for sale by an industrial real estate broker. Arthur F. Shaw of the real estate sales firm of Catalano and Shaw Associates, Inc. (C and S) in Southfield, Michigan represents that as of September 1, 1983, C & S had attempted unsuccessfully for 15 months to sell the property. The Trustees have also independently attempted to sell the property to an unrelated party.

3. The Trustees and the Employer are requesting an exemption to permit the Employer to purchase the Property from the Plans. The Employer proposes to pay the Plans the Property's full appraised fair market value of $305,000 in cash without any sales costs to the Plans. After the sale the Employer intends to hold the Property for the possible construction, at some undetermined date, of new corporate and operational headquarters. The Trustees represent that an immediate sale of the Property is essential to provide sufficient liquidity of the Plans' assets to meet upcoming obligations to the Plans' participants and to obtain assets with a favorable rate of return. The Trustees further represent that the sale of the Property to the Employer is particularly favorable to the Plans not only because of the unsuccessful efforts to locate an unrelated buyer but also because of the avoidance of sales brokerage commissions and other costs which the Plans would pay in a standard, commercial sale transaction with an unrelated buyer.

4. In summary, the applicants represent that the criteria of section 408(a) of the Act will be satisfied in the proposed sale of the Property to the Employer for the following reasons: (1) Due to the continuing adverse economic conditions in the surrounding metropolitan area, it is unlikely that the Plans will be able to sell the Property for its full fair market value to an unrelated party soon enough to meet upcoming obligations to the Plans' participants; (2) the sale of the Property to the Employer will allow the Plan to avoid the payment of sales brokerage commissions and other sales costs which would be incurred by the Plans in a standard, commercial sale to an unrelated buyer; (3) the immediate sale of the Property will allow the plans to avoid the continued payment of substantial real property taxes on the Property; and (4) the immediate sale of the Property will allow the Plans to invest in more liquid assets yielding more favorable rates of return than the Property.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

M.M. & P. Pension Plan (the Pension Plan); M.M. & P. Maritime Advancement, Training, Education and Safety Program (the MATES Plan); M.M. & P. Health and Benefit Plan (the Health Plan); M.M. & P. Vacation Plan (the Vacation Plan); and M.M. & P. Individual Retirement Account Plan (the IRA Plan) (collectively, the Plans) Located in New York, New York

[Application No. D-4901]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of secton 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply: (1) To the proposed cash purchase by the Pension Plan from the MATES Plan of a parcel of real property (the Land) and an office building (the Building) on the Land to the subsequent leasing of space in the Building by the Pension Plan to the MATES Plan, the Health Plan, the Vacation Plan, the IRA Plan, the Joint Employment Committee (the Committee) and the International Organization of Masters, Mates and Pilots (the Union); and (2) effective December 1, 1983, to the interim of the Building by the MATES Plan to the Pension Plan, the Health Plan, the Vacation Plan, the IRA Plan, the Committee and the Union; provided that the purchase price and rental rates are at fair market value.

Summary of Facts and Representations

1. The Pension Plan had approximately 7,053 participants and in excess of $325,000,000 in assets as of June 30, 1983. All of the Plans are collectively bargained multiemployer plans established in accordance with section 302 of the Labor-Management Relations Act of 1947, as amended. Each of the Plans has 16 trustees (the Trustees), many of whom are Trustees of all the Plans.

The MATES Plan, the Health Plan, the Vacation Plan, and the IRA Plan are contributing employers to the Pension Plan, thus making them parties in interest to the Pension Plan under section 3(14)(C) of the Act. It is represented that the Committee, which defrays the costs and expenses of the operation and maintenance of various maritime hiring halls, is not a party in interest to any of the Plans. However, the Committee is administered by some of the same individuals who are Trustees of the Plans. The Union is a party in interest to the Plans under section 3(14)(D) of the Act.

2. All of the Plans, with the exception of the MATES Plan's training facilities, are currently located in New York City, where office space is becoming prohibitively expensive. As of May, 1982, the Plans' rental expense increased from $6 per square foot to $27.50 per square foot per year.

The MATES Plan owns approximately 55 acres of land in Linthicum Heights, Anne Arundel County, Maryland, a suburb located approximately 5 miles south of Baltimore, Maryland. The MATES Plan's training facilities are located on the greater portion of this site.

During the summer of 1976, the Trustees of the Plans commissioned GSP Consultants, Inc. (the Consultants) to investigate the financial feasibility of relocating the Plans' offices from the existing leased space to the Linthicum Heights site. The study was extended at the request of the Trustees to include a comparative analysis of cash outlay and occupancy costs. The extended study was completed in November, 1976, and reflected favorably in terms of remaining in the New York location, based on lease and operating costs prevalent in the New York area at that time.

In July, 1981, the Trustees requested the Consultants to re-examine the financial implications of relocating the Plans' offices to the Linthicum Heights site. This was done because the Trustees were aware that the New York lease would have to be renegotiated in 1982 and anticipated a significant increase in the rental rate. The Consultants considered several options available to the Plans, including: (a) Remaining in the New York leased space; (b) relocating to the Linthicum Heights site in a building to be constructed specifically for the Plans; (c) relocating to leased space in a downtown Baltimore office building; and (d) relocating in the metropolitan Baltimore area on a purchase, subsequent sale and leaseback basis. The Consultants concluded based on a multitude of factors that projected annual operating costs would be lowest at the Linthicum Heights site and that the estimated payback for the Linthicum Heights location investment, including cost of the facility and relocation of the office personnel, would be approximately 4 years, i.e., the funds invested in the office move would be recouped in approximately 4 years in terms of reduced annual operating costs.

3. Based on the Consultant's findings, the Plans' Trustees determined that it would be in the best interests of the Plans and their participants and beneficiaries for the Plans to relocate to the Linthicum Heights site. The MATES Plan has initiated construction of the Building, which will contain 84,266 square feet of space, on the site. The building contractor, R. S. Noonan, Inc., an unrelated party to the Plans, was selected on the basis of being the lowest bidder of the 4 contractors who bid on the job.

The Trustees of the MATES Plan originally planned to retain the Land and the Building as assets but recognized that the MATES Plan would have to obtain financing to do so. Because of the high level of current interest rates, the Trustees decided to sell the Land and the Building. The MATES Plan now proposes to sell the Land, approximately 8.015 acres[1] of the 55 acre site in Linthicum Heights, as well as the Building to the Pension Plan. The Pension Plan would have its offices in the Building and would also lease office space to the MATES Plan, the Health Plan, the Vacation Plan, the IRA Plan, the Union and the Committee.

The amount of space which would be utilized by each occupant of the Building is as follows:

The Pension Plan—11,096 square feet, or 13.17% of the Building;

The MATES Plan—5,346 square feet, or 6.34% of the Building;

The Health Plan—27,026 square feet, or 32.07% of the Building;

The Vacation Plan—21,626 square feet, or 25.66% of the Building;

The IRA Plan—2,113 square feet, or 2.51% of the Building;

The Union—16,769 square feet, or 19.90% of the Building; and

The Committee—290 Square feet, or .35% of the Building.

The Land will be sold to the Pension Plan for $280,600 cash, the value of the Land as determined by an independent appraisal made by Eugene L. Jones, MAI, of the Floyd Co., on December 3, 1982. The Building will be sold to the Pension Plan for a cash amount equal to the total construction costs of the Building[2] to the date of closing on the sale, as determined pursuant to paid invoices and bills therefor.

4. Grempler Realty, Inc. (Grempler) of Baltimore, Maryland, had been retained by the Trustees of the Pension Plan to serve as an independent fiduciary to the Pension Plan with regard to the purchase of the Land and the Building and subsequent leasing thereof. Grempler has no other relationship with any of the Plans or the Trustees. Gremper will assume managerial, supervisory and leasing responsibilities for the Building, once the Land and the Building have been acquired by the Pension Plan. Grempler's duties would include but not be limited to: Management and supervision of the collection, accounting and disbursement of all rents; construction, review and supervision of the Building's operating budget and supervision of the payment of all bills for operating expenses; negotiations of new and subsequent leases for space to be rented at such rental rates and upon such terms as Grempler, in its sole discretion, determines is reasonable and best reflects fair market rental value for the property; solicitation, review and evaluation of all bids for service and maintenance contracts for the property; solicitation, review, and evaluation of all insurance policies to cover perils and liability for the property; and review and evaluation of energy and utility cost and recommendations of possible actions to conserve same.

Grempler's counsel, Jonathan Azrael, Esq. (Mr. Azrael), of Azrael and Gann, attorneys-at-law, Baltimore, Maryland, has fully advised Grempler of the fiduciary responsibility provisions and requirements of the Act. Grempler has accepted and full understands its responsibilities as an independent fiduciary to the Pension Plan under the Act. Grempler, which has been in business for over 20 years and is the largest independent real estate brokerage firm in the central Maryland area, has been active in the management of real estate for many years. Grempler has also acted as an independent fiduciary in several commercial leasing arrangement with local investors and property owners. All legal aspects of Grempler's leasing arrangements are handler by Mr. Azrael, who has had

[1] Only 7 acres of the 8.015 parcel is useable, the remaining portion constituting a right-of-way required by the zoning laws of Anne Arundel County, Maryland.

[2] The initial contract price for construction of the Building was $5,042,000. However, cost increases due to design modifications make it likely that the Building will total approximately $5,400,000 in costs at completion.

extensive experience in commercial leasing matters and will assist Grempler in matters relating to the purchase of the Land and the Building and the leasing of the Building. Mr. Azrael and other members of his law firm will also provide continuing legal advice and consultation as to Grempler's responsibilities as an independent fiduciary under the Act.

5. In its role as a fiduciary to the Pension Plan, Grempler has evaluated the potential investment opportunity for the Pension Plan in connection with the proposed purchase and leasing arrangement, determined a fair market value for the Building and the Land on which it is situated, established a fair market rental rate and prudent term for the space to be leased, and developed a prototype lease to be used in connection with the proposed leasing.

Grempler has examined the December, 1982 appraisal of the Land, agrees with the methodology and comparables used, and concurs with the $280,600 appraisal figure. Grempler believes that the value of the Building, which has been under construction for approximately one year, is most appropriately determined by the cost of construction to the date of sale and finds the projected construction cost completely consistent with construction costs of comparable facilities in the vicinity. If the Building were completed by the date of sale, the total cost of the Land and Building would be approximately $5,743,088, including $280,600 for the Land and $62,488 for one-half of the transfer taxes and stamps which in Maryland are customarily divided evenly between buyer and seller.

An examination of the Pension Plan's current investment portfolio by Grempler revealed that as of June 30, 1983, 7.22% of the Pension Plan's assets were invested in real estate. The bulk of the current real estate investments, 7.21% of the total portfolio, are in real estate equities managed by the Prudential Insurance Company of America through its Property Investment Separate Account, a collective real estate investment account. The purchase of the Land and the Building would increase the Pension Plan's real estate holdings to approximately 8.95% of its assets.

6. Grempler has undertaken an extensive review of all comparable office rental properties in the vicinity of the Building and found that the annual gross rent [3] currently charged for these comparables range from $8 to $16 per square foot. Adjusting for differences in location and amenities between the comparables and the Building, Grempler determined that gross fair market rental value for the Building is $12.50 per square foot per year.[4] Grempler believes this rental rate to be competitive while at the same time offering the Pension Plan an opportunity to obtain an attractive rate of return on its investment.

The usual practice in the leasing of space in the greater Baltimore area is to establish the term of the lease in the five to ten year range with an option to renew the lease for an additional period at some higher rate. In Grempler's judgment, it is in the best interests of the Pension Plan and its participants and beneficiaries to set the term of al leases at six years with an option to renew for additional six year periods. During each six year period, prior to commencement of the first, third, and fifth years, Grempler will conduct a detailed analysis of comparable rental rates in the vicinity of the Building and will establish a reasonable and fair market rental rate to be applied during the next two years. In addition, all operating expense increases will be passed on immediately to the tenants as they occur.

The Trustees of each of the Plans which will be renting space in the Building have determined such rental is in the best interest of the Plans that they represent and the Plans' respective participants and beneficiaries.

7. With a gross rent of $12.50 per square foot per year and operating expenses estimated at $3.12 per square foot, the net rent is $9.38 per square foot. The net rent is the figure used to determine the rate of return to be achieved by the Pension Plan as a result of its investment in the Land and the Building. Since the Pension Plan will occupy about 13.17% of the Building, 86.83% will be available for lease. Therefore, 86.83% of the total cost of the Land and the Building, i.e., $4,986,723, should be evaluated as the income-producing investment. Taking these factors into consideration, the rate of return on the investment is 13.76%. In addition to this amount, another 5 to 8% capital appreciation per year is likely to occur, increasing the total return to the 18 to 21% range. In Grempler's opinion, this represents an excellent return for a real estate investment of the quality being considered here. The income return of 13.76% exceeds by over 4.16% the best income return that the Pension Plan has achieved on its other real estate related investments during the 1977-1981 period. Moreover, the performance of the Pension Plan's entire portfolio, including both real estate and non-real estate assets, during the period 1975 through 1981 was 6.82%.

Grempler has determined that the Pension Plan had assets totaling $23,868,394 invested in cash and cash equivalents earning an average of 9% as of June 30, 1983, and has discussed with representatives of the Pension Plan the necessity of drawing on such funds for the purchase of the Building. Grempler has advised the Trustees that prudence dictates that funds earning no more than 13% per annum be used for the purchase of the Land and the Building since the income return on this investment is projected at 13.76% the first year of operation. It is evident that ample funds in this category are available and Grempler as independent fiduciary will require their use.

After examining the Pension Plan's overall investment portfolio, considering the availability of cash to be used to consummate the transaction under consideration, and evaluating the rate of return on the investment, Grempler considers that the purchase of the Land and the Building is a prudent investment for the Pension Plan and is clearly in the best interests of its participants and beneficiaries.

8. The applicants have advised the Department that the Building was completed and ready for occupancy in late 1983. In order to avoid the higher costs of operations in the New York City area, and Plans, the Committee and the Union began occupancy of the Building December 1, 1983. Pending the grant of an administrative exemption by the Department for the sale of the Land and the Building to the Pension Plan, the MATES Plan is leasing space to the other occupants of the Building at the fair market rental rate as determined by Grempler.

9. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria contained in section 408(a) of the Act because: (a) The proposed purchase of the Land and Building by the Pension Plan from the MATES Plan is a one-time cash transaction at the fair market value of the property; (b) the relocation of the Plans' offices from their current New York location to the Linthicum Heights site is projected to result in significant cost savings in operating expenses for all of the Plans; (c) the proposed leasing by the Pension Plan to the other Plans, the Committee, and the Union will be at

[3] Rentals for properties of this kind are generally quoted in terms of gross rent which consists of net rent plus operating costs.

[4] Grempler has estimated the total operating expenses for the first year of occupancy to total $3.12 per square foot.

fair market rental rates and will produce a good investment return to the Pension Plan; (d) the leasing of the Building by the MATES Plan is for a short period of time and is at the fair market rental rate as determined by Grempler; (e) Grempler as independent fiduciary has determined that the proposed purchase and leasing transactions are at fair market value and are in the interests of the Pension Plan and its participants and beneficiaries; (f) Grempler will negotiate and monitor all leases and the operation of the Building; and (g) the Trustees of each of the Plans have determined that the proposed transactions are in the interests of each of the Plans involved and their respective participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department within 45 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing. Comments and requests for a hearing are due within 75 days of the date of publication in the **Federal Register.**

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Atlas Industries, Inc. Employees Stock Ownership Plan (the Plan) Located in Carnegie, Pennsylvania

[Application No. D–4926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed loan (the Loan) by the Plan to Atlas Industries, Inc. (the Employer), the sponsor of the Plan; and (2) the personal guarantee of the obligation of the Employer in such Loan by Mr. William A. Bayer, a party in interest with respect to the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution employee stock ownership plan which had 40 participants and net assets of approximately $2,123,880 as of September 30, 1982. The trustee (the Trustee) of the Plan is Mr. William A. Bayer, an officer and director of the Employer. Investment decisions for the Plan are made by the Trustee. The Employer is a Pennsylvania corporation engaged in the contracting for and sales of commerical and industrial insulation and building products.

2. An exemption is requested to permit the Plan to loan cash in the amount of $130,000 to the Employer, the proceeds of which will be used primarily for the pruchase of a new Basic Four Model 510 computer system and related software costing approximately $130,000. The Loan will be fully repaid over a three year period in 36 monthly installments. The interest rate on the Loan will be the prime rate in effect on the date the Loan is consummated at Mellon Bank, N.A. (the Bank) of Pittsburgh, Pennsylvania plus 1%, and will be adjusted annually to reflect the then-current prime rate of the Bank plus 1%, but in no event will the interest rate on the Loan be less than 10% per annum. Full or partial prepayment of the Loan will be permitted at any time without prepayment penalty.

3. The Loan will be secured by a purchase money security interest in the computer and equipment being purchased and by a pledge of the Employer's accounts receivable which are less than thirty days old (collectively, the Collateral). The Employer's accounts receivable represent goods sold and past services. As of November 30, 1983, the accounts receivable less than thirty days old totaled $624,000. The applicants represent that the average balance in these (less than thirty days old) outstanding accounts is approximately $624,000. The applicants represent that the value of the Collateral securing the Loan will at all times be at least 150% of the outstanding Loan balance. The Plan will have a first security interest in the Collateral and such interest will be perfected by the filing of a security agreement and financing statements with the Secretary of the Commonwealth of Pennsylvania and the Prothonotary of Allegheny County. Pennsylvania. The Collateral will be insured against loss, damage and destruction and the Plan will be named as the beneficiary of such insurance policy.

4. The obligation of the Employer in the Loan will be personally guaranteed by Mr. William A. Bayer (Mr. Bayer), the president and majority shareholder of the Employer. Mr. Bayer represents that as of November 8, 1983, he had a net worth substantially in excess of the amount of the proposed Loan.

5. Sheraden Bank (Sheraden) of Pittsburgh, Pennsylvania has agreed to act as an independent fiduciary for the Plan with respect to the Loan. The applicant represents that although the Employer has a commercial relationship with Sheraton, such relationship consists merely of deposits constituting less than .0016% of Sheraden's total deposits. Sheraden represents that it is qualified to act as an independent fiduciary because it has extensive lending experience and diverse experience in the administration of employee benefit plans, as well as general investment and management expertise. Sheraden represents also that it is aware of its fiduciary responsibilities under the Act. Sheraden has reviewed the Plan's documents and financial statements, including the Plan's liabilities for the next three years as determined by the Plan's actuary, and has determined that the proposed Loan is in the best interest of and protective of the Plan because the proposed Loan represents less than seven percent of the Plan's current assets and will provide the Plan with a high rate of return which will be adjusted annually, but which will in no event be less than 10% per annum. Additionally, the Loan will be secured by Collateral having a value of at least 150% of the Loan amount and will be personally guaranteed by an individual with sufficient assets to cover the full amount of the Loan. Sheraden will monitor the value of the Collateral, the interest rate, and the repayment of the Loan and will take any steps necessary to enforce the terms and conditions of the Loan on behalf of the Plan.

6. In summary, the applicants represent that the proposed transaction is protective of an in the best interest of the Plan's participants and beneficiaries because: (1) The Loan will involve less than seven percent of the Plan's current assets; (2) The Loan will provide the plan with a high rate of return which will in no event be less than 10% per annum; (3) the Loan will be secured by a first security interest in Collateral which will at all times have a value of at least 150% of the outstanding Loan balance; (4) The Loan has been approved and will be monitored by an independent fiduciary which will take whatever actions are necessary to protect the rights of the Plan with regard to the Loan; and (5) the Loan has been

personally guaranteed by the president and majority shareholder of the Employer.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

Shelly's Tall Girl Shops, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Application No. D–4932]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the loan by the Plan of amounts not to exceed 25 percent of its total assets to Shelly's Tall Girl Shops, Inc., the Plan Sponsor, on a recurring basis over a five-year period, and the guarantee of the repayment of those loans by Messrs. Sheldon Kort, Irving Kellogg, and Sherman Andelson, parties in interest with respect to the Plan, provided the terms of the loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption

If granted, this exemption will be effective for five years from the date a grant of an individual exemption is published in the **Federal Register** on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five year period.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately 130 participants. As of June 30, 1983, the Plan had total assets of approximately $1,600,000. The Plan's administrators and trustees are Sherman L. Andelson and Zoltan Batyka (the Trustees). The Trustees collectively own 22 percent of the stock of Shelly's Tall Girl Shops, Inc. (the Plan Sponsor).

2. The Plan Sponsor is a California corporation incorporated in 1953 to conduct retail sales of women's clothing.

3. The Trustees request an exemption to allow the Plan to make loans to the Plan Sponsor (the Loans) for a period of five-years, on a recurring basis. The proceeds of the Loans will be used to finance the purchase of computer equipment, to satisfy outstanding loan balances on computer equipment already purchased, or to reimburse the Plan Sponsor for previously purchased computer equipment. The total amount of the Loans will not exceed 25 percent of the assets of the Plan.

4. Each of the Loans will be collateralized by a promissory note and a security agreement which will itemize the collateral. In addition, a UCC–1 filing statement will be filed in accordance with California law for each of the Loans. Each of the Loans will be personally guaranteed by Messrs. Sheldon Kort, Irving Kellogg, and Sherman Andelson, the majority shareholders of the Plan Sponsor. It is represented that these individuals each have a net worth in excess of $500,000.

5. Each of the Loans will have a first lien on the computer equipment purchased. The amount of each of the Loans will at no time exceed 66⅔ percent of the value of the computer equipment acquired and will therefore, at the time entered into, represent 150 collateralization of the outstanding balance of the Loans.

6. The interest rate of the Loans will be equal to the prevailing rate for similar commercial equipment loans in the Los Angeles area. The maximum length of each of the Loans will be 60 months. The Loans will be repaid in monthly installments of principal and interest.

7. Mr. Max Goodman, Attorney at Law, will serve as the independent fiduciary (Independent Fiduciary) for the Loans. The applicant represents that the Independent Fiduciary is unrelated to the Plan and the Plan Sponsor. Prior to the Plan entering each of the Loans, the Independent Fiduciary will certify that it would be an appropriate investment for the Plan, and that the terms are equal to or better than those which the Plan would receive in dealing with an unrelated party. The Independent Fiduciary will monitor repayment of the Loans and review the fair market value of the collateral.

8. The Plan will release money to fund each of the Loans only upon the Plan's receipt of (1) a promissory note and security agreement in proper form personally guaranteed by Messrs. Kort, Kellogg and Andelson, (2) an application for a certificate of title to the computer equipment, and (3) the written approval of the Independent Fiduciary.

9. The Independent Fiduciary has made the following representations:

(1) That he understands the general fiduciary duties and responsibilities he has agreed to perform in accordance with section 404 of the Act.

(2) That the value of the collateral for the Loans will be determined in independent appraisals to assure that the collateral represents 150 percent of the outstanding balance of the Loans.

(3) That he will have the authority to monitor the collateral to assure that it remains 150 percent of the outstanding balance of the Loans, and will act on behalf of the Plan to require additional collateral should the existing collateral decrease in value below the 150 percent limit and take whatever steps are necessary to protect the Plan's assets invested in the Loans.

(4) That the interest rate received on the Loans will be a similar rate to that charged by outside lending institutions on similar loans for similar commercial business equipment.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Loans will be adequately secured at all times by personal property valued at 150 percent of the outstanding balance of the Loans and by personal guarantees of the majority stockholders of the Plan Sponsor;

(b) The Loans will be limited to a five-year period; and

(c) The Independent Fiduciary has determined that the Loans are in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

McKay of California, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Application No. D–4933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the loan by the Plan of amounts not to exceed 25% of its total assets to McKay of California, the Plan Sponsor, on a recurring basis over a five-year period, and the guarantee of the repayment of these loans by Messrs. Sherman L. Andelson, Irving Kellogg, and Sherman Kort, parties in interest with respect to

the Plan, provided the terms of the loans are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of Exemption

If granted, this exemption will be effective for five years from the date a grant of an individual exemption is published in the Federal Register on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five-year period.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately 40 participants. As of June 30, 1983, the Plan had total assets of approximately $217,000. The Plan's administrators and trustees are Sherman L. Andelson and Irving Kellogg (the Trustees). The Trustees collectively own 31% of the stock of McKay of California (the Plan Sponsor).

2. The Plan Sponsor is a California corporation engaged in the manufacturing of women's clothing.

3. The Trustees request an exemption to allow the Plan to make loans to the Plan Sponsor (the Loans) for a period of five years, on a recurring basis. The proceeds of the Loans will be used to finance the pruchase of computer equipment, to satisfy outstanding loan balances on computer equipment already purchased, or to reimburse the Plan Sponsor for previously purchased computer equipment. The total amount of the Loans will not exceed 25% of the assets of the Plan.

4. Each of the Loans will be collateralized by a promissory note and a security agreement which will itemize the collateral. In addition, a UCC–1 filing statement will be filed in accordance with California law for each of the Loans. Each of the Loans will be personally guaranteed by the Trustees and Mr. Sherman Kort, the majority shareholders of the Plan Sponsor. It is represented that these individuals each have a net worth in excess of $500,000.

5. Each of the Loans will have a first lien on the computer equipment purchased. The amount of each of the Loans will at no time exceed 66⅔% of the value of the computer equipment acquired and will therefore at the time entered into, represent 150% collateralization of the outstanding balance of the Loans.

6. The interest rate of the Loans will be equal to the prevailing rate for similar commercial equipment loans in the Los Angeles area. The maximum length of each of the Loans will be 60 months. The Loans will be repaid in monthly installments of principal and interest.

7. Mr. Max Goodman, Attorney at Law, will serve as the independent fiduciary (Independent Fiduciary) for the Loans. The applicant represents that the Independent Fiduciary is unrelated to the Plan and the Plan Sponsor. Prior to the Plan entering each of the Loans, the Independent Fiduciary will certify that it would be an appropriate investment for the Plan, and that the terms are equal to or better than those which the Plan would receive in dealing with an unrelated party. The Independent Fiduciary will monitor repayment of the Loans and review the fair market value of the collateral.

8. The Plan will release money to fund each of the Loans only upon the Plan's receipt of (1) a promissory note and security agreement in proper form personally guaranteed by the Trustees and Mr. Kort, (2) an application for a certificate of title to the computer equipment, and (3) the written approval of the Independent Fiduciary.

9. The Independent Fiduciary has made the following representations:

(1) That he understands the general fiduciary duties and responsibilities he has agreed to perform in accordance with section 404 of the Act.

(2) That the value of the collateral for the Loans will be determined by independent appraisals to assure that the collateral represents 150% of the outstanding balance of the Loans.

(3) That he will have the authority to monitor the collateral to assure that it remains 150% of the outstanding balance of the Loans, and will act on behalf of the Plan to require additional collateral should the existing collateral decrease in value below the 150% limit and take whatever steps are necessary to protect the Plan's assets invested in the Loans.

(4) That the interest rate received on the Loans will be a similar rate to that charged by outside lending institutions on similar loans for similar commercial business equipment.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Loans will be adequately secured at all times by personal property valued at 150% of the outstanding balance of the Loans and by personal guarantees of the majority stockholders of the Plan Sponsor;

(b) The Loans will be limited to a five-year period; and

(c) The Independent Fiduciary has determined that the Loans are in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Johnson Swanson & Barbee Amended and Restated Retirement Plan (the Plan) Located in Dallas, Texas

[Application No. D–5016]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sales by Wallace M. Swanson (Swanson) to the Plan for the directed investment account (the Account) of Swanson of an interest in certain notes (the Notes), provided that the price paid by the Account for the interests in the Notes is the fair market value of such interests at the time of sale as determined by the Republic Bank, Dallas, N.A. (the Bank) which is located in Dallas, Texas.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan. The sponsor of the Plan is Johnson & Swanson (the Employer) which is a general partnership engaged in the practice of law. Swanson is a general partner in the Employer and a participant in the Plan. Subject to the approval of the Investment Committee (the Committee) of the Plan, participants in the Plan may direct the investment of their Plan accounts. The trustee of the Plan is the Bank.

2. The applicant is requesting an exemption which will permit Swanson to sell his interest in any of the Notes to his Account at the fair market value of such notes at the time of sale. The Account balance as of September 30, 1982 is $61,985.30. Swanson is 100% vested in his Account and has no other directed investments. The maker and payor of twenty of the notes is J&J Properties IV, Ltd. (J&J IV), a Texas limited partnership. Swanson is a general partner in the J&J IV. Other general partners in the Employer are also partners in J&J IV. The maker and payor of another note is Centenary Associates, a Texas joint venture. This note was endorsed by the original payees to J&J Properties, another limited

partnership in which Swanson and other partners of the Employer are partners. In addition, there is another note payable to Ronald G. Taylor with J&J Properties II, Ltd. (J&J II) as the maker. Swanson and other partners of the Employer are the owners of J&J II. The specific terms and conditions of the Notes and appraisals of the properties collateralizing the Notes are detailed in the underlying application to this notice of pendency. In such application, the applicant represents that the Plan will receive a high rate of interest on the Notes.

3. As a condition to this exemption, Swanson may only sell interests in the Notes to the Account such that at the time of such sale the sales price of the interests in the Notes together with the fair market value of any other interests in the Notes presently held in the Account does not exceed 25% of the fair market value of the Account. The Bank will value each interest in the Note upon its sale to the Plan. In addition, the Bank will have the responsibility of monitoring the Notes and enforcing collection on the Notes. The Committee has approved the proposed transactions subject to the granting of this exemption request.

4. The applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act as follows: (1) The investment will be limited to the Account which is segregated from the Plan's other assets; (2) the Committee has approved the proposed investments; (3) the Notes will be valued by the Bank at the time of sale; (4) the Bank will enforce collection on the Notes; and (5) the Account will receive notes with a high yield.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

Stanley J. Leiken, M.D., Inc. Profit Sharing Plan (the Profit Sharing Plan) and Stanley J. Leiken, M.D., Inc. Money Purchase Plan (the Money Purchase Plan) (collectively, the plans) Located in Encino, California

[Application Nos. D-5023 and D-5024, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale to Stanley J. Leiken, M.D. (Dr. Leiken) by the Plans of their respective interests in two notes (Note 1 and Note 2, collectively, the Notes) at face value, plus accrued interest to the date of sale, provided that the sale price is at least equal to the fair market value of the Notes on the date of sale.

Summary of Facts and Representations

1. As of May 31, 1982, the Profit Sharing Plan had assets of $42,474 and the Money Purchase Plan had assets of $23,434. Each of the Plans, which are sponsored by Stanley J. Leiken, M.D., Inc., has two participants, Dr. Leiken and Maureen Crotou. The trustees of the Plans (the Trustees) are Dr. Leiken and Barbara Leiken, his wife. The Trustees make all investment decisions for the Plans.

2. On March 11, 1980, the Plans made a $20,000 unsecured loan (Loan 1) to Westwood Kelton Condominiums, Ltd. (Westwood), a California partnership which is an unrelated party to the Plans. The Profit Sharing Plan loaned $15,000 and the Money Purchase Plan loaned $5,000 of the $20,000 total. Loan 1, which is evidenced by Note 1, was due and payable on January 3, 1983, and bears interest at 10% per annum plus a contingent interest sum based on profits derived from the sale of a 12-unit condominium project.

No payments of principal or interest have been made on Loan 1. Dr. Leiken has contacted one of the partners of Westwood on several occasions to attempt collection on Loan 1. When his collection endeavors failed, Dr. Leiken contacted an attorney. Dr. Leiken was advised that another lender was suing Westwood in order to collect on that lender's loan to Westwood and that the best course of action for Dr. Leiken to pursue was to await the resolution of that lawsuit.

Dr. Leiken does not want the Plans to be in a hazardous position with regard to their investments. Therefore, he has offered to purchase Note 1 from the Plans at its face value, plus accrued interest to the date of sale.

3. The Plans made a second loan (Loan 2) on March 25, 1981, to Oakhurst Center Associates (Oakhurst), an unrelated party to the Plans, for $15,000, $5,000 of which was funded by the Profit Sharing Plan and $10,000 of which was funded by the Money Purchase Plan.[1] Loan 2, which is secured by a third mortgage on Oakhurst Center (the Center), bears interest at 18% and is evidenced by Note 2. Interest only payments were due on or before July 1, 1981, October 1, 1981, and January 1, 1982. The outstanding principal balance plus all accrued and unpaid interest was due and payable on March 24, 1982.

Some payments of interest were made on Loan 2, the last of which was in July of 1982, and no payments of principal have been made. The major tenant in the Center vacated and the Center began having cash flow problems. The owner of the first mortgage on the Center has taken action to foreclose and force a sale of the Center. There are negotiations ongoing with the owner of the first mortgage in an attempt to salvage the investment made by the Plans and the others who participated in the third mortgage loan. The outcome of these negotiations is very speculative.

Dr. Leiken wishes to purchase Note 2 from the Plans at face value plus accrued interest to the date of sale. He feels it is not appropriate for the Plans to continue to hold Note 2 as it now appears a loss may result.

4. Dr. Leiken learned of the Westwood investment opportunity through another doctor and the Oakhurst investment opportunity through an insurance agent, neither of whom are related to Dr. Leiken or the Plans. Based on the information available to him, he felt that Loan 1 and 2 represented good investments for the Plans. Now that Loan 1 and Loan 2 have become extremely speculative investments, Dr. Leiken does not want them in the investment portfolios of the Plans.

The investment in the Loans represents approximately 47% of the Profit Sharing Plan's assets and 64% of the Money Purchase Plan's assets. By selling these investments to Dr. Leiken, the Plans will dispose of assets that are producing no income and will probably result in a loss if they continue to be held.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) It will be a one time transaction for cash;

(b) The Plans will be able to dispose of speculative investments that are not producing income;

(c) The Plans will receive the face amount of the Notes plus accrued interest to date of sale; and

(d) The Trustees have determined that the transactions are in the best interests

[1] The $15,000 from the Plans represents a 7.5% interest in a $200,000 loan to Oakhurst. There are eight other parties who invested in the Oakhurst loan, none of which are parties in interest to the Plans.

of the Plans and their participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Bell System Pension Plan Trust; Bell System Management Pension Plan Trust; Bell System Trust (the Trust) Located in New York, New York

[Application Nos. D–5056 and D–5059]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective June 24, 1983, to the acquisition by the Trust from John Hancock Mutual Life Insurance Company (Hancock) of a parcel of improved real property for $10 million (the Property) pursuant to the exercise of an option in a ground lease assigned to the Trust by 9601 Associates (9601), an unrelated party, provided that the transaction was approved by Heitman Advisory Corporation (Heitman), a Trust fiduciary unrelated to and not affiliated with Hancock.

Effective Date: If granted, this exemption will be effective June 24, 1983.

Summary of Facts and Representations

1. The Trust is a tax-exempt trust established pursuant to the Bell System Trust Agreement dated October 1, 1980 (the Trust Agreement). The Trust was established by American Telephone and Telegraph Company (AT&T) as a group trust to hold, manage and invest assets held by the trusts created under the Bell System Pension Plan and the Bell System Management Pension Plan (the Plans). As of December 31, 1982, the Plans covered approximately 1,165,000 participants, and had assets valued at approximately $46 billion.

2. Pursuant to section 4(a) of the Trust Agreement, AT&T reserved the power to hire investment managers to invest all or some of the funds held in the Trust. Heitman, an Illinois corporation with its principal office in Chicago, Illinois, is an investment advisor registered with the Securities Exchange Commission and with the Securities Division of the Secretary of State of the State of Illinois. Heitman has entered into a management agreement with AT&T whereby Heitman has agreed to act as an investment manager for such portion of the Trust assets as may be allocated to Heitman from time to time. Specifically, Heitman's duties are to invest allocated Trust funds, directly or indirectly, in real estate or real estate related investments. As an investment manager, Heitman has sole responsibility for the acquisition, management and disposition of each real estate related investment acquired by Heitman on behalf of the Trust. All amounts allocated to Heitman on behalf of the Trust are allocated through Harris Trust and Savings Bank (Harris Bank), one of the Trust's trustees.

3. Heitman represents that it qualifies as a qualified professional asset manager (QPAM), as defined in Part V(a) of the class exemption published on March 13, 1984 (49 FR 9494). However, Heitman represents that because a large amount of assets it manages are Trust assets, it will not qualify under Part I of the exemption as an eligible QPAM with respect to Trust assets under management.

4. Pursuant to the court-ordered divestiture of AT&T which went into effect on January 1, 1984, and the resultant split-up of the Plans, a separate real estate trust has been established. This trust holds approximately $4 billion in Trust assets which are currently invested in real estate, including the Property.

5. The Property is located at 9601 Wilshire Boulevard, Beverly Hills, California, and consists of an irregularly shaped lot containing approximately 60,000 square feet of land improved by an 11-story office building (the Improvements). Prior to the transactions described herein, Hancock owned the fee simple interest in the Property subject to a ground lease to 9601, a general partnership. The ground lease contained an option on the part of 9601 to purchase the Property from Hancock for $10 million. Pursuant to an agreement entered into on June 24, 1983 (as amended by an agreement dated August 1, 1983) 9601 assigned its interest in the ground lease and the option included therein to the Bank of America National Trust & Savings Association (the Bank), a ancillary trustee of the Trust appointed by Harris for $37,250,000.[1] The Bank, on behalf of the Trust, exercised the purchase option and purchased from Hancock the Property for $10,000,000. Hancock is a party in interest with respect to the Trust by virtue of being an investment manager with respect to the Trust; however, Hancock had no authority, control or responsibility over the Trust's decision to enter into this transaction.

6. Pursuant to a purchase agreement dated August 11, 1983, the Trust sold and transferred title to the Improvements for a purchase price of $41,650,000 to Wilshire-Camden Associates (Wilshire), a limited partnership. The sale of the improvements was financed by a first mortgage loan from the Trust to Wilshire in the amount of $41,650,000. Pursuant to the agreement the Trust entered into a ground lease with Wilshire as lessee for an initial term of 20 years. The applicant represents that Wilshire is an unrelated party with respect to Heitman and the Trust, and no relationships currently exist between Heitman or any partners of Wilshire.[2]

7. The applicant seeks an exemption for the purchase of the Property by the Trust from Hancock. Heitman represents that the Property had been analyzed to be a high quality investment opportunity for the Trust from the standpoint of the proposed rate of return and allowed the Trust to diversify its real estate investments.

8. The applicant represents that the terms of the investment were negotiated on an arm's-length basis between Heitman and 9601 without regard to the fact that Hancock owned the Property. In this regard, neither Heitman nor any officer or shareholder of Heitman is an officer, director, or 5% or more shareholder of Hancock, or a partner in 9601. Also, neither Hancock, 9601, or either partner of 9601, have any ownership interest in Heitman or any affiliate of Heitman.

9. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the terms of the transaction were negotiated on an arm's-length basis on behalf of the Trust by Heitman; (b) Heitman represents that none of the parties to which the exemption applies has in any way influenced its discretion with respect to the investment; and (c) Heitman represents that the investment is a high quality investment opportunity and

[1] 9601 had, prior to closing, exercised its option to purchase the Property but had not consummated that transaction.

[2] The applicant represents that the general partners of Wilshire are attorneys in a California law firm who provided tax counsel for the Trust in 1982 with respect to a real estate investment made by Heitman on behalf of the Trust. Heitman represents that all services performed by the general partners are now complete, and that Heitman has no further plans to engage the general partners in any capacity. Heitman represents that no general partner has any interest in Heitman, and that no partner had any role in Heitman's decision to acquire the Property.

allows for diversification of the Trust's real state investments.

For Further Information Contact: Mr. Alan Levitas of the Department, elephone (202) 523–8971. (This is not a oll-free number.)

Delong's, Inc. Profit Sharing Trust Plan (the Plan) Located in Jefferson City, Missouri

[Application No. D–5113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a parcel of improved real property by the Plan to Delong's, Inc. (the Employer) for $77,500 in cash, provided that this amount is not less than the fair market value at the time of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 132 participants and net assets of $1,323,358.50 as of December 31, 1982. The Plan's trustee is the United Missouri Bank (the Trustee) located in Kansas City, Missouri.

2. In 1958, the Employer sold a parcel of improved real property located at 1811 Industrial Drive, Jefferson City, Missouri (the Property) to the Plan. The subject site is improved with a one story concrete block building. The Property was originally leased to the Wilson Plastic's Company, which subsequently went out of business. Since that time the Property has been rented to various tenants for warehouse space. The Property is presently rented to the Miller Tool and Manufacturing Company, an unrelated party, for $600 per month.

3. The Trustee represents that the building on the Property is in need of repairs. These repairs are necessary to deal with a drainage problem, the replacement of several large doors and various smaller maintenance requirements. The Trustee also states that the Property is semi-isolated and has limited accessibility. The only access to the Property is across land owned by the Employer or across land owned by a state-owned facility.

4. The Trustee, because of the age of the building, its present condition, location and limited accessibility, desires to dispose of the Property. The value of the Property has decreased over the past several years, pursuant to independent appraisals performed for the Trustee.[1] In addition, the tax costs, maintenance costs, insurance costs and other related real estate costs are represented to make a disposition of the Property at this time desirable.[2]

5. The Trustee, in order to obtain the highest price for the Property, advertised the Property for sale in the real estate section of the Jefferson City News Tribune, a paper of general circulation throughout Jeffeson City and central Missouri. The notice specified a minimum cash bid of $77,500 for the Property, which is represented by the Trustee to be its fair market value. The notice appeared in the Jefferson City News Tribune on Sunday, October 30, 1983; Monday, October 31, 1983; Tuesday, November 1, 1983; Thursday, November 3, 1983; and Friday, November 4, 1983. The notice specified a bid deadline of November 30, 1983. The open bidding process, however, produced no bidders.

6. The Trustee now proposes to sell the Property to the Employer for $77,500 in cash. There would be no sales commission paid in connection wih the sale, nor would the Plan incur any additional expenses incident to the sale.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the sale will be a one time transaction for cash;

(b) the Plan will not pay any real estate commissions or fees in connection with the sale;

(c) the sale will allow the Plan to dispose of an asset which produces little income and is in need of repair;

(d) the Trustee has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

[1] The Trustee had appraisals performed as follows:

(a) December 10, 1980 by Mr. Robert R. Pratt (Mr. Pratt) of Robert R. Pratt Real Estate Appraisers, Appraised for $90,000.

(b) March 20, 1981 by Teddy J. Blaylock (Mr. Blaylock) of Cannon and Blaylock, Appraised for $82,000.

(c) January 19, 1983 by Mr. Blaylock, Appraised for $81,000.

(d) February 3, 1983 by Mr. Pratt, Appraised for $74,000.

[2] In this proposed exemption the Department expresses no opinion as to whether the Plan's holding of the Property violated any provision of Part 4 of Title I of the Act.

El Camino Anesthesia Medical Group, Inc. Money Purchase Pension Plan (the Plan) Located in Los Altos Hills, California

[Application No. D–5125]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of certain real property by the Plan to Alfred Dennis Surtees, M.D., a party in interest with respect to the Plan, provided that the terms of the sale are at least as favorable to the Plan as those obtainable in an arms length transaction with an unrelated party at the time of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 8 participants. As of September 30, 1983, the Plan had total assets of $1,684,745. The trustees of the Plan are Drs. Peter Kronfeld, Alfred Surtees, Stephen Voydal, Robert Moore, Jack Thompson, Robert Karch, C. Richard Saylor and James Corfield (the Trustees). The Trustees are employees of El Camino Anesthesia Medical Group, Inc. (the Plan Sponsor) and participants of the Plan.

2. The Plan provides for individual accounts which are maintained on a segregated basis. Each participant individually directs his own accounts so that the income, loss, appreciation, and/or depreciation of the assets attributable to a participant's accounts do not affect any other participant's accounts.

3. Alfred Dennis Surtees, M.D. (Dr. Surtees), an employee of the Plan Sponsor, Plan participant, and a Trustee, has invested a portion of the funds allocated to his accounts in the Plan in certain real property located in Richmond, California (the Property). The Property was purchased from an unrelated party on December 2, 1982 for a total purchase price of $121,591. The Property is undeveloped and has not been leased or used by anyone since it was acquired by the Plan.

4. The Property was independently appraised on October 19, 1983 by Charles T. Reid, a licensed real estate

broker. The appraisal established the value of the Property at $120,000.

5. Dr. Surtees proposes to purchase the Property from the Plan for $120,000, the appraised fair market value. The purchase price will be paid in cash. The applicant represents that the Property has not yielded as favorable a return as was anticipated at the time of its purchase.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) It will be a one-time cash transaction;

(2) The Plan will receive fair market value for the Property;

(3) The Plan will be able to dispose of an asset which is not yielding a favorable return;

(4) It will only affect the individual account of Dr. Surtees and will not be adverse to the other participants of the Plan; and

5. The Trustees believe the proposed sale is in the interests of and protective of the Plan.

Notice to Interested Persons: Since Dr. Surtees is the only participant affected by the transaction, it has been determined that there is no need to distribute notice to interested persons. Comments and hearing requests are due 30 days after publication of this notice in the **Federal Register.**

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

San Marino Ophthalmological Medical Clinic, Inc. Defined Benefit Pension Plan (the Plan) Located in San Marino, California

[Application Nos. D–5248, D–5249, and D–5250]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan (the Loan) for two years of $71,058 by the Plan to San Marino Ophthalmological Clinic, Inc. (the Employer), which employs Plan participants, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan's assets as of November 30, 1983 totalled $284,232. The Plan covered three participants as of November 11, 1983, including Nathan H. Roth, M.D., the sole owner of the Employer and the current Plan trustee.

2. The purpose of the Loan is to help finance the Employer's purchase of certain real property located in Duarte, California, to be used as a site for the Employer's practice. Although the Employer does not have sufficient working capital at the present to complete the purchase, the Employer anticipates being able to generate sufficient working capital within the next two years. The Loan would be represented by the Employer's promissory note providing for monthly repayments of interest only, repayment of the principal two years from the date the Loan is made, prepayment without penalty, and interest on the unpaid principal at the rate of 15% annually. The Loan would involve 25% of the Plan's total assets and would be secured by a second deed of trust on a 6,512 square foot parcel of real property owned by Dr. Roth and improved by two buildings: a medical office and retail building and another small building—both located at 1437–1441 San Marino Avenue, San Marino, California. As additional security for the Loan, Dr. Roth—whose personal net worth, excluding his ownership of the Employer and his interest in the Plan, exceeds $2,000,000—will guarantee repayment of the Loan.

3. Mr. Donald R. Spradlin, Appraisal Officer of the Los Angeles Appraisal Department of Lloyds Bank California (the Bank) has appraised the property mentioned in the preceding paragraph (the Property) and estimates that its fair market value as of February 14, 1984 was $535,000. The Bank's Appraisal Department regularly appraises commercial properties for the purposes of making loans on the security of the properties. Mr. Spradlin certifies, among other things, that he has no personal interest in or bias with respect to the Property or the parties involved. The Property is presently encumbered by a first deed of trust securing a loan owing to Crocker Mortgage Co., with an unpaid balance of approximately $27,000, bearing interest at the rate of 6.5% annually, principal and interest payable at the rate of $714 per month. Crocker Mortgage Co. is not a party in interest nor related to a party in interest with respect to the Plan, except that it is a creditor of Dr. Roth. The ratio of the Property's fair market value, as appraised by Mr. Spradlin, to the sum of the amount of the Loan plus the unpaid balance of the loan secured by the first deed of trust is 5.46 ($535,000 ÷ ($71,058 + 27,000)).

4. The Bank has agreed to accept appointment as successor trustee of the Plan. The Bank represents that it fully understands and acknowledges its duties, responsibilities, and liabilities under the Act in acting as a fiduciary with respect to the Plan. In the natural course of its business, the Bank monitors hundreds of loans secured by deeds of trust. The Bank also acts as trustee or custodian of approximately 1,300 employee benefit plans with total assets of approximately $1,750,000,000. Dr. Roth has no ownership interest in the Bank but does maintain checking and savings accounts with the Bank. His total deposits in such accounts represent .0000248 of the Bank's total checking and savings account deposits. The assets of the employee benefit plans maintained by the Employer represent .00444 of the total assets of employee benefit plans held by the Bank as trustee. The Bank represents that it has no other relationship with either Dr. Roth or the Employer.

5. The Bank states that as of February 29, 1984, it was charging interest on loans of the same nature as the Loan at the rate of 13½% plus a three point loan origination fee, which is equivalent to an annual interest rate of 15% over the two year life of the Loan. The Bank states that it would charge this rate if it were the creditor under the Loan. The Bank has determined that the security for the Loan is well in excess of the guidelines the Bank has established for similar transactions for employee benefit plans. The Bank believes that in view of the short duration of the Loan and the ample margin indicated by the appraisal mentioned above, the return from the Loan is higher than the return the Plan could get from other investments offering the same relative security. For these reasons, it is the Bank's opinion that the Loan would be in the best interest of the Plan and its participants and beneficiaries.

6. If the proposed exemption is granted, the Bank's Trust Real Estate Note Section will monitor the Loan throughout its duration on behalf of the Plan. In the event the Loan went into default, the Bank would initiate foreclosure proceedings on behalf of the Plan, pursuant to section 4.10 of the trust document which describes the Bank's powers as trustee of the Plan. The account administrator who would be assigned to this account is an assistant

vice president of the Bank who has been Employee Benefit Trust Administrator with the Bank for over seven years. The trust officer in the Bank's Real Estate Section who would be monitoring the Loan has over five years experience in her position.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The Bank, an independent fiduciary, believes that the Loan would be in the best interest of the Plan and its participants and beneficiaries; (b) the Bank will monitor the Loan throughout its duration on behalf of the Plan; (c) the Loan is secured by a second deed of trust on the Property, whose fair market value, as determined by a qualified independent appraiser as of February 14, 1984, equals more than five times the sum of the amounts of the Loan plus the balance due on a first deed of trust encumbering the Property; (d) the Loan will bear interest at the effective annual rate that the Bank charges for similar loans and which the Bank would charge if it were the creditor under the Loan; and (e) the Loan will mature in two years.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of April, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-10998 Filed 4-23-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON ARTS AND THE HUMANITIES

Office of the General Counsel

National Council of the Humanities Advisory Committee; Meeting

April 19, 1984.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on May 14-15, 1984.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C. A portion of the morning and afternoon sessions on May 14, 1984 and the afternoon session on May 15, 1984 will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on May 14, 1984 will be as follows:

(Open to the Public)

8:30-9:30—Coffee for Council Members—Room 502

9:30-10:30—Committee Meetings—Policy Discussion

Education and State Programs—Room M-14

Fellowship Programs—Room 315

General Programs—Room 415

Research and Program & Policy Studies—Room 316-2

10:30—Adjourn (Closed to the Public for the reasons stated above)

Committee Meetings (continued)—Consideration of specific applications

The morning session on May 15, 1984 will convene at 8:30 a.m. in the 1st Floor Council Room M-09 and will be open to the public. The agenda for the morning session will be as follows: Coffee for Staff and Council Attending Meeting will be served from 8:30 a.m.-9:00 a.m.

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Long-Term and Recurring Applicants.
E. Dates of Future Council Meetings
F. Application Report and Gifts and Matching Report
G. Status of Fiscal Year 1984 Program Funds
H. FY 1985 Appropriation Request
I. FY 1986 Budget Planning
J. Committee Reports on Policy and General Matters
   a. Education Programs
   b. State Programs
   c. General Programs
   d. Research Programs
   e. Program and Policy Studies
   f. Fellowship Programs

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr.

Stephen J. McCleary, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code 202–786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84–11013 Filed 4–23–84; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management, Advisory Committee for Ethics and Values in Science and Technology; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the establishment of the Advisory Committee for the program on Ethics and Values in Science and Technology in the Directorate for Scientific, Technological, and International Affairs is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of Committee: Advisory Committee for Ethics and Values in Science and Technology.

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impact of Foundation-supported research and related activities in this field, and on more general national concerns and priorities related to questions on science, technology, ethics, and values.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate on a continuing basis subject to its renewal every two years.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be individuals eminent in science, engineering, humanities and public affairs. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities, women and minority scholars, the handicapped, and different geographic regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Foundation policy and procedures, GSA Interim Regulations on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the act.

Dated: April 19, 1984.

Richard Nicholson,

Acting Director.

[FR Doc. 84–10953 Filed 4–23–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Metropolitan Edison Co., et al.; Issuance of Amendment to Facility Operating License and Final No Significant Hazards Consideration Determination (Partial)

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 91 to Facility Operating License No. DPR–50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, and GPU Nuclear Corporation (the licensees), which revised the Technical Specifications (TSs) for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility), located in Dauphin County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the TSs to permit the steam generators to be declared operable for pre-critical hot functional testing using pump heat (non-nuclear), thereby permitting such testing. As such, it addresses a portion of the Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing identified below.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 31, 1983 (48 FR 24231), and corrected June 14, 1983 (48 FR 27328). That notice covers a requested amendment which would: recognize steam generator repair techniques other than plugging, provided such techniques are approved by the Commission; approve the kinetic expansion repair technique; and authorize subsequent operation (both non-nuclear and nuclear) of the facility with the repaired steam generators. This notice addresses a portion of, and is encompassed by, that May 31 notice.

In response to the May 31 notice, requests for hearing were filed by TMIA on May 19, 1983, as amended on June 23, 1983, and by Lee, Molholt, and Aamodt on June 30, 1983, as amended on July 13, 1983. Comments were made by six other persons and the Commonwealth of Pennsylvania.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing in connection with this amendment will be held after issuance. A final determination regarding significant hazards considerations on the remainder of the subject matter of the May 31 notice, i.e., nuclear operation with the repaired steam generators, has not yet been made.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to the action see (1) the application for amendment dated May 9, 1983, (2) Amendment No. 91 to Facility Operating License No. DPR–50, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 9th day of April 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-10961 Filed 4-23-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Committee Activities; Postponed Meeting

The ACRS Subcommittee on Committee Activities scheduled for April 30, 1984, Room 1046, 1717 H Street, NW, Washington, D.C. has been postponed to Wednesday, May 30, 1984.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Monday, April 16, 1984 (49 FR 15028).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Morton W. Libarkin (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: April 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-10958 Filed 4-23-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on May 10-12, 1984, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on April 18, 1984.

The agenda for the subject meeting will be as follows:

Thursday, May 10, 1984

8:30 A.M.—8:45 A.M.: Chairman's Report (Open)—The ACRS Chairman will report briefly to the Committee regarding items of current interest.

8:45 A.M.—10:45 A.M.: Seismic Qualification of Nuclear Power Plant Equipment (Open)—The Committee members will hear and discuss the proposed NRC plan of action to provide for seismic qualification of electrical equipment in operating nuclear power plants.

10:45 A.M.—11:30 A.M.: Recent Operating Experience (Open)—The members will hear and discuss reports from representatives of the NRC staff regarding recent incidents of pipe cracking in nuclear power plant systems and a leak in the rod drive stub tube at the Nine Mile Point Nuclear Station.

11:30 A.M.—12:00 Noon: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

1:00 P.M.—3:00 P.M.: Emergency Core Cooling Systems (Open)—The members will hear and discuss reports from its subcommittee, representatives of the NRC Staff, and the General Electric Company regarding proposed changes in the ECCS evaluation codes for boiling water reactors.

Portions of this session may be closed to discuss Proprietary Information related to this matter.

3:00 P.M.—5:00 P.M.: Staffing Requirements at Nuclear Power Plants (Open)—The members will hear and discuss reports from its Subcommittee on Human Factors and from representatives of the NRC regarding proposed NRC requirements regarding staffing and fitness-for-duty considerations at nuclear power plants.

Friday, May 11, 1984

8:30 A.M.—10:30 A.M.: Maintenance Practices and Procedures (Open)—The members of the Committee will hear and discuss reports regarding the proposed NRC action plan to matters relating to maintenance practices and procedures at nuclear power plants. Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

10:30 A.M.—11:30 A.M.: Evaluation of Operating Information (Open)—Representatives of the NRC Staff will report on the proposed AEOD program for review and evaluation of trends in nuclear power plant operations.

11:30 A.M.—12:00 Noon: NRC Regulatory Guides (Open)—Representatives of the NRC Staff will report to the Committee regarding the status of implementation of Regulatory Guide 1.97, Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following An Accident.

1:00 P.M.—2:00 P.M.: Meeting with NRC Commission (Open)—The members will discuss topics scheduled for discussion with the NRC Commissioners related to the proposed NRC safety research program, proposed NRC QA/QC initiatives, and consideration of an NTSB-like board for review and evaluation of nuclear power plant accidents.

2:00 P.M.—3:30 P.M.: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss the items noted above.

3:30 P.M.—4:30 P.M.: ACRS Subcommittee Activities (Open)—Designated ACRS Subcommittees will report to the full Committee regarding assigned activities including proposed changes in NRC Regulatory Guides, a proposed rule regarding residual radioactive contamination limits, prioritization of unresolved generic safety issues, and implementation of the NRC integrated safety assessment program.

4:30 P.M.—5:00 P.M.: New Members (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

Saturday, May 11, 1984

8:30 A.M.—12:30 P.M. and 1:30 P.M.—3:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items discussed during this meeting. Portions of these sessions will be closed as required to discuss Proprietary Information related to the matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of

the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with the Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary information and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)) and information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: April 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–10959 Filed 4–23–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, 202–632–6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 27, 1984 (49 FR 11736). Individual authorities established or revoked under Schedules A, B, or C between 1, 1984 and March 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Smithsonian Institution. One International Security Studies Program Administrator and one Latin American Program Administrator in the Woodrow Wilson International Center for Scholars. Effective March 7, 1984.

Department of the Air Force. Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988. Effective March 9, 1984.

National Endowment for the Arts. One Director of the Challenge Grant Program, GM–301–15. Effective March 9, 1984.

Federal Emergency Management Agency. Not to exceed 350 professional and technical positions at grades GS–5 through GS–15 in Mobile Emergency Response Support Detachments. Effective March 30, 1984.

Schedule C

The following exceptions are established:

Department of Agriculture. One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective March 16, 1984.

One Private Secretary to the Inspector General, Office of the Inspector General. Effective March 16, 1984.

Department of Commerce. One Confidential Assistant to the Assistant Secretary for Economic Development, Economic Development Administration. Effective March 1, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration. Effective March 2, 1984.

One Special Assistant to the Director, Office of Public Affairs. Effective March 5, 1984.

One Congressional Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 16, 1984.

One Congressional Liaison Specialist to the Assistant Director for Communications, Bureau of the Census. Effective March 22, 1984.

Department of Defense. One Assistant for Policy Analysis to the Deputy Assistant Secretary of Defense (International Economic, Trade and Security Policy). Effective March 21, 1984.

One Speechwriter to the Assistant Secretary of Defense (Public Affairs). Effective March 22, 1984.

One Special Projects Assistant to the Deputy Assistant Secretary of Defense (Equal Opportunity and Safety Policy). Effective March 30, 1984.

Department of Education. One Special Assistant to the Director, Postsecondary Relations Staff, Office of Postsecondary Education. Effective March 9, 1984.

One Director, Operations Support Services, Office of Civil Rights. Effective March 9, 1984.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective March 9, 1984.

One Executive Assistant to the Deputy Under Secretary for Management. Effective March 9, 1984.

One Special Assistant to the Deputy Assistant Secretary for Policy, Office of Civil Rights. Effective March 9, 1984.

One Special Assistant to the Deputy Assistant Secretary for Operations. Effective March 9, 1984.

One Special Assistant to the Comptroller, Effective March 9, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights. Effective March 9, 1984.

One Special Assistant to the Deputy Assistant Secretary for Operations. Effective March 9, 1984.

One Special Assistant to the Deputy Under Secretary for Management. Effective March 13, 1984.

One Special Assistant to the Under Secretary, Office of the Under Secretary. Effective March 16, 1984.

One Special Assistant for Adult Literacy Initiatives to the Under Secretary, Office of the Under Secretary. Effective March 19, 1984.

One Special Assistant to the Director of Regional Liaison, Office of the Under Secretary. Effective March 20, 1984.

One Special Assistant to the Assistant Secretary for Postsecondary Education, Office of Postsecondary Education. Effective March 20, 1984.

One Deputy Director, Regional Liaison Staff, Office of the Under Secretary. Effective March 22, 1984.

One Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective March 22, 1984.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective March 29, 1984.

Department of Energy. One Staff Assistant to the General Counsel, Office of the General Counsel. Effective March 2, 1984.

One Staff Assistant to the Executive Assistant to the Secretary. Effective March 2, 1984.

One Secretary (Confidential Assistant) to the General Counsel. Effective March 14, 1984.

Department of Housing and Human Services. One Confidential Assistant to the Executive Assistant to the Secretary. Effective March 5, 1984.

One Executive Director, President's Committee on Mental Retardation. Effective March 9, 1984.

One Confidential Staff Assistant to the Senior Advisor to the Secretary/Executive Officer. Effective March 22, 1984.

One Congressional Liaison Specialist to the Deputy Assistance Secretary for Legislation. Effective March 22, 1984.

Department of Housing and Urban Development. One Special Assistant to the Regional Administrator/Regional Housing Commissioner in San Antonio, Texas. Effective March 5, 1984.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation. Effective March 6, 1984.

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective March 9, 1984.

One Special Assistant to the Regional Administrator/Regional Housing Commissioner in Ft. Worth, Texas. Effective March 9, 1984.

One Special Assistant to the Regional Administrator/Regional Housing Commissioner in New York. Effective March 27, 1984.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of the Assistant Secretary for Legislation and Congressional Relations. Effective March 27, 1984.

One Special Assistant to the Under Secretary, Office of the Under Secretary. Effective March 29, 1984.

One Staff Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs, Office of Housing. Effective March 30, 1984.

Department of the Interior. One Staff Assistant to the Associate Director, Bureau of Land Management. Effective March 1, 1984.

One Staff Assistant to the Associate Director, Bureau of Land Management. Effective March 15, 1984.

One Confidential Assistant to the Special Assistant (Field Representative), Secretary's Field Coordination Office in Sacramento, California. Effective March 29, 1984.

Department of Labor. One Special Assistant to the Assistant Secretary, Mine Safety and Health Administration. Effective March 13, 1984.

One Confidential Staff Assistant to the Assistant Secretary, Mine Safety and Health Administration. Effective March 16, 1984.

One Secretary (Typing) to the Regional Representative in Seattle, Washington, Office of the Deputy Under Secretary for Intergovernmental Affairs. Effective March 27, 1984.

One Secretary to the Secretary of Labor. Effective March 29, 1984.

Department of Transportation. One Confidential Secretary to the General Counsel. Effective March 1, 1984.

One Special Assistant for Management Policy and Productivity to the Administrator, Saint Lawrence Seaway Development Corporation. Effective March 9, 1984.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective March 12, 1984.

One staff Assistant to the Director, Office of Public Affairs, Federal Highway Administration. Effective March 14, 1984.

One Intergovernmental Liaison Officer to the Director, Intergovernmental Affairs. Effective March 16, 1984.

One Consumer Affairs Specialist to the Director, Office of Intergovernmental Affairs. Effective March 22, 1984.

One Receptionist to the Associate Deputy Secretary. Effective March 26, 1984.

One Director, Executive Secretariat, Urban Mass Transportation Administration. Effective March 26, 1984.

Department of the Treasury. One Special Assistant to the Assistant Secretary (Legislative Affairs). Effective March 27, 1984.

One Special Assistant to the Assistant Secretary for Business and Consumer Affairs. Effective March 30, 1984.

ACTION. One Special Assistant to the Assistant Director, Office of Volunteer Liaison. Effective March 6, 1984.

Commission on Civil Rights. One Public Affairs Officer to the Staff Director, Office of the Staff Director. Effective March 5, 1984.

One Deputy General Counsel, Office of the General Counsel. Effective March 9, 1984.

One Confidential Assistant to the Chairman in San Diego, California. Effective March 14, 1984.

Environmental Protection Agency. One Congressional Liaison Specialist to the Director, Office of Congressional Liaison. Effective March 6, 1984.

Executive Office of the President. One Secretary to the Chairman, Council of Economic Advisers. Effective March 6, 1984.

One Public Affairs Specialist to the Director, Public and Intergovernmental Affairs, Office of the U.S. Trade Representative. Effective March 16, 1984.

One Secretary to the Director, Office of Management and Budget. Effective March 27, 1984.

Federal Emergency Management Agency. One Special Assistant to the Director, Office of the Director. Effective March 22, 1984.

Federal Home Loan Bank Board. One Assistant to a Member of the Board. Effective March 26, 1984.

National Transportation Safety Board. One Special Assistant to a Member of the Board. Effective March 21, 1984.

One Confidential Assistant to a Member of the Board. Effective March 21, 1984.

Office of Personnel Management. One Special Assistant to the Assistant Director of Public Affairs, Office of Policy and Communications. Effective March 19, 1984.

One Staff Assistant (Typing) to the Supervisory Special Assistant to the Director, Office of the Director. Effective March 26, 1984.

One Confidential Assistant to the General Counsel, Office of the General Counsel. Effective March 26, 1984.

Pension Benefit Guaranty Corporation. One Staff Assistant to the Executive Director, Office of the Executive Director. Effective March 16, 1984.

President's Commission on Executive Exchange. One Confidential Assistant to the Executive Director. Effective March 16, 1984.

Securities and Exchange Commission. One Secretary (Typing) to the Director of Investment, Division of Investment Management. Effective March 26, 1984.

Small Business Administration. One Confidential Program Assistant to the Administrator, Office of the Administrator. Effective March 16, 1984.

One Staff Assistant to the Assistant Administrator for Public Communications, Office of Public Communications. Effective March 23, 1984.

One Special Assistant to the Regional Administrator in Atlanta, Georgia, Office of the Regional Administrator. Effective March 27, 1984.

U.S. Information Agency. One Special Assistant to the Director, Private Sector Programs. Effective March 6, 1984.

United States Tax Court. One Secretary (Confidential Assistant) to a Judge. Effective March 22, 1984.

Veterans Administration. One Confidential Assistant to the Director,

Congressional Affairs Staff, Office of the Administrator. Effective March 6, 1984.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-10947 Filed 4-23-84; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond Escrow Requirement Relating To Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Charmer Industries Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Charmer Industries Inc. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. A notice of the request for exemption from this requirement was published on February 14, 1984 (49 FR 5706). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 am., and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address).

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860 (not a toll-free-number).

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of the these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for a variance or exemption if it detemines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On February 14, 1984 (49 FR 5706), the PBGC published a notice of the pendency of a request from Charmer Industries Inc. ("Charmer") for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Charmer of certain assets of Standard Wine & Liquor Co., Inc. ("Standard"). The sale of assets became effective on December 31, 1981. No comments were received in response to the notice.

Charmer has assumed Standard's obligation, pursuant to collective bargaining agreements with four unions, to contribute to four pension plans, viz.:

Union	Plan
Wine, Liquor and Distillery Workers, Union Local one.	Wine, Liquor and Distillary Workers Union, Local One Pension Fund ("Local One Fund").
Liquor Salesmen's, Union Local 2.	Retirement Plan of the Liquor Salesmen's Union, Local 2 Pension Fund ("Local 2 Fund").
Wholesale Wine, Salesmen's Union, Local 18.	Wholesale Wine Salesmen's Union, Pension Fund ("Local 18 Fund").
Drivers and Chauffeurs, Local Union No. 816, IBT.	Local 816 Labor and Management Pension and Welfare Fund ("Local 816 Fund").

The amount of Charmer's bond/escrow required under section 4204(a)(1)(B) is $296,050.28, and Standard's estimated potential withdrawal liability is $1,603,799, broken down as follows:

Fund	Bond	Withdrawal liability
Local 1 fund	$58,600.00	$79,048
Local 2 fund	121,758.00	755,382
Local 18 fund	16,174.00	47,887
Local 816 fund	99,512.28	721,502

Charmer contributed to the plans before its purchase of Standard's assets but has not submitted estimates of its pre-transaction withdrawal liability.

Charmer and its subsidiary had net tangible assets for its fiscal year ended March 31, 1981, of $12,247,392 and for its fiscal year ended March 31, 1983, of $17,406,780. Charmer and its subsidiary had an average net income for its fiscal years ended March 31,1979–1981, of $1,359,859, and for its fiscal years ended March 31, 1981–1983, of $2,558,246.

Based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Charmer's request for an exemption from the bond/escrow requirement. The grantng of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is made by the plan sponsors.

Issued at Washington, D.C. on this 18th day of April 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-10928 Filed 4-23-84; 8:45 am]

BILLING CODE 7708-01-M

Exemptions From Bond/Escrow Requirement Relating To Sale of Assets by an Employer who Contributes to a Multiemployer Plan; S. E. Rykoff & Co.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted S. E. Rykoff & Co. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for

exemption from this requirement was published on January 31, 1984 (49 FR 3947). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On January 31, 1984 (49 FR 3947), the PBGC published a notice of the pendency of a request from S. E. Rykoff & Co. ("Rykoff") for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Rykoff of the assets of C.W. Stoffers Co. ("Stoffers"). The sale of assets became effective on May 27, 1982. No comments were received in reponse to the notice.

Rykoff has agreed to assume the responsibilities of Stoffers to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund") for which Stoffers had an obligation to contribute. Stoffers' potential withdrawal liability to the Fund has been estimated to be not more than $274,717, subject to a reduction under ERISA section 4225(a), relating to the liquidation value of a withdrawing employer. The amount of the bond or escrow required under ERISA section 4204(a)(1)(B) is $39,429. Rykoff's potential withdrawal liability to the Fund (including withdrawal liability to another plan that merged with the Fund at the end of 1981) before its purchase of Stoffers' assets was $2,820,366.

According to its audited financial statements, Rykoff's net income (after taxes) for its fiscal years ending April 30, 1980–82, and its net assets as of the end of the same fiscal years, were as follows:

	1980	1981	1982
Net income	$4,758,000	$5,737,000	$6,385,000
Net assets	38,574,000	42,644,000	47,416,000

Based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Rykoff's request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is made by the plan sponsor.

Issued at Washington, D.C. on this 18th day of April, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-10929 Filed 4-23-84; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for Approval of Special Withdrawal Liability Rules; Southern California Rock Products and Ready Mixed Concrete Industries Operating Engineer Employees Retirement Plan et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the following plans for approval of plan amendments providing for special withdrawal liability rules: the Southern California Rock Products and Ready Mixed Concrete Industries Operating Engineer Employees Retirement Plan; the Southern California Rock Products and Ready Mixed Concrete Industries Teamster Employees Retirement Plan; and the Southern California Rock Products and Ready Mixed Concrete Industries Machinist and Laborer Employees Retirement Plan. The plans, and the work covered by the plans, are interrelated. Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended, a plan may establish special withdrawal liability rules if the PBGC finds that the rules apply to an industry that has the characteristics that would make use of the special rules appropriate, and that the rules would not pose a significant risk to the PBGC insurance system. The effect of this notice is to advise interested persons of this request for approval of special withdrawal liability rules and to solicit their views on it.

DATES: Comments must be submitted on or before June 8, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The complete request for approval is available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m. Any comments received will also be made available to

the public at the above address at those times.

FOR FURTHER INFORMATION CONTACT:
J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860. [This is not a tool-free number.]

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), a complete withdrawal is generally defined as the permanent cessation of an employer's obligation to contribute under the plan, or the permanent cessation of all covered operations under the plan. Under section 4205, a partial withdrawal generally occurs when an employer reduces covered operations by seventy percent, or removes a continuing facility or bargaining unit from the plan while continuing to do the previously covered work in the area. Thus, the general rules on complete and partial withdrawal identify those events that normally result in a loss to the plan's contribution base.

However, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute by an employer normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

Under the definition ERISA section 4203(b)(2), a complete withdrawal occurs only if a construction industry employer ceases to have an obligation to contribute under the plan, and the employer either continues to perform previously covered work in the area of the collective bargaining agreement or resumes such work within five years without renewing the obligations to contribute at the time of resumption. Section 4203(c)(1) applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent area is the area of the plan rather than the area of the collective bargaining agreement. In contrast, the general definition of complete withdrawal imposes liability regardless of the continued activities of the withdrawn employer (section 4203(a)).

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. In construction, a partial withdrawal occurs "only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required" (ERISA section 4208(d)(1)). The entertainment industry is exempt from partial withdrawal liability "except under the conditions and to the extent prescribed by the corporation by regulation" (section 4208(d)(2)).

ERISA section 4203(f) provides that the PBGC may authorize plans in industries other than construction and entertainment to adopt special complete withdrawal liability rules similar to those for the construction and entertainment industries in section 4203 (b) and (c). Section 4208(e)(3) provides that the PBGC may permit plans to adopt special partial withdrawal liability rules upon a finding by the PBGC that the rules are consistent with the purposes of Title IV of ERISA. Under ERISA section 4203(f) and § 2645.4(a) of the PBGC's regulation on procedures for extension of special withdrawal liability rules (47 FR 12622, March 24, 1982), the PBGC will approve a plan amendment establishing special withdrawal rules if the PBGC determines that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(B) Will not pose a significant risk to the insurance system.

In making these determinations, the PBGC will conduct a comprehensive analysis of the request, the actuarial data submitted and other relevant information relating to the industry and the plan. The PBGC may condition its approval of the special rules on the plan's taking certain additional actions in order to ensure satisfaction of the regulatory standards. For example, the PBGC approval may be conditioned on the plan's modification of the rule or a change in the plan's funding practices.

In order for the PBGC to determine whether a special withdrawal rule is appropriate, § 2645.3(d)(7) of the regulation requires that plans provide information on the industry which is the subject of the rule. This includes information on the effects of withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. (These characteristics include, but are not necessarily limited to, the mobility of employees, the intermittent nature of employment, extreme fluctuations in the level of an employer's covered work under the plan, the project-by-project or temporary nature of the employer's participation in the plan, the existence or non-existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.)

Under § 2645.2(a) of the regulation, a special partial withdrawal rule must be consistent with the rule the plan has adopted on complete withdrawals. The regulation also requires that a plan indicate how the special rules will operate in the event of a sale of assets by a contributing employer or the withdrawal from the plan of all employers (§ 2645.3(d)(4)). Finally, § 2645.4(b) requires the PBGC to publish a notice of the pendency of a request for approval of special withdrawal rules in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

The Request

The PBGC has received a request from the following multiemployer plans for approval of plan amendments providing for special withdrawal liability rules: the Southern California Rock Products and Ready Mixed Concrete Industries Operating Engineer Employees Retirement Plan (the "Engineers Plan"); the Southern California Rock Products and Ready Mixed Concrete Industries Teamster Employees Rtirement Plan (the "Teamsters Plan"); and the Southern California Rock Products and Ready Mixed Concrete Industries Machinist and Laborer Employees Retirment Plan (the "Machinists Plan") (collectively referred to as the "Plans"). In the request, the Plans represent, among other things, that:

The Plans

Each of the Plans is maintained pursuant to an industry-wide collective bargaining agreement in the rock products and ready mixed concrete industries in Southern California. The geographical territory covered by these agreements is Los Angeles, Ventura and Orange Counties, California. The employers who contribute to the Plans are engaged in the extraction, preparation, sale and delivery of rock, sand, gravel and other rock products for use in the manufacture of concrete and other applications in the construction industry and in the manufacture, sale and delivery of ready mixed concrete to the construction industry. In a typical year, employers contributing to the Plans account for approximately 95 percent of the total tonnage of rock

products produced in Los Angeles and Orange Counties and 83 percent of the total cubic yardage of ready mixed concrete produced in those counties. These market shares have not significantly declined in the last five years. All of the employees covered by the Plans work in the rock products industry. An employer in this industry is likely to contribute to all three Plans on behalf of its workers. The Plans, and the work covered by the Plans, are interrelated. The engineers crush the stone and produce rock products; the teamsters transport the products; and the machinists repair the trucks and other equipment necessary for this production. However, the Plans have different benefit structures and different contribution rates.

a. *Engineers Plans.* The Engineers Plan is maintained pursuant to an agreement with the International Union of Operating Engineers Local 12, AFL–CIO. In 1981, 34 employers contributed under the plan. As of January 1, 1983, this plan covered a total of 1,604 participants (1,069 actives and terminated vested and 535 retirees and beneficiaries), and had assets of $34.3 million with liability for vested benefits of $47 million. During 1982, the Engineers Plan received $3.3 million in contributions; benefit payments in that year were $2.3 million. In addition, an unknown amount was paid for disability and pre-retirement death. For 1981, disability and pre-retirement death payments totalled $368,000.

b. *Teamsters Plan.* The Teamsters Plan is maintained pursuant to agreements with Locals 420, 982, 495, 692, 88, 467 and 186 of the International Brotherhood of Teamsters, Chauffeurs & Warehousemen of America. In 1981, 28 employers contributed under the plan. As of January 1, 1983, this plan had a total of 2,426 participants (1,802 actives and terminated vested and 624 retirees and beneficiaries), and had assets of $43.5 million with liability for vested benefits of $49.3 million. During 1982, the Teamsters Plan received $3.2 million in contributions; benefit payments in that year were $2.4 million. In addition, an unknown amount was paid for disability and pre-retirement death. In 1982, disability and pre-retirement death payments totalled $383,400.

c. *Machinists Plan.* The Machinists Plan is maintained pursuant to agreements with Lodges 94, 1186 and 1484 of the International Association of Machinists and Aerospace Workers, AFL–CIO, and the Southern California District Council of Laborers. In 1981, nine employers contributed under the plan. As of January 1, 1983, the Machinists Plan had a total of 262 participants (184 actives and terminated vested and 98 retirees and beneficiaries), and had assets of $5 million with liability for vested benefits of $7.4 million. During 1982, the Machinists Plan received $479,000 in contributions; benefit payments in that year were $340,000. In addition, an unknown amount was paid for disability. In 1981, disability payments totalled $79,000.

Industry Characteristics

According to the request, the rock products industry evidences various characteristics which make the use of special withdrawal liability rules appropriate.

First, work in this industry is local in nature. The presence of that characteristic results, in part, from the perishability of ready mixed concrete and the high cost of transporting rock products and ready mixed concrete. Once water has been added, concrete is a perishable commodity and this is rarely transported over a distance of more than 20 miles. It is obviously more economic to use rock products found in nearby quarries, rather than incurring the high expense of shipping from distant points. In addition, this industry is very much interrelated with the local construction industry. Both rock products and ready mixed concrete are delivered to construction job sites and installed on the site by construction industry crafts. For all of these reasons, work in the rock products industry must be performed within a particular geographic area, which in this case is the jurisdiction of the Plans.

The intermittent nature of employment and the project-by-project nature of work in this industry are somewhat similar to that of the construction industry, since there is work in the rock products industry only to the extent of construction activity in the area of the plan. When a construction project is completed, deliveries of rock products and ready mixed concrete cease. The employees begin on the next project for which their employer has been able to obtain purchase orders for materials.

Fluctuations occur in the volume of employer's covered work, depending upon its ability to compete in this highly competitive industry. Since the means of production of rock products is well-understood, and thus the quality of the product does not vary, competition in this industry is based on price and service. Fluctuations occur in the level of all employer's covered work depending upon the level of activity in the construction industry, inclement weather, the availability of cement and similar factors. Although there is no hiring hall system in this industry, the great majority of covered employees are required to dial a phone number each evening to determine whether they are scheduled to work the following day. There is a significant degree of mobility within the crafts covered by the Plans, but it is restricted for the most part to employers in the Plans.

In some ways, this industry is not similar to the construction industry. Employees in the rock products industry are more likely to remain with the same employer than are employees in the construction industry. Also, due to the large capital investment required and the relative scarcity of rock quarries, very few employers ever enter the industry and very few ever leave it. New employers which have entered the industry have in almost all cases been successor employers. In the past five years, some facilties have changed hands, mostly between contributing employers, and some new facilities have been opened, but usually by employers already contributing to the Plans.

However, on the basis of the above factors, the request concludes that—

> . . . if a covered employer withdraws from one of these plans and does not continue to perform work in the jurisdiction in question, his employees will find work with one of the other employers which continues to be covered by the plans. [In addition,] the total number of contribution base units for any of these plans for any year will not change materially because one or more of the covered employees withdraws from that plan under said condition.

Actuarial Data

As part of the request, three actuarial valuation reports were submitted for each of the three Plans. The results are summarized in the attached tables 1, 2 and 3.

Plan costs for each of the Plans for minimum funding purposes are determined using the frozen initial liability, entry age normal method (FIL). The normal cost reported by the 1983 valuation decreased significantly relative to the 1980 results for all three Plans. It is likely that the decrease in the number of active participants and, to a lesser extent, the increase in asset values during the intervening three years were primarily responsible for the decrease in normal cost.

The asset to vested liability ratio has increased during each succeeding valuation for all three Plans. Some of the improvement in 1983 can be traced to the increase from 6½% to 7½% in the

interest rate assumed for liability calculation purposes.

Typically, contributions for each plan are bargained for on a three-year cycle. For the Engineers Plan the hourly contribution rate has increased from $1.92 to $2.82 for the period 1978–1983. Contributions under the Teamsters Plan previously varied by bargaining unit and date of hire but became a uniform $1.47 per hour during 1982. For the Machinists Plan, contributions for laborers has remained steady at 71 cents per hour during the period covered by the valuation reports while machinists' contributions (hourly) have increased from $1.29 to $2.14.

The benefit structure for each of the Plans is as follows:

Engineers Plan. Normal retirement is at age 62, but accrued benefits can be elected as early as age 52 with a 3% per year reduction from 62 for early benefit commencement. The monthly benefit is $5.25 times servce before October 1, 1962 (past service) plus $23 for service after that date (future service). The future service multiplier has increased steadily from $13.50 in 1976. Moreover, these benefit increases have been extended to retirees. The plan also provides a pre-retirement lump sum benefit of $500 multiplied by the participant's future service. The 1983 valuation report shows a FIL of $16.9 million as of January 1, 1976. Benefit increases effective in each of the seven years 1976–1982 increased the actuarial liability by $20.3 million.

Teamsters Plan. Normal retirement is at age 65, but active employees can elect benefit commencement as early as age 55 with the reduction in accrued benefits calculated from age 60. The early retirement reduction is on an approximate actuarially equivalent basis. Prior to 1980, the monthly benefit varied by bargaining units and hire dates. Currently, the monthly normal retirement benefit is $29 times credited service up to a maximum of 25 years. The plan provides two forms of pre-retirement death benefits: a lump sum benefit of $15,225 and annuities for the surviving spouse and children. A post-retirement lump sum death benefit of one year's payout is also provided. The 1983 valuation report shows a FIL of $22.2 million as of January 1, 1976. Six benefit increases effective during the period 1976–1982 increased the actuarial liability by $12.3 million.

Machinists Plan. The Plan's normal retirement age is 65 for laborers and 62 for machinists. With reduction on an approximate actuarially equivalent basis, accrued benefits are available as early as age 55. The monthly retirement benefit for laborers is $11.85 times service with a maximum of $553.50 per month. The same benefit formula has been in effect since 1977. For machinists the monthly benefit multiplier is $20 for service before September 1, 1981 and $21 for service after that date. The machinists' benefit multiplier has increased steadily to its current level since 1977, when it was $13.75 for all service. As shown in the 1983 valuation report, FIL was $3.5 million as on January 1, 1976. Benefit increases effective in each of the years 1977–1981 increased the actuarial liability by $1.9 million.

TABLE 1.—SUMMARY OF ACTUARIAL VALUATION RESULTS [1]—ENGINEERS PLAN

	Valuation date		
	Jan. 1, 1983	Jan. 1, 1980	Jan. 1, 1977
A. Number of participants:[2]			
1. Active and terminated vested	1,069	1,397	1,242
2. Retirees and beneficiaries	535	480	370
B. Annual contributions and benefits [3] ($000):			
1. Employer contributions	$3,341	$4,048	$2,303
2. Benefits paid	(4)	1,808	1,036
C. Plan assets and liabilities ($000):			
1. Plan assets	$34,251	$22,076	$12,531
2. Liability for vested benefits:[5]			
a. Retirees and beneficiaries	23,605	16,839	9,350
b. Other participants	23,890	23,165	16,396
c. Total	47,495	40,004	25,746
3. 1. ÷ 2.c. (percent)	72	55	49
4. Normal cost [6]	382	1,149	980
5. Unfunded actuarial liability [6]	32,061	27,370	18,712

[1] Taken from actuarial reports submitted with request.
[2] 1983 figures are taken from the actuarial report, the others are from the corresponding Form 5500's.
[3] For the calendar year preceding the valuation date.
[4] Unavailable.
[5] Assumed interest rate is 7½% for 1983, 6½% for others.
[6] Frozen initial liability entry age normal method with assumed interest at 6½%

TABLE 2.—SUMMARY OF ACTUARIAL VALUATION RESULTS [1]—TEAMSTERS PLAN

	Valuation date		
	Jan. 1, 1983	Jan. 1, 1980	Jan. 1, 1977
A. Number of participants: [2]			
1. Active and terminated vested	1,802	2,412	2,456
2. Retirees and beneficiaries	624	572	417
B. Annual contributions and benefits [3] ($000):			
1. Employer contributions	$3,161	$4,226	$3,159
2. Benefits paid	(4)	2,082	1,208
C. Plan assets and liabilities:			
1. Plan assets ($000)	$43,480	$30,079	$17,733
2. Liability for vested benefits: [5]			
a. Retirees and beneficiaries	23,109	18,053	11,173
b. Other participants	26,172	34,506	24,036
c. Total	49,281	52,559	35,209
3. 1. ÷ 2.c. (percent)	88	57	50
4. Normal cost [6]	270	858	1,258
5. Unfunded actuarial liability [6]	27,956	28,072	30,749

[1] Taken from actuarial reports submitted with request.
[2] 1983 figures are taken from the actuarial report, the others are from the corresponding Form 5500's.
[3] For the calendar years preceding the valuation date.
[4] Unavailable.
[5] Assumed interest rate is 7½% for 1983, 6½% for others.
[6] Frozen initial liability entry age normal method, with assumed interest at 6½%.

TABLE 3.—SUMMARY OF ACTUARIAL VALUATION RESULTS [1]—MACHINISTS PLAN

	Valuation date		
	Jan. 1, 1983	Jan. 1, 1980	Jan. 1, 1977
A. Number of participants:[2]			
1. Active and terminated vested	184	231	232
2. Retirees and beneficiaries	98	93	79
B. Annual contributions and benefits [3]($000):			
1. Employer contributions	$479	$584	$435
2. Benefits paid	(4)	308	204
C. Plan assets and liabilities ($000):			
1. Plan assets	$5,040	$3,375	$2,050
2. Liability for vested benefits:[5]			
a. Retirees and beneficiaries	3,626	2,769	1,768
b. Other participants	3,740	3,847	2,709
c. Total	7,366	6,616	4,477
3. 1. ÷ 2.c. (percent)	68	51	46
4. Normal cost [6]	70	158	132
5. Unfunded actuarial liability [6]	5,154	4,933	3,467

[1] Taken from actuarial reports submitted with request.
[2] 1983 figures are taken from the actuarial report, the others are from the corresponding Form 5500's.
[3] For the calendar year preceding the valuation date.
[4] Unavailable.
[5] Assumed interest rate is 7½% for 1983, 6½% for others.
[6] Frozen initial liability entry age normal method with assumed interest at 6½%.

Special Withdrawal Rules

Each of the Plans has adopted an identical amendment prescribing special withdrawal rules. The amendment provides that the special rules shall be effective as of April 29, 1980. The amendment would apply to any employer who contributes to any of the Plans. The proposed complete and partial withdrawal rules read as follows:

(b) An event described in ERISA section 4203(a) or section 4205 (a)(1) or (a)(2) shall not constitute a complete or partial withdrawal, if

(i) the Employer does not within five years after such contribution decline or such cessation continue or resume the performance of work at any of such facilities or locations, or at any new location within the geographical jurisdiction of the Basic Labor Agreement, of the type for which contributions under the Plan are required,

unless the work so continued or resumed is covered by an obligation to contribute under the Plan,

(ii) the Employer does not subcontract work of such type at or for any of such facilities or at any such new location within five years after such contribution decline or such cessation unless the work so subcontracted is covered by an obligation of the subcontractor to contribute under the Plan, and

(iii) the purchaser, if any (and the successors in interest of such purchaser), of all or any part of the Employer's assets theretofore used at any of such facilities or locations, the sale of which is the direct or indirect cause of such contribution decline or such cessation do not within five years after such sale, directly or indirectly, perform or subcontract the performance of work within the georgraphical jurisdiction of the Basic Labor Agreement of the type for which contributions thereunder to the Plan are made by Employers, unless the work so performed or subcontracted is covered by an obligation of the purchaser, successor, or subcontractor to contribute under the Plan." (*Amendment*; section 10.10(b)).

Section 10.10 of the amendment further provides that the special withdrawal liability rules would apply "but solely with respect to actions or events hereinafter described which are not in concert with, or which do not occur during the same three year period in which substantially similar actions or events occur with respect to substantially all of the Employers, as determined by the Administrator . . ." The PBGC notes that the sale of assets provisions of ERISA section 4204 apply by operation of law to withdrawals from the Plans.

Notice

A notice of the adoption of the amendments by the Plans and of this request for the PBGC's approval of the amendments has been mailed to all employers who have an obligation to contribute under the Plans and to the employee organization representing employees covered under the Plans.

Comments

All interested persons are invited to submit written comments on the pending request to the above address, on or before June 8, 1984. All comments will be made a part of the record. Comments received, as well as the application for approval of the plan amendments, will be available for public inspection at the address set forth above.

Issued at Washington, D.C. on this 18th day of April 1984.

C. C. Tharp,

Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 84-10927 Filed 4-23-84; 8:45 am]

BILLING CODE 7708-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Public Meeting

April 30, 1984.

Notice is hereby given of a meeting of the Prospective Payment Assessment Commission scheduled for Wednesday, May 30, 1984. The meeting will convene at 9:00 a.m. at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, D.C., Pierre Room, and will be open to the public.

Stuart H. Altman,

Chairman, Prospective Payment Assessment Commission.

[FR Doc. 84-11020 Filed 4-23-84; 8:45 am]

BILLING CODE 6820-SW-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13007]

Criterion Acceptance Corp.; Application and Opportunity for Hearing

April 17, 1984.

Notice is hereby given that Criterion Acceptance Corporation (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteehsip of First National Bank of Minneapolis ("First Minneapolis") under an existing indenture that has been qualified under the Act and another indenture which will be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as trustee under either such indenture.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that: (1) The Applicant has entered into an Indenture, dated as of September 1, 1983, as amended by a First Indepture Amendment, dated as of December 1, 1983 (as so amended, the "Single Maturity Bond Indenture"), with First Minneapolis, as trustee. Pursuant to the Single Maturity Bond Indenture, the Applicant issued, on September 22, 1983, October 27, 1983, December 20, 1983, and February 9, 1984, respectively, $14,500,000 principal amount of its 12.30% GNMA-Collateralized Bonds, Series A (together with all other bonds of each series issued or issuable under the Single Maturity Bond Indenture, the "Single Maturity Bonds"), $14,925,000 principal amount of its 12% GNMA-Collateralized Bonds, Series B, $15,407,000 principal amount of its 12.15% GNMA-Collateralized Bonds, Series C, and $18,007,000 principal amount of its GNMA-Collateralized Bonds, Series D. All such Single Maturity Bonds are registered under the Securities Act of 1933.

(2) Each series of Single Maturity Bonds is (or will be, as a condition to issuance) secured by entirely separate collateral consisting principally of a group of GNMA certificates, which are mortgage-backed certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"). GNMA's guaranty obligation is backed by the full faith and credit of the United States. The Single Maturity Bond Indenture requires that the GNMA certificates deposited as collateral for each series have on the issue date for the series an aggregate GNMA Collateral Value (as defined in the Single Maturity Bond Indenture) that will assure that they (a) will have an aggregate principal amount which will be at least equal to the aggregate principal amount of the bonds of the series (except as adjusted in the case of

a certain type of GNMA certificates securing certain series) and (b) will produce, together with other collateral required to be deposited as a condition to issuance of the series, a cash flow sufficient to amortize the bonds of the series through redemption and payment at their stated maturity (30 years from the date of issuance in the case of each series of Single Maturity Bonds issued thus far) and to support all interest payments required to be made on the bonds of the series while they are to be outstanding in accordance with the amortization thus provided. The Single Maturity Bond Indenture expressly prohibits any collateral pledged thereunder as security for one series of bonds to be pledged as security for any other series or any other indebtedness.

(3) The Applicant plans to continue issuing, from time to time, additional series of Single Maturity Bonds. The Applicant also intends in the future to issue one or more series of GNMA-collateralized bonds that would have different maturities within each series ("Multiple Maturity Bonds"). In connection therewith, the Applicant, on February 17, 1984, filed with the Commission a registration statement (Registration No. 2–89524, TIA Filing No. 22–12966). Such registration refers to an Indenture, to be dated February 1, 1984 (the "Multiple Maturity Bond Indenture"), proposed to be entered into between the Applicant and First Minneapolis, as trustee. Each series of Multiple Maturity Bonds will be secured by entirely separate collateral consisting principally of a group of GNMA certificates. Similar to the Single Maturity Bond Indenture, the Multiple Maturity Bond Indenture requires that the GNMA certificates deposited as collateral for each separate series (a) have an aggregate principal amount which will be at least equal to the aggregate principal amount of the bonds of the series (except as adjusted in the case of a certain type of GNMA certificates securing certain series) and (b) be such as to produce, together with other collateral required to be deposited as a condition to issuance of the series, a cash flow sufficient to amortize the bonds of the series through principal distributions, redemptions and payment at the bonds respective stated maturities and to support all interest payments required to be made on the bonds of the series while they are to be outstanding in accordance with the amortization thus provided. As in the case of the Single Maturity Bond Indenture, the Multiple Maturity Bond Indenture will expressly prohibit any collateral pledged thereunder for one series of bonds to be pledged as security for any other series of any other indebtedness (including any Single Maturity Bonds).

(4) The Application is not in default under the Single Maturity Bond Indenture.

(5) Such differences as exist between the Single Maturity Bond Indenture and the Multiple Maturity Bond Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as Trustee under both such indentures.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than May 14, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–10851 Filed 4–23–84; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–12976]

Trans World Airlines, Inc.; Amendment No. 1 To Application Dated February 15, 1984

April 16, 1984.

Trans World Airlines, Inc. (the "Applicant") has filed an application, dated February 15, 1984, under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of The Bank of New York (the "Bank") under (i) a Trust Indenture and Mortgage, dated May 1, 1971 (the "Indenture") among Bankers Trust Company, as Owner-Trustee ("Bankers Trust"), Applicant as Guarantor and the Bank as Indenture Trustee, (ii) an Equipment Trust Agreement, dated October 1, 1979 (the "Equipment Trust") between Applicant and the Bank which provides for the issuance of approximately $100 million aggregate principal amount of Equipment Trust Certificates due May 11, 1990, (iii) an Indenture of Mortgage, dated January 1, 1977 (the "Mortgage") among certain senior lenders, Applicant and the Bank, as Trustee (succeeding the original Trustee Marine Midland Bank) and (iv) a Note Facility Indenture of Mortgage dated as of January 16, 1984 (the "Facility Mortgage") between the Applicant and the Bank as Trustee for the benefit of holders of Promissory Notes issued under a certain Note Facility Agreement and a possible future long-term facility arrangement, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the Indenture.

On March 6, 1984 in response to the Application, the Commission issued Notice of Application and Opportunity For Hearing (the "Notice") describing the Application, the relief requested and the factual allegations in support thereof. It also gave notice that written requests for a hearing on the application and a statement of the issues to be controverted were to be submitted no later than April 3, 1984.

Applicant submits this amendment to disclose a change in factual circumstances from that alleged in its Application, as follows: 1. In paragraph 4 of the Application, and as described in paragraph 5 of the Notice, the Facility Mortgage secures three-month Promissory Notes (or "Notes") of TWA to be issued to foreign investors through Merrill Lynch International & Co. (the "Placing Agent"), in London. Because it was contemplated that sales would be outside the United States and to foreign investors, the Promissory Notes have not been registered under the Securities Act of 1933 (the "1933 Act") and the Facility Mortgage has not been qualified under the Trust Indenture Act of 1939 (the "1939 Act").

3. On March 21, 1984, $10 million of Promissory Notes were sold to Merrill, Lynch, Pierce, Fenner and Smith

Incorporated ("Merrill Lynch") which in turn immediately sold the Notes to the New York City branch of Creditanstalt-Bankverein (the "Purchaser"), an Austrian banking institution. Certain restrictive provisions pertaining to sales in the United States or to U.S. Persons and appearing on the Notes and in the Note Facility Agreement have been waived.

4. The Purchaser has represented and warranted to Applicant and to Merrill Lynch that it has purchased the Notes for investment and for its own account and not with a view to the resale, offering or distribution thereof and has further agreed that it will not directly or indirectly, offer or sell any of the Notes or any interest or participation therein, in the United States or to U.S. Persons.

5. Merrill Lynch, the Placing Agent and the Applicant have not directly or indirectly, sold or offered for sale or disposed of, or attempted or offered to dispose of, any of the Notes or any part thereof to, and have not solicited offers to buy any of the Notes or any part thereof from, or otherwise approached or negotiated in respect thereof with, any U.S. Person (as defined in the Notes) or in the United States, other than the Purchaser. Indeed, it appears that the Purchaser became aware of the Notes through one of its offices located outside of the United States.

6. Under the foregoing circumstances the placement of $10 million in Notes with the Purchaser is a private placement and consequently does not subject the Notes to registration requirements under the 1933 Act or the Facility Mortgage to qualification under the 1939 Act.

7. As stated at Paragraph 6 of the Application and as described in Paragraph 6 of the Notice, the Facility Mortgage may serve in the future as the basic security vehicle for a proposed additional, long-term credit facility involving the issuance of three-month Notes to foreign investors outside the United States. However, it is possible a limited number of private placements within the United States, similar to that with the Purchaser, could occur. However, there is no definite plan for such placements at this time.

8. The powers and duties of the Bank of New York as Trustee under the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage, as well as the collateral secured by those instruments, remain unaffected by the placement of the Notes to the Purchaser. As a general matter such private placement within the United States should not impact the Bank's trusteeship or the security interest in the mortgaged property.

9. The new circumstances, as set forth in this amendment, have no material affect upon the subject trusteeships of the Bank and, thus, no perceivable consequence upon the potential for a conflict of interest on the Bank's part, which as previously alleged, is not so likely to be material as to cause the Bank to be disqualified from its several trusteeships.

Notice is further given that any interested person may, not later than May 14, 1984 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10648 Filed 4-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13891; 812-5753]

VALIC Timed Opportunity Fund, Inc.; Application for an Order Exempting Applicant

April 17, 1984.

Notice is hereby given that Valic Timed Opportunity Fund, Inc. (the "Fund"), 2727 Allen Parkway, Houston, TX 77019, filed an application on January 23, 1984, and amendments thereto on March 30, and April 6, 1984, requesting an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Fund from the provisions of Sections 18(f)(1) and 17(f) of the Act to the extent necessary to permit it to invest in stock index futures and related options. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

According to the application, the Fund is a registered open-end diversified management investment company that currently offers its common stock exclusively to Separate Account A of The Variable Annuity Life Insurance Company ("VALIC"), an insurance company organized under Texas law, to fund variable annuity contracts issued by VALIC. VALIC or one of its affiliated companies will serve as investment adviser to the Fund. The Fund's primary investment objective is to seek a maximum aggregate rate of return over the long term through investments believed to offer substantial potential for capital appreciation or high current income. The Fund invests its assets in equity securities, bonds or long-term debt securities, and money market instruments. The proportion of its assets invested in each of these three areas at any given time reflects adjustments made to take advantage of price cycles in the stock and the bond markets. The application states that, solely as a hedge against possible market changes, and not for speculation, the Fund proposes to enter into interest rate futures contracts and stock index futures contracts (collectively, "financial futures contracts").

The application states that upon entering into a financial futures contract, the Fund must post an "initial" margin deposit with the commodities broker effecting the transaction. If for any day the net equity of the Fund's account with the broker falls below the required margin deposit, the Fund must make a "variation margin" payment to increase the equity in the account. Similarly, if the Fund's open futures contract positions with any broker experience a net gain for any day, the broker is obligated to pay the Fund variation margin in the amount of that excess (unless part of that variation margin is retained by the broker in order that the account may continue to meet the minimum margin requirements). By entering into futures contracts, the Fund will incur obligations which could be deemed to constitute "senior securities" whose issuance by the Fund might be deemed prohibited by Section 18(f) of the Act. Moreover, margin deposits posted by the Fund and variation margin owed to the Fund by brokers in connection with financial futures contracts might be deemed to be required under Section 17(f) of the Act to be held by the Fund's custodian. The Fund requests an order pursuant to Section 6(c) of the Act exempting the Fund from Sections 18(f)(1) and 17(f) of the Act to the extent necessary to permit the Fund's proposed transactions in financial futures contracts and its related practices in connection with

margin deposits and in connection with variation margin owed to the Fund.

The Fund states that it will not be trading in futures contracts for speculative purposes and therefore will not be exposed to the degree or types of risks associated with leveraging and addressed by Section 18(f). In this connection, the Fund has made the following undertakings:

1. The Fund will enter into interest rate and stock index futures contracts not for speculation, but only (1) as a hedge against possible changes in the values of securities or other instruments held by the Fund or which it intends to purchase and where the transactions are economically appropriate to reduce risks inherent in the ongoing management of the Fund or (2) to close out an existing position in a futures contract;

2. The Fund will not enter into a financial futures sale contract (by exercise of any option or otherwise) or write any call option on a market index, if, immediately thereafter, the sum of the then-current value of its portfolio securities which are hedged by futures sale contracts and the then-current value of its portfolio securities being used to hedge "covered" call options on market indexes would be more than one-third of the value of its total assets;

3. The Fund will not enter into a financial futures contract (by exercise of any option or otherwise) or acquire any option thereon, if, immediately thereafter, the total of the initial margin deposits required with respect to all open futures positions at the time such positions were established, plus the sum of the premiums paid for all unexpired options on futures contracts, would exceed 5 percent of the market value of the Fund's total assets;

4. The Fund will maintain at all times (in a segregated account with its custodian) cash or cash equivalents which equal at least the sum of the aggregate value of all futures purchase contracts owned by the Fund, as marked to market each day, less the amount of margin deposits with respect thereto, and which are not earmarked to support any other obligations of the Fund.

In support of its requested relief from Section 17(f), the Fund undertakes, with respect to financial futures contracts, to amend or supplement its custodial agreement to provide for the transfer of the margin deposit assets maintained for each broker into a separate segregated account with the custodian and to provide that (1) the custodian will take instructions with respect to disposition of assets in that account only from that broker and (2) in directing the disposition of these assets, the broker must state that the Fund is in default, that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of its agreement with the Fund. The Fund will enter into an agreement with each broker which would provide (1) that Fund assets held by the broker would be in the possession of the custodian until released or sold or otherwise disposed of in accordance with or under the terms of that agreement, (2) that those assets would not otherwise be pledged or encumbered by the broker, (3) that when requested by the Fund the broker would cause the custodian to release to the Fund's general custodial account any assets to which the Fund is entitled under the terms of such agreement, and (4) that assets in the segregated account shall otherwise be used only to satisfy the Fund's obligations to the broker under the terms of that agreement. The Fund will promptly cause to be transferred to the general custodial account any amounts no longer required as margin to support its futures contracts. In the prospectus used for the sale of its shares, the Fund will appropriately disclose the risk of loss or delay in recovery, of margin deposits in the event of a broker's insolvency or bankruptcy, although the foregoing arrangements are intended to reduce that risk.

The Fund further states that any variation margin payable by brokers to the Fund reflects net gains which are immediately shown as increased equity in the Fund's account with the relevant broker and are immediately credited to the Fund's net asset value. Applicant undertakes, on a daily basis, to promptly demand payment and transfer of those amounts from each broker to the Fund's custodian (for the general or segregated custodial account, as appropriate) whenever the amount of variation margin owed to the Fund by a given broker reaches $50,000, in order to minimize any risk of loss of the variation margin to which it is entitled.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 14, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10849 Filed 4-23-84; 8:45 am]

BILLING CODE 8010-01M

[Release No. 20874; File No. 4-256]

National Market System Securities; Institutional Networks Corp. and National Association of Securities Dealers, Inc.; Order Announcing Commission Findings, Modifying Interim Relief, and Instituting Proceedings

I. Introduction

A. Description of the Proceeding

This proceeding involves Commission review, pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act"),[1] of proposed fees of the National Association of Securities Dealers, Inc. ("NASD") for quotation information regarding certain over-the-counter ("OTC") securities. The Commission instituted this proceeding as the result of the submission by the Institutional Networks Corporation ("Instinet"), a vendor of securities information,[2] of a petition alleging that the NASD, both as a securities information processor ("SIP")[3] and as an exclusive processor,[4] has proposed

[1] 15 U.S.C. 78k-1(b)(5) (1976).

[2] Instinet is a registered broker-dealer that operates both information services and a computerized stock execution system.

[3] Section 3(a)(22)(A) of the Act, 15 U.S.C. 78c(a)(22)(A) (1976), defines the term SIP as "any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication . . . transactions in or quotations for any security . . . or (ii) distributing or publishing . . . on a current and continuing basis, information with respect to such transactions or quotations."

[4] Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B) (1976), defines the term "exclusive processor" as "any securities information processor or self-regulatory organization which . . . engages on an exclusive basis on its own behalf in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association." *Id.* An exclusive processor is required to register with the Commission pursuant to Section 11A(b) of the Act, 15 U.S.C. 78k-1(b) (1976).

fees at a level and at terms that, in effect, inappropriately deny or limit Instinet's access to this information.[5] As a result, Instinet believes that it has been denied an opportunity to compete with the NASD in supplying this information to end-users.

B. Statutory Requirements

In the Securities Acts Amendments of 1975 ("1975 Amendments"),[6] Congress directed the Commission "to facilitate the establishment of a national market system [("NMS")] for . . . 'qualified securities' " [7] consistent with certain objectives, including making available "to brokers, dealers, and investors . . . information with respect to quotations for and transactions in securities." [8] In this respect, Congress concluded that "communications systems designed to provide automated dissemination of last sale and quotation information with respect to securities will form the heart of the national market system." [9]

Because Congress was concerned that exclusive processors of securities information, as monopoly facilties, could frustrate the goals of an NMS,[10] Congress made the Commission "a first line of defense against anti-competitive practices . . . [by granting] the SEC broad powers over any exclusive processor and [imposing] on [the Commission] a responsibility to assure the processor's neutrality and the reasonableness of its charges in practice as well as in concept." [11]

Specifically, to ensure the widespread availability of securities information, Section 11A(c) of the Act requires self-regulatory organizations ("SRO") and SIPs to make available, on terms that are not inconsistent with the purposes of the Act, all securities information that they collect, process, distribute or publish.[12] That section also authorizes the Commission to adopt rules to "assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in . . . securities and the fairness and usefulness of the form and content of such information." [13]

In addition, Section 11A(b)(5)(A) of the Act provides the Commission with authority on its own motion, or upon application by an aggrieved person, to review any prohibition or limitation of access to services provided by a registered SIP. Section 11A(b)(5)(B) provides that, if the Commission finds, after notice and opportunity for hearing, that a prohibition or limitation on access to the services of a registered SIP is consistent with the provisions of the Act and the rules and regulations thereunder and that the person alleging that prohibition or limitation has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. Section 11A(b)(5)(B) also provides that "[i]f the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the prohibition or limitation and require the registered [SIP] to permit such person access to services offered by the registered [SIP]." In addition, pursuant to Section 11A(b)(5)(A), the Commission may summarily, or after notice and opportunity for hearing, stay a prohibition or limitation with respect to access to services offered by a registered SIP.

Section 11A(b)(5) thus provides the Commission with the substantive power to review prohibitions or limitations on access by registered SIPs and the power to stay the effectiveness of alleged prohibitions or limitations upon access until such time as the Commission may conduct its substantive review in an orderly manner.[14]

Pursuant to its authority under Section 11A(b)(5) the Commission, on August 16, 1983, issued an order preliminarily finding that the NASD's proposed fees constituted a prohibition or limitation on access to services, and instituted this proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the provisions of the Act.[15] The order also granted Instinet conditional interim relief so that Instinet could begin receiving the quotation information during the pendency of the proceeding.[16]

C. NASD's Proposed Fees

The NASD currently offers NASDAQ quotation information to the public in three forms.[17] NASDAQ Level 1 service provides the inside market (the best bid and offer) for a security. This is the basic service registered representatives receive and is carried only by vendors other than the NASD, such as Quotron Systems, Inc. and Bunker Ramo Information Systems. The NASD charges subscribers $8.75 a month for Level 1, which subscribers must pay to the NASD in addition to any vendor fees which the supplier of the information, *e.g.*, Quotron or Bunker Ramo, may charge its subscribers. Approximately 100,000 terminals receive Level 1 service.

NASDAQ Level 2 service provides a full quotation montage showing each market maker for a NASDAQ security and its quotations. This service is provided only by the NASD, using

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[5] Hereinafter this proceeding will be referred to as the "Instinet Proceeding." The proposed NASD fees are also the subject of a concurrent proceeding under Section 19 of the Act, 15 U.S.C. 78s (1976), to consider whether those fees should be approved or disapproved. Securities Exchange Act Release No. 20873 (April 17, 1984). *See infra* note 29.

[6] Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

[7] Section 11A(a)(2) of the Act, 15 U.S.C. 78k-1(a)(2) (1976).

[8] Section 11A(a)(1)(C)(iii) of the Act, 15 U.S.C. 78k-1(a)(1)(c)(iii) (1976).

[9] Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 9 (1975) ("Senate Report"), *reprinted in* [1975] U.S. Code Cong. & Ad. News 179, 187.

[10] In this regard, Congress stated that "[a]ny exclusive processor is, in effect, a public utility, and thus it must function in a manner which is absolutely neutral with respect to all market centers, all market makers, and all private firms." *Id.* at 11, [1975] U.S. Code Cong. & Ad. News at 189.

[11] Senate Report, *supra* note 9, at 12, [1975] U.S. Code Cong. and Ad. News at 190. *See* Sections 11A(b) and (c)(1) of the Act, 15 U.S.C. 78k-1(b) & (c)(1) (1976).

[12] 15 U.S.C. 78k-1(c) (1976). Indeed, the Senate report stated that: [w]ith respect to securities information processors generally and exchanges and the NASD insofar as they are performing processing functions, the bill would direct the Commission . . . to assure that all securities information processors may obtain access on fair and reasonable terms for purposes of distribution and publication of such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such a capacity.

Senate Report, *supra* note 9, at 10-11, [1975] U.S. Code Cong. & Ad. News at 188-89. *See infra* Section V.

[13] Section 11A(c)(1)(B) of the Act, 15 U.S.C. 78k-1(c)(1)(B) (1976). In addition, the Commission adopted Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1 (1983), which specifically directs the NASD to make quotations for certain securities available to SIPs. *See infra* note 19 and accompanying text.

[14] For further discussion of the statutory provisions relevant to this proceeding, see *infra* Section III B.

[15] *See* Securities Exchange Act Release No. 20088 (August 18, 1983), 48 FR 38124, 38126 ("Order Instituting Proceedings").

[16] *Id.* at 38126, 38130. The conditions of the interim relief generally required Instinet to pay a sum into escrow equal to the NASD's proposed fees. The NASD began providing Instinet with this data according to the terms of the interim relief order in September 1983. Instinet is currently marketing the information to selected customers.

[17] Securities information services are offered by the NASD through two wholly-owned subsidiaries, NASDAQ, Inc. and Market Services, Inc. For ease of discussion, the NASD and its subsidiaries will be viewed collectively as the "NASD" (when discussing the allocation of costs among the NASD and its subsidiaries, however, NASDAQ, Inc. should be viewed as a separate entity). NASDAQ, Inc. is registered with the Commission as an exclusive processor of securities information pursuant to Section 11A(b) of the Act and Rule 11Ab2-1 thereunder. Securities Exchange Act Release No. 12802 (September 16, 1976), 41 FR 41485.

NASDAQ terminals. Level 2 costs $150 a month per terminal. Level 3 is the same as Level 2, with the added ability to enter quotations. Level 3, also marketed exclusively by the NASD, is available only to market makers and is priced the same as Level 2. There are approximately 330 Level 2 terminals, and 1,900 Level 3 terminals.

Until recently, no vendor other than the NASD stated that it was willing to make the necessary information for such a service available.[18] The Commission's firm quotation rule, Rule 11Ac1–1 under the Act, required, as of April 1, 1982, the NASD to make full quotation information available to vendors on those OTC securities designated as NMS Securities.[19] In light of that requirement, the NASD asked all vendors whether they were interested in receiving this quotation information on NMS Securities. Only Instinet expressed an interest in receiving the data.

The Commission granted the NASD a number of exemptions[20] from having to provide Instinet the data until after technical preparations and negotiations over access terms, with fees as the principal issue, were completed. Despite almost two years of negotiations, the parties could not reach an agreement on fees. The NASD thereupon filed with the Commission its proposed fees.[21] The terms of the NASD's proposed fees were identical to the NASD's last offer to Instinet for the service under consideration in this proceeding [referred to by the NASD as the National Quotation Data Service ("NQDS")]. Under the proposed fees Instinet would be charged $3,200 a month for the direct computer-communication costs of transmitting the quotation information from the NASD to Instinet (hereinafter referred to as the "Vendor Fee").[22] Instinet's customers, who subscribed to the information, would be charged by the NASD a monthly per terminal subscriber fee based on the NASD's $150 Level ⅔ fee (hereinafter referred to as the "Subscriber Fee").[23] The $150 fee would be reduced, however, to reflect that Instinet only would receive quotations in NMS Securities.[24]

D. Instinet's Petition

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to Section 11A(b)[5] of the Act alleging that the fees for NQDS were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information.[25] In its petition, Instinet, however, sought access to quotation information on all NASDAQ securities, not just NMS Securities.

On August 16, 1983, the Commission issued an order pursuant to Section 11A(b)(5) of the Act preliminarily finding that, at least with respect to those securities designated as NMS Securities, the proposed fees constituted a prohibition or limitation on access to services, and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the provisions of the Act.[26] In that order, the Commission also solicited comments on certain issues raised in the proceeding, including whether Instinet should receive access to quotation information on all NASDAQ securities, and requested the NASD to submit, by September 15, 1983, data pertaining to the cost of providing quotation information.[27] The order also granted Instinet conditional interim relief so that Instinet could begin receiving quotations for NMS Securities during the pendency of the Instinet Proceeding.[28] The conditions of the interim relief generally required Instinet to pay a sum into escrow equal to the NASD's proposed fees. Finally, the Commission instituted proceedings pursuant to Section 19 of the Act to determine whether to approve or disapprove the proposed fees.[29]

On September 27, 1983,[30] the NASD responded to the Commission's request for cost data by submitting the financial statements of NASDAQ, Inc. for the past five years and disclosing some of NASDAQ, Inc.'s present policies for determining and allocating costs associated with the NASDAQ system as well as the relationship between NASDAQ, Inc. and other NASD affiliates.[31]

On October 19, 1983, the NASD filed a motion with the Commission to terminate the Instinet Proceeding.[32] Noting that Instinet currently was receiving access to quotation information for NMS Securities, the NASD argued that the legislative history of Section 11A(b), as well as practical considerations, required that the proposed fees be reviewed under either Sections 15A or 19 of the Act, as opposed to Section 11A(b)(5).

Thereafter, on October 31, 1983, the NASD submitted certain additional data requested by the Commission, and stated that certain other data requested by the Commission's October 6th letter, concerning allocating costs of operating the NASDAQ system, could not be obtained due to the nature of the NASDAQ system.[33] In light of those

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[18] *See* Letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated January 3, 1984.

[19] 17 CFR 240.11Ac1–1 (1983). NMS Securities are those OTC securities designated as such pursuant to Rule 11Aa2–1 under the Act. 17 CFR 240.11Aa2–1 (1983). The primary effect of designation is to subject OTC stocks to the Commission's firm quotation rule and last sale reporting rule, Rule 11Aa3–1 under the Act, 17 CFR 240.11Aa3–1 (1983).

[20] *See* Securities Exchange Act Release Nos. 18585 (March 23, 1982), 19112 (October 12, 1982), and 19584 (March 3, 1983); 47 FR 13265, 46793, and 48 FR 10175.

[21] Securities Exchange Act Release No. 1984 (June 17, 1983), 48 FR 29086. *See* File No. SR–NASD–83–13. As an SRO, the NASD's proposed fees constituted a proposed rule change and had to be submitted to the Commission for approval pursuant to Section 19 of the Act. *See infra* notes 50–52 and accompanying text.

[22] Securities Exchange Act Release No. 19864 (June 17, 1983), 48 FR 29086, 29087. The Vendor Fee would be decreased by the amount which new subscribers (*i.e.*, Instinet subscribers who were not previously NASDAQ subscribers) pay the NASD.

[23] *Id.* at 29087. The NASD's proposed Subscriber Fee was intended to recover the costs of operating the NASDAQ system.

[24] *Id.* at 29086–87. Specifically, the fee is $75 times the percentage of NMS Securities share volume as it relates to NASDAQ share volume, plus $75 times the percentage of NMS Securities dollar volume as it relates to NASDAQ dollar volume.

[25] *See* Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 15, 1983 ("Instinet Petition"). *See* Public File No. 4–256

[26] *See* Order Instituting Proceedings, *supra* note 15, 48 FR at 38126.

[27] *Id.* at 38126–27. For the Commission's letter to the NASD requesting general cost information, see Letter to Gordon S. Macklin, President, NASD, from Douglas Scarff, Director, Division of Market Regulation, dated August 18, 1983.

[28] *Id.* at 38127–30. The NASD began providing Instinet with quotations for NMS Securities in September 1983.

[29] Securities Exchange Act Release No. 20089 (August 16, 1983), 48 FR 38131. *See* File No. SR–NASD–83–13.

[30] *See* Letter to Douglas Scarff, Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 27, 1983 ("NASD's September 27th submission").

[31] The Commission informed the NASD that the NASD's September 27th submission was a useful first step in evaluating the NASD's proposed fees and Instinet's petition, but requested that the NASD provide more detailed data in a number of areas, including a breakdown of the costs of collecting and storing quotation information. *See* Letter to Frank J. Wilson, Executive Vice President and General Counsel, NASD, from Richard G. Ketchum, Associate Director, Division of Market Regulation, dated October 6, 1983 ("October 6th letter"). The NASD responded on October 31, 1983. *See infra* note 33 and accompanying text.

[32] *See* Letter and attached motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated October 19, 1983.

[33] *See* Letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated October 31, 1983 ("NASD's October 31st Submission"). In that submission, the NASD also presented a detailed breakdown on how it derived the $3,200 monthly Vendor Fee. The information was supplemented by the NASD on

Continued

difficulties, the NASD requested that the Commission authorize a special hearing for a presentation concerning technical aspects of the NASDAQ system. The NASD also noted certain statements in the Commission's October 6th letter that indicated the NASD to be in a competitive position with Instinet and requested the Commission to delineate the nature of competition that NASDAQ is engaging in with Instinet. Finally, the NASD raised concerns with respect to the nature of Instinet's business and requested the Commission to direct Instinet to make a number of disclosures to the record including its corporate structure and the composition of the charges it imposes for its services.[34]

On November 30, 1983, the Commission granted the NASD's request for a hearing [35] and extended the temporary stay granted to Instinet from December 31, 1983 until March 31, 1984.[36] The hearing was held on December 14, 1983 at the Commission.[37] During the hearing, the Commission requested the NASD to provide additional information regarding its description of the NASDAQ system.[38] The NASD subsequently replied to this request.[39]

E. *Commission Findings and Action*

After reviewing the record in this proceeding, including all comments received and the transcript of the hearing held by the staff on behalf of the Commission,[40] the Commission has determined that, because Instinet seeks to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based and calculated by allocating the percentage of system use of each quotation service offered by the NASD ("functional analysis"), to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers.[41] In contrast, the NASD has based its proposed fees, at least with respect to the proposed charge to be levied on Instinet's subscribers, on a strict value-of-service basis without reagard to the costs incurred by the NASD in providing Instinet and its subscribers with the information.[42]

As discussed in detail below, the NASD's fees can only appropriately be based on the costs of collecting, validating and processing quotations. Because the proposed Subscriber Fee is based in part on costs related solely to operating a quotation inquiry service, a function not used in supplying quotation data to Instinet, the Fee is not properly cost-based. To allow the NASD to include in its fee these costs, in effect, would require Instinet subscribers to subsidize other NASDAQ services by requiring them to contribute to the NASDAQ inquiry service operated in competition with Instinet. Accordingly, the Commission is unable to conclude that the NASD's proposed Subscriber Fee is consistent with the statutory requirements. Therefore, the Commission sets the proposed Subscriber Fee as an inappropriate prohibition or limitation on access to quotation information sought by Instinet and instructs the NASD to submit a new fee based on an allocation of system use among all subscribers of NASDAQ information.[43]

II. Overview of Comments Received [44]

The Commission received comments from Instinet, the NASD, OPRA, and the Consolidated Plan Participants.[45]

Instinet argues that, through unfair, unreasonable, discriminatory, and inequitably allocated fees to Instinet and its customers, the NASD is seeking to deny Instinet, its customers and investors valuable quotation and other information with respect to OTC securities; that fees imposed by the NASD directly on Instinet's customers would unnecessarily burden competition between the NASD and Instinet and between Instinet and other vendors; and that the NASD's proposed fee structure is an attempt by the NASD to preserve its monopoly in the retail information market in which Instinet seeks to compete. Accordingly, Instinet requests access to full quotation information in all NASDAQ stocks. Instinet believes that Subscriber Fees are impermissible for this information and the Vendor Fee should be based strictly on costs revealed from an analysis of the functions (and their associated costs) used by each service generated by the NASDAQ system.

The NASD argues that Instinet has not been denied access to NASDAQ

February 6, 1984. *See* Letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated February 6, 1984.

[34] The Commission provided the NASD certain information regarding Instinet's present business operations. After receiving this information, the NASD sought further detailed information on the nature of its potential competition with Instinet and other general questions in regard to Instinet's business. *See* Letters to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated November 28, 1983, and December 27, 1983. On November 30, 1983, the Commission stated that it did not believe that the nature of Instinet's business was relevant to a review of the NASD's proposed fees. *See* Securities Exchange Act Release No. 20425 (November 30, 1983), 48 FR 54733, 54733 n.10 ("Extension Order"). On January 9, 1984, the Division of Market Regulation informed the NASD that a Commission decision on the nature and impact of the competition between Instinet and the NASD would be made only after the receipt of all comments and in the context of the proceeding as a whole; with respect to the NASD's request for additional information on Instinet, the Division stated that all pertinent information thereon already was contained in the public file. *See* Letter to Frank J. Wilson, Executive Vice President and General Counsel, NASD, from Richard G. Ketchum, Associate Director, Division of Market Regulation, dated January 9, 1984. For a discussion of the Commission's determination with respect to the relevance of the nature of Instinet's business to this proceeding, see *infra* Section III C.

[35] The Commission requested the NASD to submit a written statement concerning the matters the NASD intended to raise in the hearing to Instinet and the Commission at least two business days in advance of the hearing. Accordingly, on December 12, 1983, the NASD submitted a written statement, which provided an overview and description of the NASDAQ system and facilities. *See* Letter to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated December 12, 1983.

[36] *See* Extension Order, *supra* note 34, 48 FR at 54733–34. The temporary stay was again extended on March 30, 1984 to April 30, 1984. *See* Securities Exchange Act Release No. 20803 (March 30, 1984), 49 FR 13938.

[37] The NASD's witness was Robert Reiss, a professional consultant specializing in data processing, then employed by RHA Design Corporation of Greenwich, Connecticut. The NASD indicated that Mr. Reiss was an expert on all technical aspects of the Univac 1100, the central processor of the NASDAQ system.

[38] The Division of Market Regulation also requested the Options Price Reporting Authority ("OPRA") and the Consolidated Tape and Quotation Plan participants ("Consolidated Plan Participants") to provide a functional description of their quotations systems. *See* Letter to Samuel Alward, Executive Vice President, New York Stock Exchange, Inc., from Richard G. Ketchum, Associate Director, Division of Market Regulation, dated December 22, 1983; Letter to Joseph Corrigan, Executive Director, OPRA, from Richard G. Ketchum, Associate Director, Division of Market Regulation, dated December 29, 1983.

[39] *See* Letters to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated January 16, and February 6, 1984.

[40] For the notice of hearing and the designation of William E. Toomey, Special Counsel, Division of Corporate Finance, as hearing officer, see Securities Exchange Act Release No. 20425 (November 30, 1983), 48 FR 54733.

[41] *See infra* Section III E.

[42] *See infra* Section III F and G.

[43] For a more complete discussion of the manner in which the NASD's proposed Fee constitutes a denial of access, see *infra* Section III G.

[44] For a more detailed discussion of the comments, see *infra* Section III.

[45] *See* Memorandum and Comments of Instinet, dated January 15, 1984 ("Instinet Comment"); Statement of the NASD in support of Proposed NQDS Service Fee and in response to Petition by Instinet and Request for Comments by the Securities and Exchange Commission, dated January 16, 1984 ("NASD Statement"); Letter to George A. Fitzsimmons, Secretary, SEC, from Michael L. Meyer, OPRA Counsel, dated December 14, 1983; and Letter to George A. Fitzsimmons, Secretary, SEC, from Samuel A. Alward, Chairman, Consolidated Tape Association, dated January 24, 1984.

quotation information because the NASD has made this information available to vendors. The NASD also asserts that its proposed NQDS fees are consistent with the Act and are based on fees previously approved by the Commission. In this respect, the NASD indicates that it would be difficult to set fees based on a functional analysis of the costs of the NASDAQ system because the system's facilities are utilized to provide a number of services. The NASD believes that its business judgment should be given great deference and therefore, absent a showing of bad faith, the NASD's decision to set fees on a value or equivalence of service basis is reasonable.

While not commenting on the level or terms of the NASD's proposed fees, OPRA and the Consolidated Plan Participants argue that the legislative history of the 1975 Amendments permits SIPs to recover their costs through direct subscriber charges. Additionally, these commentators believe that SIPs should have ample flexibility in determining the method by which to recover their costs subject only to the Commission's determination that the SIP's fees are "fair and reasonable" and "not unreasonably discriminatory." Finally, they argue that a denial of access proceeding is not the appropriate method to review these fees.

III. Discussion

A. Appropriateness of Section 11A(b)(5) Proceeding

1. *Comments.* The NASD, OPRA and the Consolidated Plan Participants assert that because the Instinet-NASD dispute centers around fees, the matter would best be resolved through a procedure other than that provided under Section 11A(b)(5) of the Act. They suggest as an alternative Section 11A(b)(1) of the Act with respect to SIPs, or Section 19(b) of the Act relating to rule changes by SROs and the related rules thereunder. The NASD also believes that it is improper to characterize the matter as a denial of access proceeding because Instinet currently is receiving the information it seeks.

Although the NASD, OPRA and the Consolidated Plan Participants question the Commission's authority generally to review an exclusive processor's fees pursuant to Section 11A(b)(5), both OPRA and the Consolidated Plan Participants acknowledge that a Section 11A(b)(5) proceeding may be appropriate in certain instances. For example, OPRA believes that such a proceeding may be appropriate where fees are discriminatory or in situations where competitive unfairness exists.

Instinet notes that the proceeding involves not only fees but the terms of access to securities information, and matters relating to regulatory policy. Instinet also cites a previous Commission proceeding under Section 11A(b)(5) as precedent for the proposition that the level of charges, or the terms at which facilities and services are offered by a registered SIP, can constitute a prohibition or limitation on access to facilities or services.[46] Instinet also indicates that Section 11A(b)(5) provides the Commission with more affirmative remedies such as the power to grant interim relief.

2. *Commission Response.* In the OPRA Proceeding, the Commission determined that "the imposition of an access fee can be a limitation upon access to a service offered by an exclusive processor."[47] The Commission reaffirms that determination. The Commission believes that fees for access to NASDAQ services are a limitation on access within the terms of the statute. The statute permits the Commission to determine whether a "prohibition or limitation is consistent with the provisions of this title and the rules and regulations thereunder."[48] In this regard, the legislative history of the 1975 Amendment indicates that Congress expected the Commission to review both the reasonableness and fairness of an exclusive processor's fees under Section 11A(b) of the Act.[49]

The Commission notes that the NASD is an SRO and, accordingly, must file all proposed rules, including fees, with the Commission pursuant to Section 19(b) of the Act and Rules 19b–4 thereunder. In addition, the NASD's wholly-owned subsidiary, NASDAQ, Inc., is a registered SIP and, accordingly, is subject to those provisions of the Act and the rules thereunder applicable to such entities.[50] Section 19(b) provides the Commission authority over the wide ranging activities of SROs. Section 11A(b)(5) addresses particular Congressional concerns regarding the imposition of limitations of access by exclusive processors. These different types of review serve different purposes.[51] There is no indication in that Section and its legislative history that SROs acting as SIPs should be treated differently under the Section because of the Commission's separate statutory authority under Section 19(b). This Congressional silence is particularly noteworthy. At the time Section 11A(b)(5) was enacted, the NASD already had been operating the NASDAQ system for four years and each of the exchanges directly supplied vendors quotation information in listed securities.

Moreover, whereas Section 19(b) and Rule 19b–4 gives the Commission authority to approve or disapprove the fees in question,[52] Section 11A(b)(5) provides the Commission with the explicit authority to grant interim relief pursuant to the stay provision thereunder, thus providing the Commission the ability to grant Instinet access to the data and providing the NASD with some degree of financial protection while the Commission reviews the fees. In light of the increased flexibility of a Section 11A(b)(5) proceeding as well as the special concerns expressed by Congress regarding the potentially profound competitive impact exclusive processors may have on other securities market participants, the Commission concludes that the possibility of Section 19(b) review does not limit the Commission's authority to act pursuant to Section 11A.

The Commission also believes that the particular facts of this dispute require the Commission to review the NASD's filing as a limitation of access. First, there is a clear issue as to whether the NASD's proposed level of fees and other conditions for access to the NQDS information act as a practical denial of access to Instinet and its subscribers. The practical impact of such terms and conditions raise particular concerns

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[46] *See* Securities Exchange Act Release No. 15372 (November 29, 1978), 16 S.E.C. Doc. 285, 287 ("OPRA Release"). In that proceeding, two vendors petitioned the Commission under Section 11A(b)(5) to determine whether OPRA's imposition of access fees on vendors receiving options last sale reports could constitute an inappropriate limitation on access to services ("OPRA Proceeding").

[47] *Id.* at 287. In its comment letter, OPRA argues that the Commission erred in the release instituting this proceeding when it described the fee at issue in the OPRA Proceeding as a limitation on access, albeit a permissible one. The Commission, however, notes that in the OPRA Proceeding it held that "OPRA's imposition of some form of an access fee *is a limitation on access* permitted by the Act and existing rules thereunder." *Id.* (emphasis added).

[48] *See* Section 11A(b)(5)(B) of the Act.

[49] Senate Report, *supra* note 9, at 11–12, [1975] U.S. Code Cong. & Ad. News at 189–90.

[50] This regulatory system is not unlike the system applicable both to the Consolidated Plan Participants and OPRA. These entities are regulated both as registered SIPs and as participants in NMS Plans pursuant to Rule 11Aa3–2 under the Act, which contains regulatory procedures similar to Section 19 and Rule 19b–4.

[51] For a discussion of the Commission's review authority pursuant to Sections 11A and 19(b), see Senate Report, *supra* note 9, at 9–10, 26–30, [1975] U.S. Code Cong. & Ad. News at 187–88, 204–08.

[52] The Commission notes that the statutory standards governing the review of the proposed fees are substantially identical to the standards governing the review of a denial of access. *See infra* Section III B.

where the exclusive processor proposing the fee also operates a retail quotation inquiry service in potential competition with the vendor seeking access to the data.[53] In such an instance, the establishment of the inappropriately high fees can serve to insulate the exclusive processor from competition on the retail level. For example, the NASD's proposed fee formula would charge Instinet users a subscriber charge substantially equivalent to that charged for NASDAQ Level 2 service. To the extent that Instinet incurs additional processing and storage costs (including the Vendor Fee for receiving the data), Instinet necessarily would be required to impose a relatively higher charge for the information than NASDAQ. Accordingly, the Commission finds that the NASD's proposed Subscriber Fee would have a negative competitive impact on Instinet, especially in light of the NADS's own limited commercial success in marketing NASDAQ Level 2 service at the present fee levels.

The NASD also argues that, because it is now providing Instinet with the quotation data, there is no denial of access to the information, and thus Section 19(b) and Rule 19b–4 provide adequate review procedures for fees.[54] The Commission, however, does not believe this characterization fairly represents the status of this proceeding. While the NASD did express a willingness to provide Instinet access to the quotation data during the Commission's review of the subscriber charges, that offer was conditioned on Instinet and its subscribers paying the proposed fees on an interim basis. Instinet alleges that fees set at the same price as NASDAQ Level 2 service would make any Instinet service unprofitable and difficult to market. Therefore, Instinet states that the NASD's proposed fees would in effect act as a denial of access. Accordingly, Instinet proposed substantially different conditions for interim relief.[55] Despite extensive efforts at mediation by the Commission's Division of Market Regulation, the parties were unable to narrow their differences on the terms of initial provision of the data stream. After almost two years of fruitless negotiations, this issue was resolved only when the Commission exercised its authority under Section 11A(b)(5) of the Act to order interim relief pursuant to conditions different than those proposed by either party.[56]

Accordingly, because the Commission has concluded, as more fully described below, that the NASD's proposed Subscriber Fee would have a negative competitive impact on Instinet and, in effect, would be a denial or limitation on Instinet's access to that information, the Commission believes the Fee should be reviewed carefully by the Commission pursuant to Section 11A(b)(5) of the Act.

B. Statutory Provisions Relevant to the Underlying Fee Dispute

The determination that the NASD has imposed a limitation or denial of access is only the beginning of the statutory inquiry in this proceeding. Under Section 11A(b)(5)(B) of the Act, the Commission is required to dismiss a denial of access proceeding if, among other things, the Commission finds that the denial or limitation on access is "consistent with the provisions of [the Act] and the rules and regulations thereunder . . . ." [57] Therefore, the Commission must examine the relevant goals and objectives of the Act in reaching its determination in this proceeding.

There are a number of relevant statutory provisions that must be examined before the Commission can determine that the denial of access is consistent with the Act and dismiss the denial of access proceeding:

• Section 11A(b)(5)(B) also sets out the specific requirement that a limitation of access is to be set aside if: (1) it unfairly discriminates, or (2) it imposes an unnecessary or inappropriate burden on competition. Congress placed great importance on assuring the widespread dissemination of securities quotation information for all securities. Specifically, Section 11A(a)(i)(C)(iii) of the Act provides that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities . . . ." [58]

• Section 15A(b)(5) of the Act requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls . . . ." [59]

• Section 15A(b)(6) of the Act requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers . . . ." [60]

• Section 15A(b)(9) of the Act requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." [61]

C. Nature of Instinet's Business

1. *Comments.* The NASD notes that Instinet is registered as a broker-dealer and is a vendor of securities information. Should Instinet receive NASDAQ quotation information at a price substantially lower than what other broker-dealers pay, the NASD believes that other broker-dealers will be competitively disadvantaged. The NASD also believes that Instinet's status as a vendor may give rise to conflicts of interest with its function as a broker-dealer. Accordingly, the NASD has requested the Commission to define the type of competition that it believes the NASD is engaging in with Instinet, and require Instinet to submit for the record a detailed description of its business including the services it provides and the rates it charges.

2. *Commission Response.* The Commission previously has stated that it does not believe that the nature of

[53] For a discussion of the competitive positions of the parties and the level of review necessitated by such competition, see *infra* Section III E.

[54] NASD Statement, *supra* note 45, at 77.

[55] *See* Instinet Petition, *supra* note 25.

[56] The Commission, therefore, views the availability and use of the denial of access review procedures as necessary to provide for the prompt dissemination of the quotation information on terms which are fair to both parties. For further discussion of these attempts to reach an agreement between Instinet and the NASD on interim provision of the data, see Order Instituting Proceedings, *supra* note 15, 48 FR at 38125.

[57] Similary, Section 19(b) of the Act requires the Commission to approve a proposed rule change filed by the NASD if the proposed rule change is "consistent with the requirements of [the Act] and the rules and regulations thereunder applicable to [the NASD]." 15 U.S.C. 78s(b) (1976). Accordingly, the standards used by the Commission in reviewing the proposed fees under Section 19(b) are the same as the standards for reviewing the denial of access. The NASD, however, implies in its January 16, 1984 statement that the only statutory standard the proposed rule change must meet is the one standard directly applicable to fees. NASD Statement, *supra* note 45, at 44–47. The Commission disagrees. The fee filing is a proposed rule change and must meet all of the applicable standards in the Act, and the rules and regulations thereunder, including the requirement of Section 15A(b)(9) that "the rules of [an] association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act. 15 U.S.C. 78o–3(b)(9) (1976). For a discussion of how specific statutory standards of the Act must be read in reference to other provisions of the Act, see Securities Exchange Act Release No. 17371 (December 12, 1980), 45 FR 83707, 83715–19.

[58] *See also supra* Section I B.

[59] 15 U.S.C. 78o–3(b)(5) (1976).

[60] 15 U.S.C. 78o–3(b)(6) (1976).

[61] 15 U.S.C. 78o–3(b)(9) (1976).

Instinet's business (other than as a potential vendor of quotation information) is relevant to a review of the NASD's proposed fees.[62] After reviewing the NASD's latest comments on this issue, the Commission continues to believe that the nature of Instinet's business is irrelevant with respect to this proceeding. As a general matter, Instinet's broker-dealer or execution services are irrelevant to its vendor services. While both Instinet and the NASD offer execution services attendant to their quotation information services, the Commission does not believe that those services have an impact on the current proceeding, which pertains solely to the provision of information services.

The Commission does recognize, however, that to the extent Instinet uses the quotation data internally for its own broker-dealer business, it is, in effect, the same as any other broker-dealer receiving NASDAQ information. In that event, the Commission would expect Instinet to pay the approved NASDAQ fees that are charged to all NASDAQ Level 2 subscribers. The fees in question in this proceeding pertain only to Instinet's subscribers' terminals and Instinet's supervisory terminals necessary to monitor its vendor service.[63]

D. Scope of Commission Fee Review

1. *Comments.* The NASD states that the Act requires the NASD's fees to be "equitably allocated," but provides no specific method by which to perform this allocation. In this regard, the NASD believes that the Commission should not evaluate how the NASD's fees were computed, but only whether the NASD has made an equitable allocation of its fees. The NASD notes that the Commission previously approved the NASDAQ fee structure on which its NQDS fees are based. The NASD believes that Commission and judicial precedents would afford the NASDAQ Board great deference in exercising its business judgement in determining the reasonableness of the fees. Absent a demonstrated showing of unfairness with respect to the NQDS fee, the NASD argues that its decision should be upheld.

2. *Commission Response.* The Commission believes that, due to the particular facts of the present case, a careful scrutiny of the NASD's proposed fees is necessary to ensure that they meet the requirements of the Act. The Commission further believes that its previous approval of the NASDAQ fees only has limited relevance to the current proceeding.

When the Commission approved the current NASDAQ fee schedule, it was addressing a situation markedly different from the situation in the current case. Current NASDAQ fees apply to either (1) subscribers of the NASD's own NASDAQ Level ⅔ service, or (2) subscribers to the NASD's Level 1 service which is offered only by vendors other than the NASD. In instances such as Level 1 service, the NASD has no incentive to establish fees that would influence a subscriber's choice of particular vendors from which to receive the service; because the NASD does not market the service on a retail level, it theoretically is immaterial to the NASD from whom particular subscribers receive the data. In such cases, it well may be appropriate for the NASD to have a limited amount of flexibility in determining how to base its fees, although all NASD fees must be consistent with the Act.

In the present case, however, Instinet's entry into the market presents the NASD with the first situation where a competing vendor is offering a service which provides the same information as available on NASDAQ Level 2. Accordingly, the NASD is proposing fees to be charged to a competing vendor and to subscribers of that competing vendor. Therefore, the required analysis regarding whether the present proposed rule change does "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]" is entirely different than in the earlier approval of NASDAQ fees and must take into account the competive implications of Instinet's entry as a vendor of quotation information for OTC stocks.

In this situation, the Commission recognizes that the NASD has a theoretical incentive to keep these fees high to preserve its own revenue stream from the NASDAQ Level ⅔ services. To the extent another vendor can offer an inquiry service, or a package of services including an inquiry service, with features not available through the NASDAQ system and at a more attractive price, subscribers may choose the competing service rather than NASDAQ. By setting the fees charged to its competitor, and the competitor's subscribers, at an artificially high level, the NASD can attempt to retain its current customer base and induce future subscribers to purchase the NASD service.

The Commission emphasizes that it is in no way suggesting, either explicitly or implicitly, that the NASD is motivated by any such anti-competitive pricing policy. The Commission is stating only that it is this particular aspect of the competitive positions of the parties that requires the Commission to scrutinize these fees carefully to ensure that they do not have inappropriate competitive effects.[64]

E. Nature of Appropriate Fees an Exclusive Processor may charge a Competing Vendor or such Ventor's Subscribers

1. *Comments.* Both the NASD and Instinet agree, in principle, that fees should be cost-based.[65] The two parties diverge, however, on how those costs should be calculated. The NASD states that many activities and services offered by the NASD are interdependent and emanate from one central process center and communications system, and that the NASDAQ system does not provide strict accountability of the costs related to each function. The NASD further states that any cost analysis must be based on the existing NASDAQ system, not on theoretical alternative systems for the processing of quotation information. While conceding that usage of a processor could be measured, the NASD argues that arbitrary decisions still must be made in taking those measurements. The NASD asserts that NQDS fees should be based on the existing NASDAQ system as a whole without attempting to allocate costs by function and the fairest and least discriminatory allocation of costs would be to allocate costs on an equivalence of services basis rather than a method that

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[62] Extension Order, *supra* note 34, 48 FR at 54733 n.10.

[63] To the extent a terminal is used both for broker-dealer and supervisory purposes, the Commission expects Instinet to pay the regular NASDAQ subscriber charge.

[64] The Act also envisions a separate Commission analysis of the application of a proposed rule change to a particular fact pattern. Section 19(f) of the Act, for example, establishes the standards by which the Commission reviews denials or limitations of access by the NASD to the services it provides. Section 19(f) instructs the Commission to focus on "the specific grounds on which such denial, ban, or prohibition or limitation is based." 15 U.S.C. 78s(f) (1976). Thus, even to the extent the Commission's prior approval of NASDAQ fees is relevant to this proceeding, the Commission still must conduct a separate evaluation of whether the application of these fees to Instinet and its subscribers is consistent with the Act.

[65] The NASD states that "[t]he NASDAQ goal is to assure that no service pays less than estimated incremental costs and that, to the extent possible, each service contributes to the coverage of common costs." *See* NASD Statement, *supra* note 45, app. 1, at 4. Instinet states that "[t]he fundamental goal—efficient market development—is to set rates so that the prices charged to users for their respective services reflect to the greatest practical degree only those costs actually incurred by the utility in providing those actually incurred by the utility in providing those specific services." Instinet comment, *supra* note 45, at 3.4.

analyzes which system functions are used to generate the service.

Instinet argues that the difficulty in making precise cost allocations is no reason to abandon such an analysis. Additionally, Instinet notes that the NASD has made certain allocations for intercorporate accounting and tax purposes. Instinet asserts that judicial rate-making precedents require only that reasonable methods be used in an attempt to allocate costs; the allocations are not required to be economically perfect. In this respect, Instinet states that competitive fairness requires the NASD to disclose fully any allocational methodology it uses and requires the NASD to bear the burden of establishing the reasonableness of its fees.

2. *Commission Response.* Sections 11A(b) and (c) (1) of the Act provide the Commission broad powers over exclusive processors and make the Commission responsible for assuring the processor's neutrality and the reasonableness of its charges.[66] To ensure that such a processor's services are made available on reasonable and non-discriminatory terms, the Commission believes that, at least in the circumstance where an exclusive processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, The exclusive processor's fees should be based strictly on the expenses it incurs in providing the information to vendors. The legislative history of the 1975 Amendments strongly supports this position. Indeed, the Senate Report viewed exclusive processors as similar to public utilities[67] whose rates traditionally have been set on cost bases.[68] For example, the United States Court of Appeals for the District of Columbia has stated that the "just and reasonable" standard for telephone rates contained in Section 201(b) of the Communications Act of 1934[69] envisions rates determined on the basis of costs.[70] Furthermore, once total costs are determined, these costs should be functionally apportioned to those services to which they relate.[71] The Commission also believes that cost-based fees in this case will ensure against monopoly distortions and will preclude any service from inappropriately subsidizing other services.[72]

The Commission believes that fees based on value of service or equivalence of service are inappropriate in this case. To the extent such fees are not cost-based, "[v]alue-of-service ratemaking is a price-discrimination device, used either to maximize [a monopolist's] profit or to subsidize certain interests." [73] Setting fees in this manner permits an exclusive processor to engage in price discrimination against various classes of subscribers that receive similar types of information.[74] For example, absent the discipline of having to set fees in accordance with the costs of providing a service, a supplier of a service could erect barriers to entry by charging higher fees to vendors of competing retail services.[75]

In light of the above, the Commission believes that cost-based fees, at least in the present situation (where the NASD and Instinet are, or in the near future will be, direct competitors in providing a quotation montage for OTC securities), ensure that the ultimate fees are reasonable, equitably allocated, not unduly discriminatory, and not competitively unfair.

Specifically, the Commission finds that equivalent fees for NASDAQ Level 2/3 service and NQDS service cannot be justified based on the equivalence of the final service because of the inherent differences between NASDAQ Level 2/3 and Instinet's services. Only the substance of the underlying information is the same; the manner of providing the information and the display of the information are different. NASDAQ level 2/3 service is supported entirely by the NASDAQ system. Instinet, however, will separately store NASDAQ quotation information as well as permit its customers to recall that information through Instinet's terminals and communication systems in displays different than NASDAQ provides. Given these differences, allocation of NASDAQ system costs is absolutely

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[66] *See* Sections 11A(b) and (c) of the Act. In the words of Congress, the 1975 Amendments "would greatly expand the SEC's regulatory authority over the processors and distributors of market information. The goals of this pervasive regulatory authority would be to insure the availability of prompt and accurate trading information, to assure that these communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Exchange Act." Senate Report, *supra* note 9, at 9. [1975] U.S. Code Cong. & Ad. News at 187. Indeed, Senator Williams, the primary Senate sponsor of the 1975 Amendments, identified "monopoly control of essential mechanism for dissemination on market information" as one of the problems the 1975 Amendments were designed to address. 121 Cong. Rec. 10731 (April 17, 1975).

[67] Senate Report, *supra* note 9, at 11, [1975] U.S. Code Cong. & Ad. News at 189.

[68] Although utility ratemaking proceedings also involve the calculation of a rate of return for the utility's shareholders and bond-holders, such a calculation is unnecessary in this proceeding. The NASD has stated that it "does not build in any rate of return in its fees" as "[t]here are no shareholders, save the NASD, and no dividends have ever been paid or are contemplated." NASD's September 27th Submission, *supra* note 30, at 5.

[69] 47 U.S.C. 201(b) (1976).

[70] MCI Telecommunications v. Fed. Communications Comm'n, 675 F. 2d 408, 410 (D.C. Cir. 1982) (*"MCI"*). The Commission notes that Section 11A(c)(1) of the Act contains a similar statutory standard, that fees should be "fair and reasonable." The Commission also notes that Section 11A(b)(5)(B) requires a finding that a limitation on access is not unfairly discriminatory. In this regard, "[t]he rule that individual rates not be unduly discriminatory . . . has been defined in terms of the cost of the various sevices." 1 A. Kahn, *The Economics of Regulation: Principles and Institutions* 63 (1970). In addition, even if the wholesale rates a utility charges to customers that it competes with in the retail market are fully cost allocated and "fall within a zone of reasonableness," the rates still may be discriminatory and "create a price squeeze." Conway Corp. v. Fed. Power Comm'n, 510 F.2d. 1264, 1274 (D.C. Cir. 1975), *aff'd*, 26 U.S. 271 (1976). Accordingly, the reviewing agency would have latitude "to put wholesale rates in the lower range of the zone of reasonableness . . . in view of [a] utility's own decision to depress certain retail revenues in order to curb the retail competition of its wholesale customers." *ID.*

[71] *See MCI*, *supra* note 70, at 415. Although a formula to allocate common costs may achieve only "a rough, rule-of-thumb approximation to the actual costs for which each product or service is responsible, . . . those costs have objective reality." Kahn, *supra* note 70, at 78. The Commission recognizes the difficulties in functionally allocating costs of an integrated computer system. Courts reviewing of administrative rate decisions, however, have held that, where the statute requires allocating costs, "a ratemaking approach may not be disregarded simply because it lacks perfection." National Ass'n of Greeting Card Publishers v. United States Postal Serv., 569 F. 2d 570, 591 (D.C. Cir. 1976), *vacated on other grounds & remanded subnom.* Associated Third Class Mail Users v. United States Postal Serv., 434 U.S. 884 (1977). Courts also recognize that in ratemaking cases, "[p]recision and exactitude in the mathematical sense are not possible." Baltimore & Ohio R.R. Co. v. Aberdeen & Rockfish R.R. Co., 393 U.S. 87, 92 (1968).

[72] In *MCI*, the court upheld the Federal Communications Commission's efforts to design cost-based rates that would preclude American Telephone & Telegraph from foreclosing competition in its competitive service markets through the cross-subsidies provided by the higher rates charged in its monopoly service markets. 675 F.2d at 416. In this respect, the Commission believes that cost-based fees will ensure that Instinet is not being foreclosed from competition either by arbitrarily high rates set for the NQDS service or by the NASD's ability to cross-subsidize its competing Level 2 service.

[73] New York, New Haven & Hartford R.R. v. United States, 199 f. Supp. 835, 843 (D. Conn. 1961), *vacated on other grounds & remanded sub nom.* Interstate Commerce Comm'n v. New York, New Haven & Hartford R.R., 372 U.S. 744 (1963).

[74] Section 11A(b)(5)(B) requires a limitation on access to be set aside if the applicant has been "discriminated against unfairly." Section 11A(c)(1)(D) provides the Commission with rulemaking authority to prohibit fees charged by an exclusive processor that are unreasonably discriminatory.

[75] Indeed, Congress enacted the Postal Reorganization Act of 1970, 39 U.S.C. 101 (1976), which requires strict cost-based fees for postal services, to end discriminatory and preferential rates resulting from political lobbying in the postal ratemaking process. *See* H.R. 1104, 91st Cong., 2d Sess. 13, 17–18 (1970), *reprinted in* [1970] U.S. Code Cong. & Ad. News 3649, 3661, 3665–66.

necessary to ensure that NQDS charges are derived solely from those NASDAQ functions relevant to the service provided to Instinet and its subscribers.

F. Vendor Fee

1. *Comments.* The NASD states that the proposed $3,200 per month Vendor Fee will recover the direct costs of providing the NQDS service to vendors. The NASD asserts that this portion of NQDS costs can be relatively easily allocated, because it involves use of a discrete computer facility, a Tandem computer [76] whose operations can be measured.

While Instinet concurs with the concept of a vendor charge, it argues that the fee should be restricted to fairly allocable costs. Instinet details a number of costs that the NASD should not recover in its proposed vendor charge, including the expense of:

> Communications lines swollen by NASD's need to handle the high-volume traffic of its competing service to quotation inquiry and recall subscribers; swollen data storage and computer memory required to hold the information for long periods, in a highly reliable manner, and in a hierarchy designed to service a larger number of such inquiries; similarly swollen processor and other capacities; marketing, support, and documentation for those competing services; and capacities and expenses supporting unrelated services * * * [77]

2. *Commission Response.* Applying the principles to be considered in reviewing the NASD's proposed fees, [78] the Commission believes that the NASD's proposed $3,200 a month Vendor Fee is consistent with the Act. Accordingly, the Commission has determined to approve that Fee and to dismiss that portion of Instinet's denial of access petition challenging that Fee.

In the OPRA Proceeding, the Commission held that an access fee imposed on vendors by an exclusive processor was not, in and of itself, a prohibited limitation on access.[79] That proceeding, however, specifically did not address the level of the fee. As indicated above,[80] the Commission has determined that the overriding factor to be considered in reviewing the NASD's proposed fee is its relationship to the costs of providing the service.

The Commission believes that the NASD's proposed Vendor Fee meets the requirements of the Act. The NASD has identified the particular aspects of the NASDAQ system necessary to provide the data to Instinet. It then has allocated specific percentages of those systems' costs to the NQDS service. Those allocations appear reasonable and the Commission has no basis to challenge them. In addition, the Fee does not seem so large that, on its face, it raises serious competitive concerns. In this respect, the Commission notes that the Fee is the total fee to be charged all vendors receiving the service; accordingly, if another vendor were to obtain this data, the $3,200 would be split equally among Instinet and such other vendor. Finally, the Commission notes that the $3,200 is decreased dollar-for-dollar to the extent Instinet subscribers are the source of new revenues for the NASD.

G. Subscriber Charge

1. *Appropriateness of any type of Subscriber Charge*—a. *Comments.* The NASD, OPRA and the Consolidated Plan Participants believe that exclusive processors should have the ability to collect direct subscriber charges. They note that direct subscriber charges have been a long-standing, industry-wide practice that has been approved by the Commission in numerous filings. In particular, the Consolidated Plan Participants argue that Congress in the 1975 Amendments implicitly approved direct subscriber charges because they were contained in the then-existing Consolidated Tape Association ("CTA") Plan and Congress did not seek particularly to restrict this form of charges. Additionally, the Participants assert that business considerations should be the essential determinant of whether direct subscriber charges should be collected. In this regard, they believe direct billing provides increased control over the dissemination of the information and decreases the possibility of unauthorized use of that information. The Participants concede that in some cases, such as the collection of non-professional fees, it would be more efficient to collect charges exclusively from the vendor. They believe, however, that the exclusive processor should have the ability, free from regulatory restraint, to decide when direct subscriber charges are appropriate.[81]

Instinet argues that direct subscriber charges are inappropriate. Instinet believes that such fees are anti-competitive, and are resale price maintenance restraints.[82] They prevent Instinet from adjusting the price of its service to attract additional customers. Instinet also asserts that the NASD's proposed Subscriber Fee is set so high that it ensures the NASD's continued monopoly in the retail information market in which Instinet seeks to compete.[83]

b. *Commission Response.* The Commission believes that all subscribers to NASDAQ information, whether receiving the information through NASDAQ Level 1, NASDAQ Level ²⁄₃, or the NQDS service, fairly can be expected to pay to support those aspects of the NASDAQ system used to provide services to them.[84] Moreover, a charge based on the number of terminals is a fair and reasonable means of computing charges for market information.

The Commission also has determined that, while an exclusive processor's direct billing of subscribers of a vendor (and a direct contractual relationship between the processor and the subscriber) may well be appropriate in a number of circumstances, such arrangements are not appropriate here due to the competitive positions of the parties. The Commission does not believe it should require Instinet to provide its competitor, the NASD, with a list of Instinet's customers. Customer lists are proprietary and often can be extremely valuable to a vendor's

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[76] The NASD states that the Tandem system operates along with the central computer processor to accept the initial NQDS quotation stream from the central processor, relieving the central processor from maintaining a transaction file of every quotation that is transmitted over NQDS.

[77] Instinet Comment, *supra* note 45, at 4.2–4.3.

[78] *See supra* Section III E.

[79] OPRA Release, 1T3supra note 46, 16 S.E.C. Doc. at 287.

[80] *See supra* Section III E.

[81] Letter to George A. Fitzsimmons, Secretary, SEC, from Samuel A. Alward, Chairman, Consolidated Tape Association, dated January 24, 1984.

[82] Resale price maintenance is the practice by which a monopolist restrains a distributor's freedom to set resale prices. 3 P. Areeda & D. Turner, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 734a (1978).

[83] Instinet Comment, *supra* note 45, at 4.7.

[84] While Instinet originally indicated a need for a multiple terminal discount if a subscriber fee ultimately is approved, as discussed above, in its comment, Instinet stated that multiple terminal discounts are not appropriate if cost-based fees are utilized and the costs do not indicate the need for a discount. Instinet Comment, *supra* note 45, at 4.23. While the Commission believes it well may be within an exclusive processor's discretion to provide for multiple terminal discounts in certain situations, the Commission does not believe that the Act requires the NASD to provide a multiple terminal discount for its NQDS service, particularly where as in this case the administrative burden of identifying costs on a terminal-by-terminal basis may be unwarranted and the parties are in agreement that a terminal-based charge is appropriate. Cost savings generated by a multiple terminal subscriber would also appear primarily to relate to the economies of installing multiple terminals at a single location, thereby possibly justifying a discount in the terminal charge, but not the information charge, which seeks to recover general systems costs. Therefore, the Commission finds that it is appropriate to charge the same fee for providing the same information via a terminal.

competitors. Therefore, the Commission does not believe it should require their disclosure to a competitor absent compelling circumstances. Moreover, the Commission also believes that Instinet should have flexibility in establishing subscriber fees. While Instinet could be required to pay the NASD a set fee per subscriber terminal, there is no reason why Instinet should be prohibited from recovering such fees from its subscribers as it sees fit.[85] The NASD's proposal locks Instinet into a certain billing arrangement, thus limiting Instinet's ability to offer what it may view as a competitively superior pricing structure. The arguments in favor of direct billing, such as assuring correct payments, can be addressed adequately by the vendor through contractual arrangements with its subscribers and, if necessary, by direct Commission oversight.[86]

2. *Level of Subscriber Charge*—a. *Comments.* The NASD states that a functional analysis of the NASDAQ system would be difficult and costly to perform. Fees therefore have been allocated on a value of services basis. The NASD decided that Level 1 service should bear 75 percent of total NASDAQ costs, and Levels 2 and 3 services the remaining 25 percent. On a per terminal basis, this translates to $8.75 per Level 1 terminal and $150 per Level 2 and 3 terminal. The NASD based its NQDS service charge directly on the Level ⅔ charge, and discounted that charge to reflect that the NQDS service contains less than all NASDAQ securities. The NASD further asserts that any fees set lower that those derived from its current methodology would in effect subsidize Instinet's subscribers, and would not be consistent with the Act's requirement of equitable fees.[87]

Instinet believes that the NASD's $150 subscriber charge for Levels 2 and 3 services is too high and that a functional analysis would show that the costs of providing that service would not justify that fee. Instinet believes that, until the NASD can functionally allocate the costs attributable to its various services, the NASD should be permitted to charge only fees set at incremental cost (i.e., the Vendor Fee) because these are the only costs currently identifiable. Instinet also argues that, in accordance with the NASD's assertion that the great extent of the NASDAQ system is used to generate all the quotation services, users of Levels 1, 2 and 3 services should bear an equal share of the costs of operating NASDAQ. Instinet estimates this to be $15 per terminal, assuming $18 million in NASDAQ costs spread over 100,000 users.[88]

b. *Commission Response* As discussed above,[89] the Commission believes that, when an exclusive processor also functions as a vendor of the information it collects, the fees it charges both competing vendors and subscribers of such vendors must be cost-justified. The Commission believes that the NASD's proposed NQDS Subscriber Fee has not been adequately cost-justified; therefore, the Commission holds that the proposed Fee (1) is an inappropriate limitation on Instinet's access to quotation information in NMS Securities under Section 11A(b)(5) of the Act, and (2) the proposed Fee should be disapproved under Section 19(b) of the Act.

The Commission believes that the Fee is inappropriate because the NASD seeks to recover costs for services above and beyond what is necessary to provide quotation information to Instinet and its subscribers. The proposed Subscriber Fee is based on the $150 NASDAQ Level ⅔ fee; the only adjustment made to that Fee is to reflect the fact that information on less than all NASDAQ securities is being provided—that is, the Fee is reduced to reflect the proportion of NASDAQ volume representated by NMS Securities. The Commission believes that this is an inappropriate basis for the fee.

The $150 charge paid by NASDAQ Level ⅔ subscribers covers a range of services, including: collection of market makers' quotations, processing of quotations both at the NASDAQ regional data concentrators and at the central processing center, the validation of quotations to ensure both proper format and that quotations fall within an allowable range, the storage of quotations, and the ability to retrieve current quotation information on NASDAQ securities on a per inquiry basis. In addition, NASDAQ Level 3 allows market makers to update their quotations at no additional charge. In contrast, significantly less processing is necessary for the NASD to provide Instinet with raw quotation information. Specifically, the NASD must collect quotation information, process and validate the information, and prepare information so that it can be shipped to Instinet through the NQDS interface.[90]

The Commission believes that the NASD can base its subscriber charge on only those costs necessary to prepare the data ultimately provided to Instinet. To base its fee on all NASDAQ costs, as the NASD proposes, in fact requires Instinet subscribers to pay a portion of the costs of the NASD's inquiry service, a service that the NASD offers in competition with Instinet.[91] Such a pricing arrangement is inherently unreasonable. The NASD, in effect, should recover only those costs it would incur if it operated a pure "pass-through" system—a system that only collected information and passed it on to vendors. The NASD should not recover any costs related to its own competing vendor service.

Accordingly, the NASD may recover only the costs of collecting, validating,[92]

[85] Of course, the Act provides the Commission with rulemaking authority to ensure that vendors' charges to customers are not unreasonably discriminatory. *See* Section 11A(c)(1)(C) of the Act.

[86] The Commission expects Instinet to submit audited information regarding the number of its NQDS terminals and subscribers to the Commission upon Commission request.

[87] The NASD also argues that a fair allocation of costs would not change its proposed fee. This argument appears to be based on two points. First, the validation of quotations for NQDS relies on the full storage of quotation information held by the NASDAQ system. Second, because there would be no quotation information if market makers did not update their information and because market makers could not do so without first retrieving information through the NASDAQ system, NQDS relies upon the entire system's costs.

[88] Instinet Comment, *supra* note 45, at 4.20.

[89] *See supra* Section III E.

[90] Of course, the actual cost of shipping the data is covered by the $3,200 Vendor Fee. The only costs now in question are the costs of the pre-existing NASDAQ system, incurred without the NQDS service, to be allocated to Instinet subscribers.

[91] The Commission rejects the NASD's assertion that it should allocate to NQDS an equal share of each of the NASDAQ system's functions because the market makers who build the data base depend on all the NASDAQ system functions. There is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NQDS fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost.

[92] The Commission believes that validation of the quotation information within specified pre-existing parameters and in the correct format is a proper function of a marketplace, and thus may be considered part of the quotation collection system. Indeed, the Commission recognizes the necessity of the NASD ensuring the integrity of quotations before providing them to any vendor, whether it be NASDAQ, Instinet, or a Level 1 vendor. The Commission notes, however, that validation can be performed by comparing new quotations to either the last sale (see Letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Samuel Alward, Chairman, CTA, dated January 23, 1984 (describing NYSE and Consolidated Quotation System ("CQS") quotation validation)) or the current inside market quotations.

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and preparing the information for shipment to Instinet. Costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing an NQDS subscriber charge. In addition, incremental capacity built into its computer and communication system[93] necessary to operate an inquiry service, but not necessary for a quotation collection service, cannot be considered costs relevant to the NQDS service.

The NASD has argued that it is impractical, if not impossible, to analyze the NASDAQ system in such a way as to isolate those specific aspects of the system necessary to support the NQDS service. As discussed above, however,[94] difficulty in allocating costs is not a sufficient basis for abandoning a cost-based fee. The Commission is not requiring the NASD to prepare an economically perfect allocation of relevant costs, but only a reasonable allocation based on the best available information. To accept the NASD's argument against requiring an allocation of costs in effect requires Instinet's subscribers to bear the burden of the NASD's difficulty by paying fees based on costs relating to services they are not receiving. The Act does not sanction that result.[95]

The Commission believes that the NSCC situation clearly is distinguishable from the instant case. First, in reviewing the Commission's prior order granting NSCC temporary registration as a clearing agency, the Court of Appeals for the District of Columbia Circuit noted that the Commission's decision was based on its authority to facilitate the establishment of a national clearing system pursuant to Section 17A of the Act. In this regard, the Court stated:

> [b]ecause the statutory provision on the national market system includes the enhancement of competition among its *objectives*, rather than merely as a factor to be taken into account, it arguably makes competition a more important consideration than does the provision on the national clearing system. . . . Thus, we must be cautious in applying Congressional statements on competition that were made in the national market context to the national clearing context.

Bradford Nat'l Clearing Corp. v. SEC, 590 F.2d. 1085, 1105 n.33 (D.C. Cir. 1978). In light of this language, because the Instinet Proceeding involves Section 11A of the Act as opposed to Section 17A, the Commission believes that the competitive effects of the NASD's proposed fees must be scrutinized with utmost care.

Second, with respect to NSCC and GPM, the Commission held only that it was reasonable for NSCC to charge uniform national prices for the same service. NSCC was not providing services to its competitors at a wholesale level, which then were the same services marketed in competition with NSCC. The more appropriate analogy is to the clearing of transactions executed on the New York or American Stock Exchanges, where NSCC has a monopoly on the comparison function and then exports a compared trade to competitors which offer postcomparison clearance and settlement services in competition with NSCC. Although there were special competitive considerations in that case, the Commission required that interfaces between NSCC and interfacing clearing corporations operate without charges among the interfacing entities and without specific charges to NSCC participants that trade with sole participants in interfacing clearing corporations. Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916. *See also* Securities Exchange Act Release No. 18823 (June 21, 1982), 47 FR 26512. Moreover, in instances in which one clearing agency provides a basic centralized service to other linked clearing agencies, as NSCC does in the National OTC Comparison System, the Commission has required the central clearing agency to charge the linked clearing agencies no more than actual cost for the linked clearing agencies no more than actual cost for the linked service. For a general discussion of these principles, see Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654.

The Commission also finds that the NASD's arbitrary separation of revenues and expenses relating to NASDAQ Level 1 service from the calculation of NQDS fees is inconsistent with the Act. The Commission believes that the costs necessary to supply information to be passed through to Instinet subscribers are substantially similar to the costs that are necessary to pass through NASDAQ Level 1 information to vendors. While the actual amount of quotation information disseminated through NASDAQ Level 1 service is less than the entire quotation stream, the collection, processing and validation functions necessary to provide that service are essentially identical to those for NQDS.[96] Level 2/3 subscribers are equally dependent on the ability of the NASD to collect and process quotations in order for them to receive an inquiry service directly from NASDAQ. Accordingly, the Commission believes the NASD must distribute the costs of collecting, validating and preparing information for dissemination over the full range of its subscribers, including all Level 1, Level 2/3 and Instinet subscribers.

The Commission thus believes that, barring demonstrable differences in cost, all subscribers to NASDAQ information through vendors other than NASDAQ should pay the same basic fee to the NASD whether they receive the NASDAQ Level 1 best bid and offer service or the Instinet full quotation service.[97] The manner in which information is provided by the vendor is immaterial—formatting NASDAQ quotation information is a decision each vendor must make as a matter of

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Even if validation is accomplished through comparison with inside quotations, the full storage capacity of all quotations is not necessary to validate quotations. Therefore, the Commission would expect that only a fraction of storage costs would be properly allocated to NQDS verification.

[93] The NASD has stated that certain communication costs are recovered through NASDAQ equipment fees and not through NASDAQ information fees. *See* NASD's October 31st Submission, *supra* note 33. To the extend that certain of the communication functions funded by that fee are necessary to provide a pass-through service, the NASD may recover such costs from Instinet subscribers. If the NASD were to recover those costs through the pass-through fee, however, the Commission would expect the NASD to remove such costs from the calculation of its equipment fees and lower those fees accordingly.

[94] *See supra* Section III E.

[95] The NASD Statement analogized the situation presented in this case with the situation presented when the Commission allowed the National Securities Clearing Corporation ("NSCC") to use geographic price mutualization ("GPM"). NASD Statement, *supra* note 45, at 48–54. *See* Securities Exchange Act Release No. 17562 (February 20, 1981), 22 S.E.C. Doc. 129. In that case, the Commission allowed NSCC to charge all participants the same fees whether the participants received services from the New York City central office or a regional office, as long as the fees charged by a regional office covered the incremental cost of that office. The NASD argues that the uniform charges to all subscribers resulting from its proposed fees are consistent with the result in the NSCC case and furthers the goal of broker-dealer competition that the Commission found to be of paramount concern when considering GPM.

[96] Unlike NQDS, NASDAQ Level 1 service requires a further processing function in order to calculate the best bid and offer.

[97] If the service made available to a particular vendor is limited to a specific subset of NASDAQ securities, such as limiting Instinet subscribers to information on NMS Securities, some reduction in this fee is necessary, of course, to reflect the fact that only certain securities are covered by the service. *See infra* note 103. In this respect, should Instinet receive only quotations in NMS Securities, it should not have to bear the costs associated with collecting, processing and validating quotations in all NASDAQ securities. The Commission, of course, will review any NASD functional analysis that indicates that the present formula for reducing fees to reflect that Instinet is receiving less then all NASDAQ quotation data is inappropriate. *See infra* Section V for a discussion of Instinet's access to the entire NASDAQ quotation stream.

business judgment in determining the best way to package a service for sale to its customers.[98] Structuring NASDAQ fees in this manner ensures that the fees are equitable: all subscribers to NASDAQ information will share the pass-through costs; the amount of the NASD's fee to subscribers of NASDAQ Level 2/3 services over the pass through fee will recover the NASD's costs in providing the quotation recall services that only those subscribers use.

In addition to the competitive aspects of this arrangement, the Commission believes that uniform cost-based fees could lead to improved services with respect to OTC market information, a goal consistent with, and in furtherance of, the Act's NMS objectives. Specifically, cost-based fees to vendors should encourage competition among vendors,[99] leading to both improved information displays and lower prices to broker-dealers. By providing subscribers with full quotation information at relatively inexpensive prices, vendors will be encouraged to develop improved formats for presenting the information. The Commission believes that Instinet's decision to market a quotation montage with dynamically-updated information is a good example of the innovation possible under such a cost-based pricing structure.

The Commission also notes that CQS charges subscribers a set fee for receipt of information in listed securities. Vendors are free to package the material into any display they desire to market, subject only to the requirements of the Commission's vendor display rule, Rule 11Ac1–2 under the Act. Vendors, including NASDAQ, take advantage of that flexibility by offering information in a variety of formats. As a general matter, the Commission believes that, within the bounds of fairness, market forces should guide what displays are offered by vendors; the NASD should not be allowed to influence those decisions by imposing particular tariffs, unrelated to costs, on different types of displays.[100]

For the reasons discussed above, the Commission finds that the proposed Subscriber Fee is an inappropriate limitation on Instinet's access to the NQDS service, and, pursuant to Section 11A(b)(5)(B), is setting it aside.[101] The Commission recognizes, however, that setting aside completely this limitation on access would permit Instinet to receive access to this service without any type of subscriber fee until the NASD proposes new fees and those fees are approved by the Commission. Because the Commission believes that Instinet should not receive this service without paying any subscriber fee, the Commission finds only that the particular fee proposed by the NASD is inappropriate. The right of the NASD to levy a subscriber fee is upheld, and this proceeding will continue pending the proposal and adoption of an effective subscriber fee. Interim relief also will continue, pursuant to the terms discussd below,[102] allowing the Instinet and its subscribers continued conditional access to the information during this process.[103] Accordingly, the Commission today is disapproving the portion of the NASD's proposed rule filing pertaining to the Subscriber Fee.[104] The Commission will consider, pursuant to Section 19(b) and Rule 19b–4 thereunder, any new NASD proposed fee. The Commission expects that the methodology for all cost allocations made by the NASD in developing its new subscriber fee will be fully described in the filing and reviewed by its auditors.

IV. Continued Interim Relief

A. Comments

Instinet requests the Commission to modify its interim relief order to require the NASD to provide Instinet quotation information in all NASDAQ securities at a rate including the $3,200 Vendor Fee and $8.75 per month per Instinet terminal receiving the information, payable into escrow.

B. Commission Response

Pursuant to the terms of the interim relief currently in effect, Instinet has been paying into escrow an amount equal to the proposed Vendor and Subscriber Fees since it began receiving the service from the NASD in September 1983. The Commission believes that this interim relief should provide, to the extent possible, cost-based fees. Because the Commission has determined that the proposed Subscriber Fee is not permissible, Instinet has been paying at an inappropriately high level. The Commission also notes that under the terms of the current interim relief no disbursements have been made from the escrow. The Commission therefore is modifying its interim relief order by changing the conditions that Instinet must meet to receive continued access to the data.

As discussed above,[105] the Commission has determined that the NASD must calculate its subscriber charge in this instance based on only the costs of passing through the data to Instinet. Because the NASD has argued that a functional allocation of costs is unnecessary, the Commission does not have access to all the information necessary to determine the appropriate fee, and therefore is not in a position to establish with precision any specific interim fee to be used until the NASD performs the necessary calculations.

The Commission does recognize, however, that the NASD currently has a fee it charges subscribers of vendors who receive a pass-through service, that

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[98] *See* Section 11A(a)(1) (B) and (C) (iii) of the Act.

[99] Indeed, Congress and the courts have viewed competition as a major goal of the NMS mandated by Section 11A of the Act. *See* Bradford Nat'l Clearing Corp. v. SEC, 590 F.2d. at 1105. Moreover, this competitive concern directly related to the provision of market information. *See, e.g.*, Senate Report, *supra* note 9, at 104, [1975] U.S. Code Cong. & Ad. News at 282. Congress stated that:

[t]he Commission would be required to assure that all securities information processors, *i.e.*, vendors, have access for purposes of distributing, or publishing, on reasonable and non-discriminatory terms all securities quotation and transaction information collected, processed, or prepared for distribution or publication by any exclusive processor of such information . . . The SEC would thus be directed to remove present and future anticompetitive restrictions on access to basic market information. . . .

As the Congress noted, an exclusive processor's "decisions as to who may receive and disseminate the market information which it processes will structure the nature of competition among vendors of market information." *Id.* at 11, [1975] U.S. Code Cong. & Ad. News at 189.

[100] The Commission would distinguish the recently approved non-professional and limited usage fees that offer securities information at greatly reduced rates to a segment of investors formerly priced out of the market for this information. The Commission also notes that neither the Consolidated Plan Participants nor the NASD compete with other vendors offering these services. *See* Securities Exchange Act Release Nos. 20239 (September 30, 1983); 20240 (September 30, 1983), and 20522 (January 3, 1984); 48 FR 45637, 45638 and 49 FR 1440.

[101] Although the Subscriber Fee would not be assessed directly on Instinet, it nevertheless operates as a limitation on Instinet's access to the UQDS service because the NASD is proposing to impose the Fee on the Instinet's subscribers as a condition to Instinet's marketing the service.

[102] *See infra* Section IV.

[103] As discussed in *infra* Section V, the Commission is extending the scope of the relief to cover all NASDAQ securities, not just NMS Securities. Instinet, however, has the option to accent information only on NMS Securities, and has been receiving quotation information limited to NMS Securities under the current interim relief. In addition, other vendors may want information only on NMS Securities. In any situation where quotation information limited to NMS Securities is being provided, the Commission believes that the NASD's proposed formula to reduce the base subscriber fee half by share volume, half by dollar volume, based on the relationship by volume in NMS Securities to all NASDAQ securities, is reasonable. The Commission, sees no basis for the NASD's decision to round each of the two percentages up to the next 25 percent. That is an arbitrary figure that, on its face, is unreasonably high. Accordingly, the Commission believes that each percentage should be rounded up or down only to the nearest one percent.

[104] *See* Securities Exchange Act Release No. 20873 (April 17, 1984).

[105] *See supra* Section III G 2.

is, the NASDAQ Level 1 $8.75 per terminal monthly fee. Because the Commission has determined that all pass-through subscriber fees, including the Level 1 fee and the fee to Instinet subscribers, must be calculated on the same basis, the Commission believes that the current Level 1 fee is the appropriate basis for the interim Instinet subscriber fee. The Commission recognizes that the NASD has not applied a strict cost-accounting formula in developing the Level 1 fee. Moreover, the Commission recognizes that there may be costs properly allocable to NQDS that exceed those relating to NASDAQ Level 1 service. Based on the present record of these proceedings, however, the Commission cannot identify such costs. Because the Level 1 fee is the only NASDAQ fee which relates to a pass-through service, the Commission believes it is appropriate to base interim relief on that fee until the NASD is able to perform the more rigorous cost accounting required by this order.

The Commission also is amending its interim relief order to eliminate the escrow arrangement and require that Instinet pay the interim fees directly to the NASD. Given the clarification provided by this decision, the Commission believes it would be unfair not to provide the NASD with the use of the interim fees during the remainder of this proceeding.

With respect to any period during which Instinet is receiving quotation information only on NMS Securities, including the period covered by the escrow, the Commission believes that the $8.75 fee (plus the Vendor Fee) should be reduced by the NASD's proposed formula, as modified by the Commission above.[106] The Commission also emphasizes that the NASD must bill interim subscriber fees directly to Instinet. Instinet may recover the aggregate sum necessary to meet the condition of this interim relief as it chooses; the Commission is not providing for any direct relationship between the NASD and Instinet's subscribers.[107] Finally, as with all interim relief in this proceeding, Instinet may choose not to accept the data pursuant to these conditions. If Instinet chooses not to accept this conditional relief, the NASD shall have no further obligation to supply this information.

Accordingly, the Commission is issuing an order permitting the dissolution of the current escrow arrangement. The NASD will be paid out of that escrow $3,200 for each month of the service through March 1984, representing the approved Vendor Fee. In addition, the NASD will receive $8.75 per month per Instinet terminal, reduced by the amended NASD formula representing the percentage of volume of NMS Securities as compared to all NASDAQ Securities. The $3,200 Vendor Fee now is approved and is no longer part of the interim relief. With respect to subscriber charges, Instinet shall pay the NASD $8.75 per terminal, with this sum to be reduced by the amended NASD formula if data only on NMS Secrities is provided.

[106] *See supra* note 103.

[107] *See supra* Section III G 1.

V. Instinet's Request for Quotation Information on All NASDAQ Securities

The Commission instituted this proceeding to resolve the narrow issue of whether the NASD's proposed NQDS fees were an inappropriate limitation on Instinet's access to NMS Securities quotation information. As Instinet has made clear, however, its petition requested access to quotation information on all NASDAQ Securities.[108] In the release instituting this proceeding, the Commission specifically requested comment on this issue.[109] Since the institution of this proceeding, the positions of the parties, on Instinet's access to full NASDAQ quotation information have become clear: the NASD is willing to provide this information, but only if Instinet subscribers pay the full $150 Level ⅔ information fee.[110]

Because the Commission has determined that the Subscriber Fee is inappropriate,[111] the Commission also believes that charging the full $150 for full NASDAQ quotation information is inappropriate. The analyses of the two fee issues are nearly identical; the only difference is that in analyzing the fee for full NASDAQ information, it is unnecessary to address the NASD's proposed formula for reducing the level of the fee to reflect that information on less than all securities is being provided.

In light of these findings, the Commission has determined to institute a proceeding to review this limitation on Instinet's access to full NASDAQ quotation information. This proceeding is necessary to ensure, through interim relief, Instinet's timely access to this data.[112] As discussed by Instinet, because the NMS Securities quotation data covers only a portion of the NASDAQ market, such information renders the current Instinet OTC quotation service of extremely limited use and difficult to market.[113] The Commission concurs and believes that access to the full quotation stream for all NASDAQ securities is necessary to provide Instinet with reasonable competitive opportunities to offer vendor services in this area.

In addition, because the issues relevant to the fee for full NASDAQ quotation information have been raised and resolved in this proceeding, the Commission sees no reason to delay Instinet's access to the full quotation stream while the NASD prepares new fees and those fees are reviewed by the Commission. The Commission believes that granting Instinet interim access to the full NASDAQ quotation stream at $8.75 per subscriber terminal (without the need to discount that fee to reflect the fact that only information on NMS Securities is included) adequately protects all parties.[114]

Therefore, the Commission today is instituting a proceeding to review whether the NASD's proposed subscriber charge for full NASDAQ quotation information is an inappropriate limitation on Instinet's access to that data. The Commission is consolidating that proceeding with the current denial of access proceeding. The Commission simultaneously is ordering interim relief by requiring the NASD, within thirty days of publication of this

[108] *See* Instinet Petition, *supra* note 25, at 20–37; Instinet Comment, *supra* note 45, at 2.1–2.5.

[109] Order Instituting Proceeding, *supra* note 15, 48 FR at 38127.

[110] Instinet Comment, *supra* note 45, at 2.3;; Letter to William A Lupien, President, Instinet, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated December 27, 1983, contained in Commission File No. 4–256.

[111] *See supra* Section III G 2.

[112] The NASD consistently has stated that it is prepared to make "the full Level 2 data stream" available to Instinet. Letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated January 3, 1984. Moreover, the Commission believes that Section 11A(c)(1)(D) under the Act and its attendant legislative history envision that the NASD, as both an SRO and an exclusive processor of securities information, must make this information available to Instinet. Accordingly, under Section 11A(b)(5)(B), the NASD must make the information available on terms that are consistent with the goals of the able on terms that are consistent with the goals of the Act, do not unfarily discriminate, and do not impose any unnecessary or inappropriate burden on competition. In addition, any proposed fees by the NASD for providing the full quotation stream for all NASDAQ securities would have to meet the standards under Section 15A of the Act, including the requirement that fees be reasonable. *See supra* text accompanying notes 59–61.

[113] Instinet Comment, *supra* note 45, at 2.5.

[114] The Vendor Fee remains at $3,200 a month. To the extent that the NASD's costs in providing the full data stream, rather than the partial NMS Securities data stream, are greater, the NASD may file a proposed rule change pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder proposing such a change to the now-approved Vendor Fee.

order in the **Federal Register**, to provide Instinet the full NASDAQ quotation feed on the condition that Instinet pay the NASD $8.75 per subscriber terminal on a monthly basis.[115]

The parties, and other interested persons, have 21 days from publication of this release in the **Federal Register** to comment on this interim relief and any other issues raised by expanding this proceeding to cover all NASDAQ securities. The interim relief will remain in effect until the NASD files, and the Commission approves, new fees that cover this area, or the Commission determines, either after reviewing any comments received or *sua sponte*, to readdress this area.

VI. Order

On the basis of the above, pursuant to its authority under the Act, and particularly Sections 2, 3, 11, 11A, 15, 15A, 19, and 22 thereof,[116] The Commission hereby orders that:

1. The imposition on Instinet and other vendors of a monthly fee totalling $3,200 for access to the NASD's NQDS service is not an inappropriate prohibition or limitation on access to the NQDS service under Section 11A(b)(5) of the Act and, therefore, that portion of this proceeding is DISMISSED.

2. The imposition of some form of a fee based on the number of subscribing terminals to the NQDA service is not inappropriate prohibition or limitation on access to the NQDS service under Section 11A(b)((5) of the Act and, therefore, that portion of this proceeding is DISMISSED.

3. The imposition of a fee charged to Instinet subscribers for receipt of the NQDS service equal to $75 multiplied by the percentage (rounded to the next 25 percent) that NMS Securities dollar volume bears to total NASDAQ dollar volume plus $75 multiplied by the percentage (rounded to the next 25 percent) that NMS Securities share volume bears to total NASDAQ share volume per terminal is an inappropriate prohibition or limitation on access to the NQDS service under Section 11A(b)(5) of the Act and is SET ASIDE.

4. The Commission is instituting proceedings to determine if the NASD's decision to condition Instinet's (and Instinet's subscribers') access to full NASDAQ quotation information on payment of $150 per terminal per month is an inappropriate prohibition or limitation on access to services under Section 11A(b)(5) of the Act; these proceedings are consolidated with the proceedings reviewing the prohibition or limitation on access to the NQDS service.

5. The Commission's order, dated August 16, 1983 (Securities Exchange Act Release No. 20088, 48 FR 38124) as amended by the orders dated November 30, 1983 (Securities Exchange Act Release No. 20425, 48 FR 54733), and dated March 30, 1984, (Securities Exchange Act Release No. 20803, 49 FR 13938) granting a temporary stay, is amended to provide:

a. The parties are ordered to dissolve the escrow agreement. The NASD should receive: (1) $3,200 a month for each month that the NQDS service has been supplied to Instinet; and (2) an amount equal to $4.375 multiplied by the percentage (rounded up or down as appropriate to the next one percent) that NMS Securities dollar volume bears to total NASDAQ dollar volume times the number of Instinet terminals plus $4.375 multiplied by the percentage (rounded up or down as appropriate to the next one percent) that NMS Securities share volume bears to total NASDAQ share volume per terminal receiving the information ("the interim NQDS terminal fee") for each month that such terminal has received the NQDS service.

b. The NASD shall disseminate full NASDAQ quotation information to Instinet within 30 days after notice of this order in the **Federal Register**.

c. Instinet shall pay the NASD $8.75 per Instinet terminal receiving full NASDAQ quotation information per month. Instinet shall pay the NASD the interim NQDS terminal fee for each terminal receiving only the NQDS service until the NASD makes full quotation information available, or if Instinet chooses, to accept only information on NMS Securities.

d. The provisions of this stay shall remain in effect until the NASD files proposed fees with the Commission and such fees are approved, or until the Commission orders otherwise.

Interested persons are invited to submit written comments concerning the institution of proceedings to review the NASD's prohibition or limitation on Instinet's (and Instinet's subscribers') access to full NASDAQ quotation information, and the provisions of the stay relating thereto, within 21 days from the date of publication of this order in the **Federal Register**. Persons submitting written comment should file six copies with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. 4–256.

By the Commission.

George A. Fitzsimmons,

Secretary.

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[115] The Commission has determined that this grant of interim relief is consistent fully with the standards set forth in Virginia Petroleum Jobbers Ass'n. v. Fed. Power Comm'n., 259 F.2d 921, 925 (1958). For a discussion of the standards, see Order Instituting Proceeding, *supra* note 15, 48 FR at 38127–38129. As with the previous interim relief in this proceeding, Instinet has the option of refusing to accept interim relief on these conditions; if it does refuse the relief, the NASD shall have no further obligation. If Instinet determines to accept interim relief only with respect to NMS Securities, the conditional relief will require Instinet to pay the $8.75, as reduced by the NASD's proposed formula (as modified by the Commission, see *supra* Section IV).

[116] 15 U.S.C. 78b, 78c, 78k, 78k–1, 78o–3, 78s, and 78v (1976). The Commission has considered each party's motions and requests in this proceeding, and to the extent that they are inconsistent with the terms of this order, they are denied.

[Release No. 20873; SR–NASD–83–13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving in Part and Disapproving in Part Proposed Rule Change

April 17, 1984.

I. Background

On August 16, 1983, the Commission instituted proceedings pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] to determine whether to approve or disapprove a proposed rule change [2] submitted by the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C., 20006, that would establish fees for the receipt of quotation information concerning over-the-counter ("OTC") securities designated as National Market System ("NMS") Securities pursuant to Rule 11Aa2–1 under the Act ("NMS Securities Rule").

Pursuant to Rule 11Ac1–1 under the Act,[3] the NASD is required to make available to the public the complete quotation information disseminated by market makers in NMS Securities.

On three occasions, the Commission granted the NASD an exemption from the requirement of disseminating this information,[4] pending discussions

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[1] 15 U.S.C. 78s(b).

[2] File No. SR–NASD–83–13. *See* Securities Exchange Act Release No. 20089 (August 16, 1983), 48 FR 38131 ("Rule Review Proceeding"). Notice of the filing was given by issuance of a Commission release and by publication in the **Federal Register**. *See* Securities Exchange Act Release No. 19884 (June 17, 1983), 48 FR 29086.

[3] 17 CFR 240.11Ac1–1.

[4] *See* Securities Exchange Act Release No. 18525 (March 23, 1982), 19118 (October 12, 1982), and 19584 (March 3, 1983); 47 FR 13285, 46793, and 48 FR 10175.

between the NASD and a securities information vendor, the Institutional Networks Corporation ("Instinet"), concerning the terms and conditions under which this information would be made available. No agreement was reached in these discussions, and consequently the NASD filed the proposed rule change establishing fees for NMS Securities quotation information that were, in effect, the same fees that the NASD had proposed in its last offer to Instinet.

Specifically, the NASD proposed a fee of $3,200 a month to be shared by vendors receiving the NMS Securities quotation data stream, to be reduced by fees received from new subscribers not previously subscribing to quotation information offered by the NASD's NASDAQ subsidiary in its Level 2 and 3 services.[5] In addition, the NASD proposed a monthly per-terminal subscriber fee of $75 multiplied by the percentage (rounded up to the nearest 25 percent) that NMS Securities dollar volume of trading bears to the total dollar volume of securities included in the NASDAQ system, plus $75 multiplied by the percentage (rounded to the next 25 percent) that NMS Securities share volume of trading bears to total share volume of trading in the NASDAQ system.

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to Section 11A(b)(5) of the Act alleging that the NASD's proposed fees were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information. On August 16, 1983, the Commission issued an order preliminarily finding that the proposed fees constituted a prohibition or limitation on access to services and instituted a proceeding to determine whether the prohibitions or limitation on access to services was consistent with the provisions of the Act.[6] The Commission also instituted the Rule Review Proceeding.[7]

After receiving numerous submissions from the parties and comentators in connection with the Denial of Access Proceeding,[8] the Commission today issued an order in connection with that proceeding, holding that the NASD's charges to Instinet must be fair and reasonable.[9] In the Instinet Order, the Commission determined that the NASD's proposed vendor charge is appropriate, but was unable to make such finding with respect to the NASD's proposed subscriber charge is an inappropriate prohibition or limitation on access to quotation information sought by Instinet. Because the issues and factual situation of the Section 11A(b)(5) proceeding are identical to this Section 19(b) proceeding, this order incorporates by reference the discussion and findings contained in the Instinet Order.

II. Discussion

A. Statutory Criteria

Under Section 19(b)(2) of the Act, the Commission must approve a proposed rule change of the NASD if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder, which in this case are applicable to a registered securities association, in particular Sections 11A and 15A of the Act that respectively pertain to the establishment of the NMS and the substantive requirements governing rules of a registered securities association. The Commission must disapprove a proposed rule change if it does not make these findings.

B. Disapproval of the Proposed Subscriber Fee

Consistent with the Commission's action in the Denial of Access Proceeding and for the reasons discussed in the Instinet Order, the Commission is unable to find that the portion of the NASD's proposed rule change pertaining to subscriber charges is consistent with the requirements of the Act, and therefore, must disapprove that portion of the proposed rule change.

In particular, the Commission is unable to find that the proposed subscriber fee is consistent with Section 15A(b)(5) of the Act, which requires that the NASD's rules "provide for the equitable allocation of reasonable . . . fees . . . among . . . persons using any facility or system which the association operates or controls . . . ," and Section 15A(b)(6) of the Act, which requires that the NASD's rules "are not designed to permit unfair discrimination between customers . . . ."

As fully described in the Instinet Order, the Commission indicated that to ensure that the NASD's services are made available on reasonable and non-discriminatory terms, at least in the limited circumstances where the NASD was acting in the capacity of an exclusive processor that supplied information to other vendors while competing with them in providing services to end-users, the NASD's fees should be based strictly on the expenses it incurs in providing the information to vendors. Because the NASD's proposed subscriber fee has not been adequately cost-justified, the Commission is unable to find that the fee is reasonable or non-discriminatory in accordance with the Act.

The Commission also is unable to find that the proposed subscriber fee is consistent with Section 15A(b)(6) of the Act that requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system." In this regard, one objective of an NMS is "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."[10]

Again, as fully discussed in the Instinet Order, the Commission believes that the proposed subscriber fee is not consistent with the objectives of an NMS. Specifically, the Commission finds that the proposed subscriber fee, by not being cost-based and derived directly from the fee set for NASDAQ Level 2/3 service, recovers costs for functions unnecessary to provide quotation information to Instinet and its subscribers. Accordingly, the Commission believes that the proposed subscriber fee discourages potential vendors from marketing this data, thereby foreclosing competitive opportunities for vendors to offer improved information displays and lower prices to broker-dealers and investors.[11]

C. Approval of the Proposed Vendor Fee

The Commission finds that the NASD's proposed vendor fee is consistent with the requirements of the Act, and, in particular, Sections 11A and 15A thereunder. The NASD has identified the particular aspects of the NASDAQ system necessary to provide

[5] The NASD's NASDAQ subsidiary operates an electronic communication system through which quotations of market makers in securities traded in the NASDAQ system are collected and disseminated to other market makers and the public. NASDAQ operates both as a collector of this quotation information and as a vendor of the information to broker-dealers and the public.

[6] *See* Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124 ("Denial of Access Proceeding").

[7] *See* Rule Review Proceeding, *supra* note 2.

[8] *See* File No. 4-256. The Commission also granted the NASD's request for a hearing pertaining to information on the NASDAQ system. The hearing was held at the Commission on November 30, 1983.

[9] *See* Securities Exchange Act Release No. 20874 (April 17, 1984) ("Instinet Order").

[10] Section 11A(a)(1)(c)(iii) of the Act.

[11] To this extent, the Commission also believes that the proposed subscriber fee imposes a "burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." *See* Section 15A(9) of the Act.

Instinet the data and has attempted to allocate specific percentages of costs associated with the function. Those allocations appear reasonable and the Commission has no basis to challenge them.

III. Conclusion

For the above reasons, the Commission is unable to find that the portion of the proposed rule change pertaining to the subscriber fee is consistent with the Act, and in particular, Sections 11A and 15A, and the rules and regulations thereunder. The Commission, however, finds that the portion of the proposed rule change pertaining to the vendor fee is consistent with the Act, and , in particular, Sections 11A and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, disapproved with respect to the subscriber fee, and approved with respect to the vendor fee.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10850 Filed 4-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20880; File No. SR-NSCC-84-6]

National Securities Clearing Corp.; Filing and Immediate Effectiveness of a Proposed Rule Change

April 17, 1984.

The National Securities Clearing Corporation ("NSCC") on March 22, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. § 78s(b)(1), that amends NSCC Rule 15, Section 2, and Section I, G of NSCC's Standards of Financial Responsibility and Operational Capacity, to refine NSCC's financial and operational broker-dealer member monitoring program. The Commission is publishing this notice to solicit comments from persons interested in the proposed rule change.

Under the proposal, broker-dealer Settling Members must file with NSCC a copy of Securities Exchange Act Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report.[1] In addition, each of these members would be required to file its copy with NSCC within the time frames specified by its Designated Examining Authority ("DEA") or the Commission, whichever is later.

NSCC believes that the proposal should enhance NSCC's ability to monitor the financial and operational condition of its broker-dealer members. NSCC states that it has had some difficulty in obtaining timely financial and operational information regarding some of its broker-dealer members. Most members that have provided NSCC with FOCUS Report copies have done so voluntarily and have not had to file them within any designated time frame. Moreover, while NSCC generally receives FOCUS-derived reports from DEA's, NSCC's receipt of those reports sometimes has been delayed significantly because of the time it takes for DEA's to prepare the reports.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the Federal Register. Persons desiring to make a written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-84-6.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authorized.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10976 Filed 4-23-84; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Rule 17a-5 (17 CFR 240.17a-5) and the FOCUS Report (17 CFR 249.617).

[Release No. 34-20879; File No. SR-NSCC-84-7]

The National Securities Clearing Corp.; Order Granting the Withdrawal of Proposed Rule Change by National Securities Clearing Corp.

April 17, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1984, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change (File No. SR-NSCC-84-7) as described herein. The Commission is publishing this notice to solicit comments on that proposed rule change from interested persons.

The proposed rule change would amend NSCC Rule 2, § 2 and would add new Subsection I to Section I of NSCC's Standards of Financial Responsibility and Operational Capability. These changes would require each broker-dealer applicant [1] for NSCC membership and each broker-dealer Settling Member to complete and deliver to NSCC a questionnaire.[2] Under the proposal, applicants would be required to file the questionnaire with NSCC during the application process.[3] Continuing Members would be required to file the questionnaire on an annual basis. Firms' responses to the questionnaire would be considered to be confidential to the extent provided under NSCC Rule 15, § 2.[4]

NSCC believes that the proposal is needed for several reasons. First, NSCC's broker-dealer applicants and members historically have been largely from the New York City vicinity. These broker-dealers have had extensive experience in automated clearance and

[1] NSCC states in its filing that it intends to develop an appropriate questionnaire for each membership type, *e.g.*, bank members.

[2] The questionnaire solicits information relating to: (1) "Background Information," *e.g.*, form of organization; date business started; names of officers, counsel and outside accountants; numbers of registered representatives and operational personnel; and banking, service bureau, and clearing arrangements; (2) "Type of Business Conducted," *e.g.*, whether the firm is (a) a stock lender or borrower; (b) a municipal securities broker or dealer; (c) a market maker or underwriter; and (d) whether the firm is contemplating a change in its business mix; (3) the firm's account structure; (4) the firm's fidelity bond; and (5) whether the firm is subject to any actions by a regulatory authority.

[3] Broker-dealer applicant also would be required to provide NSCC with FOCUS report copies, upon NSCC's request.

[4] That information will be "held in the same degree of confidence as may be requested by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the Settling Member or applicant. NSCC Rule 15, section 2.

settlement systems and were "known" to NSCC. Now, however, broker-dealers that previously have not used automated clearance and settlement facilities, including municipal broker-dealers, are beginning to apply for NSCC membership. Because NSCC and those broker-dealers are unfamiliar with each other, NSCC believes it important to obtain as much financial and operational data about these applicants as practicable. Armed with that data, NSCC believes that it will be better able to make membership decisions and to determine whether conditions or limitations should be imposed on certain admittees.

Second, NSCC believes that in view of the rapidly changing financial marketplace, NSCC needs a vehicle to learn of changes in a continuing member's business mix. Those changes could increase the potential financial risks to NSCC and its membership. Currently, a broker-dealer member could significantly change its business mix without NSCC becoming aware of that change. For example, the new business emphasis could be on a financial product which is processed outside NSCC. Indeed, that broker-dealer could experience financial difficulty in that product area, and NSCC might not learn of the difficulty until NSCC-related activity is affected. NSCC believes that the proposal should help NSCC to learn of changes in business mix in a more timely manner. Thus, NSCC should be able to make better informed member oversight decisions.

For these reasons, NSCC states in its filing that the proposal is consistent with section 17A(b) of the Act. More specifically, NSCC believes that the proposal facilitates the safeguarding of securities and funds in NSCC's possession or control or for which NSCC is responsible.

In order to assist the Commission in determining whether to approve the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-84-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above/mentioned self-regulatory organization.

Finally, NSCC requested that the Commission withdraw File No. SR-NSCC-84-4, which was filed with the Commission on March 12, 1984, under section 19(b)(3)(A) of the Act. NSCC submitted File No. SR-NSCC-84-7 under Section 19(b)(2) of the Act to replace File No. SR-NSCC-84-4. Because the filings are substantively identical, the Commission grants NSCC's withdrawal request.

It is therefore ordered that File No. SR-NSCC-84-4 be, and hereby is, withdrawn.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10977 Filed 4-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20861; File No. SR-CBOE-84-13]

Self-Regulatory Organizations; Proposed Rule Change; Chicago Board Options Exchange, Inc.; Displaying Bids and Offers in the Book

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 2, 1984 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

DISPLAYING BIDS AND OFFERS IN THE BOOK

Rule 7.7. No change.

. . . Interpretations and Policies:

.01-.02 No change.

.03 Prior to the opening of trading, whether at the beginning of a trading day or after a trading halt, a Board Broker or Order Book Official has the discretion not to display, or to remove from display, the highest bid or lowest offer in his Book, where circumstances are such that such bid or offer appears to be materially away from the expected market in that series.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The Exchange separates the agency and principal functions in its markets. Public limit orders may be placed on the Exchange's book. The book is maintained by an Exchange employee, the Order Book Official ("OBO"). Under current Exchange rules, the OBO must display the highest bid and the lowest offer on the book. It is possible for a limit order received by the OBO to be in effect a market order within the context of the prevailing market. An example is where a limit call buy order is received by the OBO prior to the opening with a limit price significantly above the prevailing market close of the prior day. The closing stock price is 12¼, and the closing call market is 3½ bid, 3¾ offered. A customer enters an order to buy 5 calls at 4¾ prior to the opening on the next day. It is not expected that the market will open the next day at prices varying significantly from the last day's close. Under current rules, this unrealistic bid would nevertheless be displayed. The display of this bid may cause market confusion because it is an unrealistic bid in the circumstances. The display may also make the 4¾ bid for five calls vulnerable to being executed at a price which may be unrealistically high. The 4¾ bid should be handled like a market order which should not be disclosed before the opening rotation commences. It is better to permit the market-makers to establish the market without knowledge of market orders or

limit orders which are, because of their price, market orders.

The proposed rule change would permit the OBO to withhold unrealistic bids and offers from display, and to treat such orders as market orders. The OBO's discretion should only be required prior to rotations, either on the opening or after a trading halt because, if such an order were received during open trading, it would not be displayed; it would be immediately handled as a market order. The statutory authority for this rule change is Section 6(b) of the Securities Exchange Act of 1934, which requires national securities exchanges, among other things, to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments for and perfect the mechanism of a free and open market.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose a burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-10675 Filed 4-23-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-20855; File No. SR-MSRB-84-9]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board Relating to Customer Confirmations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1984, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith amendments to rule G-15 on customer confirmations. The text of the proposed rule changes appears below.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The proposed rule changes would incorporate into rule G-15 specific provisions, comparable to the equivalent provisions of rule G-12 on inter-dealer transactions, relating to the establishment of settlement dates on customer transactions (proposed section (b)) and deliveries of physical securities to customers (proposed section (c)). The provisions of proposed section (b) establish the fifth business day following the trade date as the standard settlement date for customer transactions, and provide for the establishment of settlement dates on "cash" and other exceptional transactions. The provisions of proposed section (c) establish certain standards relating to the proper delivery of securities to customers, covering such matters as the fungibility and specific identification of securities delivered, units of delivery, the form of the securities to be delivered, delivery of coupon and registered securities, and similar matters.

(b) The proposed rule changes are adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules

> designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * clearing, settling, * * * and facilitating transactions in municipal securities, * * * and, in general, to protect investors and the public interest * * *.

The Board believes that the proposed rule changes will further the protection of investors and promote just and equitable principles of trade by establishing minimum standards for the proper clearance and settlement of customer transactions. The Board also is of the view that the establishment of a uniform set of delivery standards applicable to these transactions will promote the more efficient handling of such transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will have any impact on competition, inasmuch as the proposed rule changes simply establish a uniform set of standards for the clearance and settlement of customer transactions that are applicable to all municipal securities brokers and municipal securities dealers. The Board further believes that the proposed rule changes merely codify good standards of business practice generally followed at the present time by most municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Board released for public comment on August 15, 1983 an exposure draft of amendments to rule G–15 proposing customer delivery standards substantially the same as those set forth in the proposed rule changes; a copy of the August 15, 1983 exposure draft is attached to this filing as Exhibit 3. The Board received eight letters of comment on the exposure draft, generally supporting adoption of the rule substantially as proposed; copies of these comment letters are attached as Exhibit 4.

One commentator disagreed with the exposure draft proposal regarding the delivery of registered securities, suggesting that the delivering municipal securities broker or dealer should be responsible for registering the securities as directed by the customer regardless of whether the delivery is made directly to the customer or to an agent acting on the customer's behalf. The Board continues to believe that regulatory action to place the burden of transferring securites on a customer's behalf on the delivering municipal securities professional is appropriate only in circumstances where the customer would otherwise have to undertake the often complex and difficult transfer process itself. In circumstances where the customer uses an agent to clear its securites transactions and perform other safekeeping and securities handling functions the Board does not believe it necessary to interfere in this clearing arrangement by imposing the transfer burden on the delivering dealer; the Board notes that the rule would still permit the customer to require the dealer to handle the transfer function by agreement at the time of trade.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

April 13, 1984.

Texts of Proposed Rule Changes*

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) No change.

(b) Settlement Dates.

(i) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A) Settlement Date. The term "settlement date" shall mean the day used in price and interest computations, which shall also be the day delivery is due unless otherwise agreed by the parties.

(B) Business Day. The term "business day" shall mean a day recognized by the National Association of Securities Dealers, Inc. as a day on which securities transactions may be settled.

(ii) Settlement Dates. Settlement dates shall be as follows:

(A) for "cash" transactions, the trade date;

(B) for "regular way" transactions, the fifth business day following the trade date;

(C) for all other transactions, a date agreed upon by both parties.

(c) Deliveries to customers. Except as provided in section (d) below, a delivery of securities by a broker, dealer, or municipal securities dealer to a customer or to another person acting as agent for the customer shall, unless otherwise agreed by the parties or otherwise specified by the customer, be made in accordance with the following provisions:

(i) Securities Delivered.

(A) All securities delivered on a transaction shall be identical as to the information set forth in subparagraph (E) of paragraph (a)(i) and, to the extent applicable, the information set forth in subparagraphs (A) and (C) of paragraph (a)(iii). All securities delivered shall also be identical as to the call provisions and the dated date of such securities.

(B) CUSIP Numbers.

(1) The securities delivered on a transaction shall have the same CUSIP number as that set forth on the confirmation of such transaction pursuant to the requirements of subparagraph (a)(i)(F) of this rule; provided, however, that for purposes of this item (1), a security shall be deemed to have the same CUSIP number as that specified on the confirmation (a) if the number assigned to the security and the number specified on the confirmation differ only as a result of a transposition or other transcription error, or (b) if the number specified on the confirmation has been assigned as a substitute or alternative number for the number reflected on the security.

(2) A new issue security delivered by an underwriter who is subject to the provisions of rule G–34 shall have the CUSIP number assigned to the security imprinted on or otherwise affixed to the security.

(ii) Delivery Ticket. A delivery ticket shall accompany the delivery of securities. Such ticket shall contain the information set forth in subparagraphs (A), (B), (D) through (H), (M) and (O) of paragraph (a)(i) and, to the extent applicable, the information set forth in subparagraphs (A), (B), (C), (E), (F) and (G) of paragraph (a)(iii).

(iii) Units of Delivery. Delivery of bonds shall be made in the following denominations:

(A) for bearer bonds, in denominations of $1,000 or $5,000 par value; and

(B) for registered bonds, in denominations which are multiples of $1,000 par value, up to $100,000 par value.

Delivery of other municipal securities shall be made in the denominations specified on the confirmation as

* Arrows indicate new language.

required pursuant to paragraph (a)(iii) of this rule.

(iv) Form of Securities.

(A) Bearer and Registered Form. Delivery of securities which are issuable in both bearer and registered form shall be in bearer form unless otherwise agreed by the parties; provided, however, that delivery of securities which are required to be in registered form in order for interest thereon to be exempt from Federal income taxation shall be in registered form.

(B) Book-Entry Form. Notwithstanding the other provisions of this section (c), a delivery of a book-entry form security shall be made only by a book-entry transfer of the ownership of the security to the purchasing customer or a person designated by the purchasing customer. For purposes of this subparagraph a "book-entry form" security shall mean a security which may be transferred only by bookkeeping entry, without the issuance or physical delivery of securities certificates, on books maintained for this purpose by a registered clearing agency or by the issuer or a person acting on behalf of the issuer.

(v) Mutilated Certificates. Delivery of a certificate which is damaged to the extent that any of the following is not ascertainable:

(A) name of issuer;
(B) par value;
(C) signature;
(D) coupon rate;
(E) maturity date;
(F) seal of the issuer; or
(G) certificate number.

shall not constitute good delivery unless validated by the trustee, registrar, transfer agent, paying agent or issuer of the securities or by an authorized agent or official of the issuer.

(vi) Coupon Securities.

(A) Coupon securities shall have securely attached to the certificate in the correct sequence all appropriate coupons, including supplemental coupons if specified at the time of trade, which in the case of securities upon which interest is in default shall include all unpaid or partially paid coupons. All coupons attached to the certificates must have the same serial number as the certificate.

(B) Anything herein to the contrary notwithstanding, if securities are traded "and interest" and the settlement date is on or after the interest payment date, such securities shall be delivered without the coupon payable on such interest payment date.

(C) If delivery of securities is made on or after the thirtieth calendar day prior to an interest payment date, the seller may deliver to the purchaser a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, in an amount equal to the interest due, in lieu of the coupon.

(vii) Mutilated or Cancelled Coupons. Delivery of a certificate which bears a coupon which is damaged to the extent that any one of the following cannot be ascertained from the coupon:

(A) title of the issuer;
(B) certificate number;
(C) coupon number or payment date. (if either the coupon number or the payment date is ascertainable from the coupon, the coupon will not be considered mutilated); or
(D) the fact that there is a signature; or which coupon has been cancelled, shall not constitute good delivery unless the coupon is endorsed or guaranteed. In the case of damaged coupons, such endorsement or guarantee must be by the issuer or by a commercial bank. In the case of cancelled coupons, such endorsement or guarantee must be by the issuer or an authorized agent or official of the issuer, or by the trustee or paying agent.

(viii) Delivery of Certificates Called for Redemption. A certificate for which a notice of call has been published on or prior to the delivery date shall not constitute good delivery unless the securities are identified as "called" at the time of trade or the notice of call is applicable to the entire issue of securities. For purposes of this subparagraph an "entire issue of securities" shall mean securities of the same issuer having the same date of issue, maturity date and coupon rate.

(ix) Delivery Without Legal Opinions or Other Documents. Delivery of certificates without legal opinions or other documents legally required to accompany the certificates shall not constitute good delivery unless identified as "ex legal" at the time of trade.

(x) Insured Securities. Delivery of certificates for securities traded as insured securities shall be accompanied by evidence of such insurance, either on the face of the certificate or in a document attached to the certificate.

(xi) Endorsements for Banking or Insurance Requirements. A security bearing an endorsement indicating that it was deposited in accordance with legal requirements applicable to banking institutions or insurance companies shall not constitute good delivery unless it bears a release acknowledged before an officer authorized to take such acknowledgements and was designated as a released endorsed security at the time of trade.

(xii) Delivery of Registered Securities.

(A) Delivery to the Customer. Registered securities delivered directly to a customer shall be registered in the customer's name or in such name as the customer shall direct.

(B) Delivery to an Agent of the Customer. Registered securities delivered to an agent of a customer may be registered in the customer's name or as otherwise directed by the customer. If such securities are not so registered, such securities shall be delivered in accordance with the following provisions:

(1) Assignments. Delivery of a certificate in registered form must be accompanied by an assignment on the certificate or on a separate bond power for such certificate, containing a signature or signatures which correspond in every particular with the name or names written upon the certificate, except that the following shall be interchangeable; "and" or "&" "Company" or "Co."; "Incorporated" or "Inc."; and "Limited" or "Ltd.".

(2) Detached Assignment Requirements. A detached assignment shall provide for the irrevocable appointment of an attorney, with power of substitution, a full description of the security, including the name of the issuer, the maturity date and interest date, the bond or note number, and the par value (expressed in words and numerals).

(3) Power of Substitution. When the name of an individual or firm has been inserted in an assignment as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as a substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

(4) Guarantee. Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar.

(5) Form of Registration. Delivery of a certificate accompanied by the documentation required in this subparagraph (B) shall constitute good delivery if the certificate is registered in the name of:

(a) an individual or individuals;
(b) a nominee;
(c) a member of a national securities exchange whose specimen signature is on file with the transfer agent or any other municipal securities broker or municipal securities dealer who has filed specimen signatures with the transfer agent and places a statement to this effect on the assignment; or

(d) an individual or individuals acting in a fiduciary capacity.

(6) Certificate in Legal Form. Good transfer of a security in legal form shall be determined only by the transfer agent for the security. Delivery of a certificate in legal form shall not constitute good delivery unless the certificate is identified as being in such form at the time of trade. A certificate shall be considered to be in legal form if documentation in addition to that specified in this subparagraph (B) is required to complete a transfer of the securities.

(C) Payment of Interest. If a registered security is traded "and interest" and transfer of record ownership cannot be or has not been accomplished on or before the record date for the determination of registered holders for the payment of interest, delivery shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the interest.

(D) Registered Securities In Default. If a registered security is in default (i.e. is in default in the payment of principal or interest) and transfer of record ownership cannot be or has not been accomplished on or before the record date for the determination of registered holders for the payment of interest, an interest payment date having been established on or after the trade date, delivery shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the payment to be made by the issuer, unless the security is traded "ex-interest."

(d) No change.

[FR Doc. 84-10694 Filed 4-23-84; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, Massachusetts, will hold a public meeting at 9:30 a.m., Friday, May 4, 1984, in the District Director's Conference Room, 150 Causeway Street, 10th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call John J. McNally, Jr., District Director, U.S. Small Business Administration, 150 Causeway Street, Boston, Massachusetts 02114](617) 223-4074.

Dated: April 17, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-10895 Filed 4-23-84; 8:45 am]
BILLING CODE 8025-01-M

Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting at 9:30 a.m., Friday, May 25, 1984, at the Louisville District Office, 600 Federal Place, Room 188, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call B. R. Wells, District Director, U.S. Small Business Administration, P.O. Box 3517, Louisville, KY 40201—(502) 582-5971.

Dated: April 17, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-10896 Filed 4-23-84; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2124]

New Jersey; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Atlantic, Bergen, Essex, Monmouth, Morris, and Passaic in the State of New Jersey constitute a disaster loan area because of damage from severe storms, coastal storms, and flooding beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 11, 1984, and for economic injury until January 14, 1985, at:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Businesses with credit available elsewhere	11.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212406 for physical damage and for economic injury the number is 615800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 17, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-10897 Filed 4-23-84; 8:45 am]
BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting Requirements 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 reporting and recordkeeping requirements to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before May 28, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

COPIES: Copies of the proposed questionnaire, the request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St. NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538

OMB reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Information collection submitted for review:

Title: Innovations Embodied in BLS Technological Change Studies.

Frequency: One time, nonrecurring.

Description of respondents: Large and small business responsible for major technological innovations embodied in BLS technological change studies.

Annual responses: 3,600.
Annual burden hours: 108.
Type of request: New.

Dated: April 17, 1984.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-10698 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR § 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR § 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings, and to its forfeiture and penalty provisions.

Effective May 1, 1984 and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR § 107.301(c) is 12.735% per annum.

Dated: April 18, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-10694 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2125]

New York; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Nassau, Orange, Rockland, and Suffolk in the State of New York constitute a disaster loan area because of damage from severe storms, coastal storms, and flooding beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 18, 1984, and for economic injury until January 17, 1985, at: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212506 for physical damage, and for economic injury the number is 615900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 19, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-11018 Filed 4-23-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on May 10, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on March 16, 1984; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for March and April, 1984; (4) Consideration of Establishing New Special Committees; (5) Approval of FY-1985 Budget; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on April 9, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 10915 Filed 4-23-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 14, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are

filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 18, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of Relief Sought
24013	Hispanioloa Airways	14 CFR 91.303	To allow petitioner to operate Boeing 707/720 and DC-8 aircraft through December 31, 1987, in noncompliance with the operating noise limits.
23955	Aer Turas Teoranta	14 CFR 91.303	To allow petitioner to operate one DC-8-63F until June 30, 1985, in noncompliance with the operating noise limits.
24012	Trans Eastern Aviation	14 CFR 91.303	To allow petitioner to operate one DC-8-50 aircraft until December 31, 1988, in noncompliance with the operating noise limits.
23995	TAMPA Airlines, S.A.	14 CFR 91.303	To allow petitioner to operate Boeing 707 Stage 1 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23982	Independent Air, Inc.	14 CFR 91.303	To allow petitioner to operate two Boeing 720 and two Boeing 707 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23983	Aeronaves del Peru	14 CFR 91.303	To allow petitioner to operate three DC-8 aircraft until January 1, 1988, in noncompliance with the operating noise limits.
23987	Surinam Airways Ltd.	14 CFR 91.303	To allow petitioner to operate two DC-8 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23974	Premiere Airlines	14 CFR 91.303	To allow petitioner to operate three Stage I Boeing 707 aircraft until January 1, 1986, or until "hush kits" can be installed on the aircraft, whichever is later.
23991	Belair AG	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-63 aircraft until December 31, 1986, in noncompliance with the operating noise limits.
23975	ATASCO U.S.A.	14 CFR 91.303	To permit continued operation in the U.S. of ten DC-8-63 aircraft as Stage 1 aircraft until these aircraft can be modified to meet Stage 2 noise levels during 1985.
23940	Virgin Islands Air Service	14 CFR 91.303 & 91.305	To allow petitioner to operate three DC-8 aircraft in noncompliance with the operating noise limits.
23956	Worldwide Airlines	14 CFR 91.303	To allow petitioner to operate three Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" can be installed on the aircraft, whichever is later.
23984	Transportes Aero Rioplatense	14 CFR 91.303	To allow petitioner to operate two Boeing 707 until January 1, 1988, in noncompliance with the operating noise limits.
23989	Maryland Air Travel Club	14 CFR 91.303	To allow petitioner to operate one Boeing 720 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23988	Air Haiti	14 CFR 91.303	To allow petitioner to operate, under wet or dry lease, one Stage 1 four-engine aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23985	Air New Zealand	14 CFR 91.303	To allow petitioner to operate one DC-8 aircraft after December 31, 1984, in noncompliance with the operating noise limits.
23986	"Faucett"	14 CFR 91.303	To allow petitioner to operate six DC-8 Stage 1 aircraft until the aircraft can be replaced or modified to comply with Stage 2 noise levels.
23978	Airmark Corp.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" are installed, whichever is later.
24015	Iberia	14 CFR 91.303	To allow petitioner to operate DC-8 aircraft until March 15, 1985, in noncompliance with the operating noise limits.
23969	Eagle Aviation	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" are installed, whichever is later.
23959	Pakistan Int'l Airlines	14 CFR 91.303	To allow petitioner to operate Boeing 707 aircraft until July 1, 1986, in noncompliance with the operating noise limits.
23972	Air Tunagaru	14 CFR 91.303	To allow petitioner to operate one Boeing 707 aircraft until January 1, 1988, in noncompliance with the operating noise limits.
23977	Air France	14 CFR 91.303	To allow petitioner to operate one Boeing 727-200 until March 31, 1985, in noncompliance with the operating noise limits.
23968	American Travelair	14 CFR 91.303	To allow petitioner to operate one Boeing 720 after December 31, 1984, in noncompliance with the operating noise limits.
23967	Challenge Air Transport	14 CFR 91.303	To allow petitioner to operate one DC-8-63F in noncompliance with the operating noise limits until "hush kits" can be installed.
23976	Guyana Airways	14 CFR 91.303	To allow petitioner to operate one Boeing 707, in noncompliance with the operating noise limits, after January 1, 1985 until "hush kits" can be installed.
23973	Lloyd Aereo Bolivianao, S.A.	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until January 1, 1988, in noncompliance with the operating noise limits.
23953	Caribbean Air Cargo	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
24000	LACSA	14 CFR 91.303	To allow petitioner to operate two DC-8 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
24001	TAP Air Portugal	14 CFR 91.303	To allow petitioner to operate Boeing 707 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23994	Atlantic Richfield	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 in noncompliance with the operating noise limits until "hush kits" are installed.
24011	Connie Kalitta Services	14 CFR 91.303	To allow petitioner to operate DC-8 aircraft in noncompliance with the operating noise limits until "hush kits" are installed.
23981	Aeromar Airlines	14 CFR 91.303	To allow petitioner to operate DC-8 and Boeing 707 aircraft in noncompliance with the operating noise limits through December 31, 1987.
23979	Sterling Airways A/S	14 CFR 91.303	To allow petitioner to operate DC-8 aircraft in noncompliance with the operating noise limits until installation of "hush kits" expected during early 1985.
23990	Hawaiian Airlines	14 CFR 91.303	To allow petitioner to operate three DC-8 aircraft until December 31, 1987, in noncompliance with the operating noise limits.
23997	General Air Services	14 CFR 91.303	To allow petitioner to operate DC-8 and CV888 aircraft in noncompliance with the operating noise limits through December 31, 1987.
23996	Zantop Int'l Airlines	14 CFR 91.303	To allow petitioner to operate DC-8 aircraft beyond December 31, 1984, in noncompliance with the operating noise limits.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of Relief Sought
23999	Aerotransportes Entre Rios S.R.L.	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until January 1, 1988, in noncompliance with the operating noise limits.
23998	Florida West Airlines	14 CFR 91.303	To allow petitioner to operate one Boeing 707 in noncompliance with the operating noise limits until December 31, 1984, or one year after issuance of an STC for a "hush kit," whichever is later.
23992	Tradewinds Airway	14 CFR 91.303	To allow petitioner to operate three Boeing 707 aircraft until December 31 1987, in noncompliance with the operating noise limits.
23993	Sierra Trans Air	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 720 until December 31, 1987, in noncompliance with the operating noise limits.
24004	American Trans Air	14 CFR 91.303	To allow petitioner to operate eight Boeing 707 aircraft in noncompliance with the operating noise limits until "hush kits" can be installed.
24002	Air Transport Int'l	14 CFR 91.303	To allow petitioner to operate two DC-8-55 aircraft in noncompliance with the operating noise limits until "hush kits" can be installed.
24003	Northeastern Int'l	14 CFR 91.303	To allow petitioner to operate two DC-8 aircraft in noncompliance with the operating noise limits for a limited period of time.
24025	Systems Analysis & Research Corp., and AVMARK	14 CFR 91.303	To allow the continued operation of four-engined aircraft until December 31, 1987, in noncompliance with the operating noise limits.
24024	VARIG, S.A.	14 CFR 91.303	To allow petitioner to operate Boeing 707-320C aircraft though December 31, 1987, in noncompliance with the operating noise limits.
23919	Clinton Aviation Group, Inc.	14 CFR 135.261(b)	To permit petitioner to operate its helicopters in a helicopter hospital emergency medical evacuation service without complying with certain duty time limitations.
23728	Houston Helicopters, Inc.	14 CFR SFAR 29-4	To amend Exemption 3903 which would eliminate the condition that each crewmenber who operates under the authority of the exemption must have been previously authorized to operate a Bell 212 aircraft under SFAR 29 prior to March 2, 1983.
22631	Air Care/ Executive Air Taxi Corp.	14 CFR 135.261	To extend Exemption 3603 which expires June 30, 1984, to allow petitioner to continue to use a helicopter in hospital emergency medical evacuation service without complying with the duty-time limitations.
23965	Rolls Royce Limited	40 CFR 87.21 & SFAR 27, § 9b	To exempt up to a maximum total of 200 of the petitioner's engines manufactured after January 1, 1984, from the standards under 40 CFR § 87.21(d)(1) without any numerical limitation in any single year of manufacture. The engines for which the exemption is requested are Rolls Royce Spey engines manufactured under Type Certificate No. E2 EU. Petitioner cites severe adverse economic impact under 40 CFR § 87.7(c).,
20334	Evergreen Helicopters, Inc.	14 CFR 135.261(b)	To amend Exemption 3886 to extend the exemption to apply to all of petitioners wholly owned subsidiaries. The exemption allows the operation of helicopters in emergency hospital medical evacuation service without meeting the flight and duty-time limitations.
20417	Floyd M. Hornstad	14 CFR 121.383(c)	To allow petitioner to serve as an airline pilot after reaching his 60th birthday.
22873	Lineas Aereas Costarricenses, S.A.	14 CFR Parts 21 & 91	To permit petitioner to operate a leased U.S.-registered DC-8-55f aircraft using a FAA-approved master minimum equipment list and inspection and maintenance program.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23784	Royal American Airways	14 CFR 121.291	To permit petitioner to increase the passenger seats on the 700 series Viscount aircraft to 60 without conducting a demonstration of emergency evacuation procedures. *Denied 3/30/84.*
23801	Globe Air, Inc	14 CFR 135.159(a)(b) and (c)	To permit petitioner to operate its helicopters, which weigh in excess of 6,000 pounds, under VFR day and night, without a gyroscopic rate-of-turn indicator, combined with a slip skid indicator, a gyroscopic bank-and-pitch indicator, and a gyroscopic direction indicator. *Denied 3/30/84.*
23874	Flight Line, Inc.	14 CFR 135.244, (a)(1), (2), and (3)	To permit petitioner to use pilots in commuter operations who do not have the required number of hours of operating experience. *Denied 4/2/84.*
23902	Eli Lilly Int'l. Corp	14 CFR 61.57(d)	To permit petitioner's pilots to act as pilot in command of an aircraft carrying passengers at night without making three takeoffs and three landings to a full stop within the proceeding 90 days. *Denied 4/5/84.*
23884	Crescent Airfreight, Ltd	14 CFR 135.261(b)	To permit a flight crewmember to accept an assignment for duty in scheduled air freight transportation for no more than 8 hours during any 24 consecutive hours without a rest period at or before the end of that 8 hours, equal to twice the number of hours of duty aloft since the last rest period, but not less than 8 hours. *Denied 4/10/84.*
18623	St. Louis Helicopter Airways, Inc.	14 CFR 135.261(b)	To extend Exemption 2700B which permits petitioner to operate a helicopter in hospital emergency medical evacuation service without meeting the duty time limitations of that section, subject to certain conditions. *Partial grant 3/29/84.*
20894	Trans-Colorado Airlines, Inc	14 CFR 135.181(a)(2)	To amend Exemption 3078A to add an additional route over which Trans-Colorado is permitted to operate certain aircraft under instrument flight rules or visual flight rules over-the-top using manufacturer's approved performance data, subject to conditions and limitations. *Granted 4/2/84.*
23077	Trinidad & Tobago Airways Corp.	14 CFR Portions of Parts 21 & 91	To extend Exemption 3578, which terminates 6/30/84, to permit petitioner to operate a leased U.S.-registered L1011 aircraft using an FAA-approved minimum equipment list and continuous inspection and maintenance program subject to certain limitations. *Partial grant 4/5/84.*
23909	Freedom Helicopters, Inc.	14 CFR 135.261	To permit petitioner to operate its helicopters in hospital emergency service without complying with certain duty-time limitations of that section. *Granted 4/5/84.*
21275	Air Florida	14 CFR 91.307	To amend Exemption No. 3116b to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 2 B-737-200: EI-ASF, & PHTVH & 2 B-737-100:N40AF, & N42AF. *Granted 4/5/84.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23944	Orion Lift Service	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 DC-9-15F: N1307T. *Granted 3/29/84.*
23966	TACA Int'l. Airlines S.A	14 CFR 91-307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 2 BAC-1-11: YS17C, YS18C. *Granted 4/6/84.*
23495	The Department of the Army	14 CFR 91.73(a) & (b)	To conduct tactical night vision flight training without lighted external aircraft lights. *Granted 4/5/84.*
23876	Owens-Illinois	14 CFR Portions of Parts 21, 43, & 91	To permit petitioner to operate two G159, N900 and N901G; and two G1159, N902 and N903G aircraft using an FAA-approved minimum equipment list. *Granted 4/10/84.*
22706	Bankair, Inc	14 CFR 135.225(e)(1)	To extend Exemption 3553, which expires 6/30/84, to permit petitioner's pilots to operate from Myrtle Beach Air Force Base and Beaufort Marine Corps Air Station using takeoff visibility minimums which are less than 1 mile and are equal to or greater than the landing visibility minimums for these airfields subject to certain conditions. *Granted 4/12/84.*
22822	T.B.M., Inc	14 CFR 91.45	To extend Exemption 3562, which expires June 30, 1984, to permit petitioner and its subsidiary, Butler Aircraft Co., to conduct ferry flights with one engine inoperative on their DC-6, DC-7, and DC-7B aircraft, without obtaining a special flight permit for each flight. *Granted 4/12/84.*

[FR Doc. 84-10917 Filed 4-23-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir. Public Debt Series—No. 11-84]

Treasury Notes of April 30, 1986; Series T-1986

Washington, April 19, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of April 30, 1986, Series T-1986 (CUSIP No. 912827 QS 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated April 30, 1984, and will bear interest from that date, payable on a semiannual basis on October 31, 1984, and each subsequent 6 months on April 30 and October 31 until the principal becomes payable. They will mature April 30, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, April 25, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 24, 1984, and received no later than Monday, April 30, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished.

Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, April 30, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 26, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, April 30, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public

announcement of such changes will be promply provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-11140 Filed 4-20-84; 4:06 pm]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 11 (Rev. 14)]

Delegation of Authority; District Counsel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This order revises the dollar limitations regarding authority to accept offers in compromise and will permit redelegation of Regional Counsel's rejection authority to District Counsel. The text of the delegation order appears below.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Grant A. Newman, OP:C:O, 1111 Constitution Avenue, N.W., Room 7539, Washington, D.C. 20224, 202-566-4998 (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Grant a Newman,

Director, Office of Field Operations.

Order No. 11 (Rev. 14)

Effective date: 4-13-84

Authority To Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order Nos. 150-25 and 150-36, 26 CFR 301.7122-1 and 26 CFR 301.7701-9, and Treasury Department Order No. 150-60 is hereby delegated as follows:

1. Regional Commissioners of Internal Revenue and Regional Counsel are delegated authority, under Section 7122 of the Internal Revenue Code to accept offers in compromise in cases in which, the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $250,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. This authority may not be redelegated.

2. District Directors, Assistant District Directors, Regional Counsel, Regional Directors of Appeals, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, penalty, additional amount or addition to tax) is less than 250,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegation to District Directors and Assistant District Directors may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to Division Chief. The District Director in a streamlined district may not redelegate this authority. The authority delegated to Regional Counsel may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to District Counsel. Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority

3. Service Center Directors and Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, in cases in which the unpaid liability is less than $250,000, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated, but not lower than to Division Chief.

4. Delegation Order No. 11 (Rev. 13), effective March 21, 1982, is superseded.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 84-11019 Filed 4-23-84; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed reinstatements and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20403, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 17, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

REINSTATEMENTS

1. Department of Medicine and Surgery
2. Appraisal of Applicant
3. VA Form 10-341a
4. Reporting requirement
5. Individuals or households, Non-profit institutions
6. 37,200 responses
7. 9,325 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Disability Benefits Questionnaire
3. VA Form 29-8313
4. On occasion
5. Individuals or households
6. 102,000 responses
7. 15,300 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Supplemental to Insurance Medical Application
3. VA Form 29-352a
4. On occasion
5. Individuals or households
6. 5,000 responses
7. 416 hours
8. Not applicable

[FR Doc. 84-10943 Filed 4-23-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 80
Tuesday, April 24, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Energy Regulatory Commission	1
Federal Reserve System	2
Federal Mine Safety and Health Review Commission	3

1

FEDERAL ENERGY REGULATORY COMMISSION

April 19, 1984.

TIME AND DATE: 10:00 a.m., April 26, 1984.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone: (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

790th Meeting—April 26, 1984, Regular Meeting (10:00 a.m.)

CAP-1: Project No. 4627-002, Albert R. and Betty F. Hunt
CAP-2: Project No. 7297-001, City of Buena Park
CAP-3: Project No. 3552-004, Oakdale Irrigation District and South San Joaquin Irrigation District
CAP-4: Project No. 6311-001, Western Hydro Electric, Inc.
CAP-5: Project No. 2893-001, BSR Company, Inc.
CAP-6: Project No. 6954-002, Hydro Power Development, Inc.
CAP-7: Project No. 2866-002, Metropolitan Sanitary District of Greater Chicago
CAP-8: Project No. 2845-001, Idaho Power Company
CAP-9: Project No. 4770-002, Wells River Hydro Associates
CAP-10:
Project No. 3493-003, Town of Summersville, West Virginia
Project No. 8170-000, Southeastern Renewable, Resources, Inc.
CAP-11:
Project No. 7010-001, Xenophon Enterprises
Project No. 7332-000, MGH Power Company
CAP-12:
Docket No. ER82-704-001, Central Louisiana Electric Company, Inc.
Docket No. EL83-8-001, Cajuan Electric Power Cooperative, Inc. v. Central Louisiana Electric Company, Inc.
CAP-13: Docket Nos. ER84-177-001 and ER84-177-002, Duke Power Company
CAP-14: Docket Nos. ER81-179-018 and ER81-179-019 (Phase I), Arizona Public Service Company
CAP-15: Docket Nos. ER83-138-005 Cleveland Electric Illuninating company
CAP-16: Docket No. ER84-305-000, Puget Sound Power & Light Company
CAP-17: Docket No. ER84-307-000, Missouri Public Service Company
CAP-18: Docket No. ER81-620-003, Public Service Company of New Hampshire
CAP-19: Docket No. ER82-481-000, Arizona Public Service Company
CAP-20: Docket Nos. QF84-170-000, QF84-171-000, QF84-172-000 and QF84-173-000, Cogentrix of North Carolina, Inc.
CAP-21: Docket Nos. QF83-320-000, and QF83-321-000, Rumford Falls Power Company
CAP-22: Docket No. ID-2073-000, Margaret M. Stapleton
CAP-23: Docket No. ER83-487-000, South Carolina Electric & Gas Company
CAP-24: Docket Nos. ER83-418-003, ER84-79-001, ER84-80-001, ER84-81-001 and ER84-188-001, Kansas Power & Light Company
CAP-25: Docket Nos. ER81-177-000 (Phase 111) and ER82-427-003, Southern California Edison Company
CAP-26: Project No. 7467-001, Southern California Edison Company
CAP-27: Docket No. ES84-26-000, Pacific Power & Light Company

Consent Misscellaneous Agenda

CAM-1: Docket No. RM83-34-000, Application for Authority to Hold Interlocking positions requiring Approval Under Section 305(b) of the Federal Power Act
CAM-2: Docket No. RM79-3-004, Identification of State and Federal Jurisdicational Agencies
CAM-3: Docket No. RM79-76-210 (Kentucky-2), High-Cost Gas Produced From Tight Formations
CAM-4: Docket No. RM79-76-134 (West Virginia-2), High-Cost Gas Produced From Tight Formations
CAM-5: Docket No. GP83-6-001, Colorado oil and Gas Conservation Commission, Section 107 NGPA Determination Davis Drilling, Inc., Baughman Farms No. 1-5 well, et al, Colorado Docket Nos. 81-761, et al., J.D. Nos. 82-22170, et al.
CAM-6: Docket No. GP84-4-000, United Gas Pipeline Company
CAM-7: Omitted
CAM-8:
(A) Docket No. GP83-55-000, Northwest Central Pipeline Corporation
(B) Docket No. GP84-1-000, Northwest Central Pipeline Corporation
(C) Docket No. GP84-16-000, Northwest Central Pipeline Corporation
CAM-9: Docket No. RA81-45-000, Southland Oil Company/VGS Corporation
CAM-10:
(A) Docket No. RA82-6-000, Farmers Union Central Exchange, Inc.
(B) Docket No. RA82-6-000, Farmers Union Central Exchange, Inc.

Consent Gas Agenda

CAG-1: Docket No. RP84-62-000, Montana-Dakota Utilities Company
CAG-2: Docket No. RP84-63-000, Mississippi River Transmission Corporation
CAG-3: Docket Nos. RP83-30-015 and RP84-51-000, Transcontinental Gas Pipe Line Corporation
CAG-4: Docket No. TA84-2-29-000 (PGA84-2), Transcontinental Gas Pipe Line Corporation
CAG-5: Docket No. TA84-1-53-012 and 013 (PGA84-1c and PGA84-1d), K N Energy, Inc.
CAG-6: Docket No. TA84-2-46-000 (PGA84-2), Kentucky West Virginia Gas Company
CAG-7: Docket No. TA84-2-47-001 (PGA84-2), MIGC, Inc.
CAG-8: Docket No. TA84-2-48-000 (PGA84-2), ANR Pipeline Company
CAG-9: Docket No. TA84-2-49—000 (PGA84-2), Montana Dakota Utilities Company
CAG-10: Docket No. TA84-2-50-000 (PGA84-2), Valley Gas Transmission, Inc.
CAG-11: Docket No. TA84-2-52-000 (PGA84-2), Western Gas Interstate Company
CAG-12: Docket No. RP84-61-000 (PGA84-2), National Fuel Gas Supply Corporation
CAG-13: Docket No. TA84-1-26-004, Natural Gas Pipeline Company of America
CAG-14: Docket No. TA84-1-59-002, Northern Natural Gas Company Division of Internorth, Inc.
CAG-15: Docket No. TA84-1-18-005, Texas Gas Transmission Corporation
CAG-16: Docket No. TA84-2-33-000, El Paso Natural Gas Company
CAG-17: Docket No. TA84-2-62-000, Pacific Offshore Pipeline Company
CAG-18: Docket No. TA84-2-42-000, Transwestern Pipeline Company
CAG-19: Docket No. RP80-136-000, Southern Natural Gas Company
CAG-20: Docket No. RP81-49-011, Natural Gas Pipeline Company of America
CAG-21: Docket Nos. TA82-2-33-000, and TA83-1-33-000 (Affiliated Entities), El Paso Natural Gas Company
CAG-22: Docket No. RP83-69-000, High Island Offshore System

CAG–23: Docket No. RP83–27–000, ANR Pipeline Company
CAG–24: Docket Nos. RP82–87–000, RP82–13–007, RP83–63–003 and RP83–105–002, National Fuel Gas Supply Corporation
CAG–25: Docket No. ST84–212–000, Consumers Power Company
CAG–26:
Docket No. RI76–31–001, Tenneco Oil Company (Operator), et al. (Agent For TEMA Oil Company and Ashland Oil, Inc.)
Docket Nos. RI80–13–001 and 002 (Consolidated), Amoco Production Company
CAG–27: Docket Nos. RI74–188–031 and RI75–21–026, Independent Oil & Gas Association of West Virginia
CAG–28:
Docket No. CI73–845–002, Cities Service Oil & Gas Corporation
Docket No. CI84–202–001, Phillips Oil Company
Docket No. CI84–203–001, Phillips Oil Company
Docket No. CS66–107–002, Hamon Oil Company (Jake L. Hamon)
CAG–29:
Docket No. CS84–14–003, Coalinga Corporation
Docket No. CI84–46–002, Benedum Trees Oil Company
CAG–30: Omitted
CAG–31:
Docket No. CI73–454–000, Texas Production Company
Docket No. CI73–455–000, Pinto, Inc.
Docket No. CI73–456–000, ECEE, Inc.
CAG–32:
Docket No. CI83–269–013, 015 and 016, Tenneco Oil Company, et al.
Docket Nos. RP83–11–019, 020, and CP83–428–001 and 015, Transcontinental Gas Pipe Line Corporation, et al.
Docket Nos. CP83–502–005 and 006, Tennessee Gas Pipeline Company
Docket Nos. CP83–452–007 and 008, Columbia Gas Transmission Company
Docket No. CP83–333–000 and 003, et al., Panmark Gas Company, et al.
CAG–33: Docket No. CP83–520–002, Transcontinental Gas Pipe Line Corporation
CAG–34: Docket Nos. CP82–125–000, 001, 002 and 005, CP82–385–001, Transcontinental Gas Pipe Line Corporation
CAG–35: Docket No. CP75–104–032, High Island Offshore System
CAG–36: Docket No. CP84–100–000, Kentucky West Virginia Company
CAG–37: Docket No. CP 84–148–000, Valero Interstate Transmission Company
CAG–38: Docket No. CP84–23–000, Tennessee Gas Pipeline Company, A Division of Tenneco Inc.
CAG–39: Docket No. TA84–1–46–000, Kentucky-West Virginia Gas Company
CAG–40: Docket Nos. RP82–58–004, RP78–62–000, RP80–78–000, TA82–2–28–000, TA83–1–28–000, TA83–2–28–000 and TA83–2–28–005, Panhandle Eastern Pipe Line Company

I. Licensed Project Matters

CAG–P–1:
Project Nos. 3524–001, 002 and 004, Western Water Power, Inc.
Project No. 3950–001, Energencics Systems, Inc.
Project No. 4399–001, Yuma County Water Users Association
Project Nos. 4411–001 and 002, city of McFarland, California
Project No. 4420–001, Imperial Irrigation District
P–2:
Project No. 3654–001, Pacific Hydro, Inc. and city of Tenino, Washington
Project Nos. 4441–001 and 002, Pacific Power and Light Company
Project No. 4702–000, city of Centralia, Washington
P–3:
Project No. 3749–000, Mitex, Inc.
Project No. 4210–000, Energenics Systems, Inc.
Project No. 5006–000, Central Montana Electric Generation and Transmission Cooperative, Inc.

Power Agenda

II. Electric Rate Matters

ER–1: Docket No. ER84–232–001, Arizona Public Service Company
ER–1: Docket No. QF83–440–000, Abbott Energy, Inc.
ER–3: Omitted

Miscellaneous Agenda

M–1: Reserved
M–2: Reserved
M–3: Docket No. RM83–1–000, Rules of Practice and Procedure: Reconsideration of Initial Decisions
M–4: Docket Nos. RM83–25–000, RM79–65–000, RM79–32–000 and RM78–17–000, Clarification of the Rules of Practice and Procedures; Establishment of Final Adjustment Procedures and Rules on NGPA Interpretations
M–5: Docket No. RM84–12–000, Revisions to PGA and Refund Regulations
M–6: Docket No. RM84–6–000, Refunds Resulting From Btu Measurement Adjustments
M–7 (A):
Docket No. GP80–24–000, Transcontinental Gas Pipe Line Corporation
Docket No. GP80–11–000, Columbia Gas Transmission Corporation
Docket No. GP80–15–000, Michigan Wisconsin Pipe Line Company
Docket No. GP80–23–000, Texas Gas Transmission Corporation
Docket No. GP80–16–000, Mid-Louisiana Gas Company
Docket No. GP80–17–000, Mississippi River Transmission Corporation
Docket No. GP80–5–000, Natural Gas Pipeline Company of America
Docket No. GP80–19–000, Panhandle Eastern Pipe Line Company
Docket No. GP80–33–000, South Texas Natural Gas Company
Docket No. GP80–20–000, Tennessee Gas Pipeline Company
Docket No. GP80–22–000, Texas Gas Pipeline Corporation
Docket No. GP80–25–000, Transwestern Pipeline Company
Docket No. GP80–26–000, Trunkline Gas Company
Docket No. GP80–41–001, United Gas Pipe Line Company
Docket No. GP80–42–000, Sea Robin Pipeline Company
Docket No. GP80–36–000, Northwest Pipeline Company
Docket No. GP80–32–000, Montana-Dakota Utilities Company
Docket No. GP80–21–000, Texas Eastern Transmission Corporation
Docket No. GP80–8–000, Arkansas Louisiana Gas Company
Docket No. GP80–28–000, Cimarron Transmission Company
Docket No. GP80–31–000, Cities Service Gas Company
Docket No. GP80–8–000, Colorado Interstate Gas Company
Docket No. GP80–45–000, Eastern Shore Natural Gas Company
Docket No. GP80–40–000, El Paso Natural Gas Company
Docket No. GP80–29–000, Florida Gas Transmission Company
Docket No. GP80–13–000, Kansas-Nebraska Natural Gas Company
Docket No. GP80–30–000, Mountain Fuel Supply Company
M–7 (B): Docket No. GP80–23–000, Texas Gas Transmission Corporation
M–7 (C):
Docket No. GP80–15–000, Michigan-Wisconsin Pipe Line Company
Docket No. GP80–24–000, Transcontinental Gas Pipe Line Corporation
Docket No. GP80–29–000, Florida Gas Transmission Company
Docket No. GP80–41–000, United Gas Pipe Line Company
M–7 (D): Docket No. GP80–19–000, Panhandle Eastern Pipeline Company
M–7 (E): Docket Nos. GP80–41–002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 022, 024, 027 and 028, United Gas Pipeline Company
M–7 (F): Docket No. GP80–24–001, Transcontinental Gas Pipe Line Corporation

Gas Agenda

I. Pipeline Rate Matters

RP–1: Docket No. TA84–1–28–003, Panhandle Eastern Pipe Line Company
RP–2: Docket Nos. ST82–319–003 and 004, CP82–361–003 and 004, Tennessee Gas Pipeline Company
RP–3: Omitted
RP–4: Docket Nos. RP80–102–005 and RP81–86–002 (Zoning and Cost Classification), Southern Natural Gas Company
RP–5: Docket No. RP78–78–001 (Abandoned Projects), Natural Gas Pipeline of America
RP–6: Omitted

II. Producer Matters

CI–1. Docket No. RI77–32–003, Disputed Zone Offshore Louisiana

III. Pipeline Certificate Matters

CP–1: Omitted

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–11054 Filed 4–20–84; 10:51 am]

BILLING CODE 6717–01–M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 30, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computer equipment within the Federal Reserve System for contingency planning.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: April 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–11128 Filed 4–20–84; 3:53 pm]

BILLING CODE 6210–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 18, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, April 25, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, ex rel. Roy Logan v. Bright Coal Company, Inc., and Jack Collins, Docket No. KENT 81–162–D. (Issues include whether the administrative law judge erred in concluding that the Secretary would be required to disclose to the respondents certain investigating material.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84–11091 Filed 4–20–84; 2:25 pm]

BILLING CODE 6735–01–M

federal register

Tuesday
April 24, 1984

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Research; Proposed Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205, on June 1, 1984 from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public on June 1 from 9:00 a.m. to approximately 3:30 p.m. to discuss:

Report of the Working Group on Release into the Environment;
Guidelines for submission of proposals to Plant Working Group and RAC;
Amendment of Guidelines;
Consideration of experiments requiring review by RAC; and
Other matters to be considered by the Committee.

Attendance by the public in the open portion of the meeting will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the chairman.

In accordance with provisions set forth in Section 552b(c)(4), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately one hour and a half for the review, discussion, and evaluation of two proposals from commercial concerns for field testing of recombinant organisms. It is anticipated that this will occur from approximately 3:30 p.m. to 5:00 p.m. on June 1. The proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a late date.

Dated: April 10, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Fedeal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR. Doc. 84–10666 Filed 4–23–84; 8:45 am]
BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the NIH guidelines for research involving recombinant DNA molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 1, 1984, the Director of the National Institute of Allergy and Infectious Diseases will issue decisions on these proposals in accord with the guidelines.

DATE: Comments must be received by May 24, 1984.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business May 29, 1984, will be reproduced and distributed to the RAC for considerations at its June 1, 1984, meeting.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the guidelines for research involving recombinant DNA molecules.

I. Proposed Amendment of Procedures for Scale-Up of Organisms Listed in Appendix C

In May 1983, Dr. Irving S. Johnson of Eli Lilly and Company proposed that procedures be modified for experiments involving more than 10 liters of culture of "exempt" organisms listed in Appendix C of the NIH guidelines for research involving recombinant DNA molecules. In September 1983, Dr. Max Marsh of Lilly Research Laboratories offered an alternate modification of Appendix C and requested it be referred to the RAC Large-Scale Review Working Group. The proposals were reviewed by the RAC at its September 19, 1983, meeting and referred to the Large-Scale Review Working Group. The RAC Large-Scale Review Working Group met on February 7, 1984. After evaluating data and discussing the issues, the Large-Scale Review Working Group proposed the following modifications to the guidelines:

1. In Appendix K–II–D of Appendix K–II, *Pl–LS Level,* the word "minimize" would be substituted for "prevent." Appendix K–II–D would read as follows:

Appendix K–II–D. Exhaust gases removed from a closed system or other primary containment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms containing recombinant DNA molecules to the environment.

2. The second paragraph of Appendix C–II, *Experiments Involving E. coli K–12 Host-Vector Systems;* Appendix C–III, *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems;* and Appendix C–IV, *Experiments Involving Bacillus subtilis Host-Vector Systems;* would be modified to read as follows:

For these exempt laboratory experiments, Pl physical containment conditions are recommended.

3. A paragraph would be added following the second paragraph of Appendix C–II, Appendix C–III, and Appendix C–IV. That paragraph would read as follows:

For large-scale fermentation experiments Pl–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of Pl–LS requirements as outlined

in Appendix K–II–A through K–II–F is permitted.

4. A reference to Appendix C would be added to the fourth sentence of Appendix K–I, *Selection of Physical Containment Levels*. That sentence would read as follows:

The P1–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require P1 containment at the laboratory scale (See Appendix C).

As a possible substitute, NIH staff proposes the following alternate modification of Appendix K–I, *Selection of Physical Containment Levels*. The following sentence would be added following the fourth sentence of Appendix K–I, *Selection of Physical Containment Levels*:

(The P1–LS level of physical containment is recommended for large-scale research or production of viable organisms for which P1 is recommended at the laboratory scale such as those described in Appendix C).

II. Proposal to Clone Shiga-Like Toxin Gene From E. coli

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) in collaboration with Dr. Randall Holmes (USUHS) proposes to clone in *Escherichia coli* K–12 the structural gene of the Shiga-like toxin of *E. coli*. Shiga-like toxin has activity similar to the activity of *Shigella dysenteriae* toxin.

In a first submission in September 1982, the investigators proposed to clone the Shiga-like toxin gene in *E. coli* EK1 host-vector systems using plasmid, cosmid, or lambda cloning vectors. In support of their proposal, Drs. O'Brien and Holmes offered the following arguments:

1. Clinical isolates of *E. coli* have already been demonstrated to elaborate large amounts of toxin indistinguishable from that produced by *Shigella dysenteriae* 1 (Shiga). Therefore, the genes for Shiga-like toxin production are present in the *E. coli* gene pool found in nature.

2. Human volunteers fed large numbers of *Shigella dysenteriae* 1 organisms that produced Shiga toxin but could not colonize the bowel did not become ill. Therefore, any accidential ingestion of the organism to be manufactured, a toxin-producing *E. coli* K–12 strain that cannot colonize the human intestinal tract, would pose little hazard to man.

3. Purification of Shiga toxin in several laboratories and *E. coli* Shiga-like toxin in the investigators' laboratory has not identified any excessive risk from the aerosolization of toxin that probably occurs during the process of toxin preparation. In one laboratory, toxin was isolated from 500 liters of culture with only P1 physical containment.

4. Shiga toxin is a potent cytotoxin for a subline of HeLa cells (a human cervical carcinoma tissue culture cell line), but the toxin has no effect on many other human, monkey, and rodent tissue culture cells. Therefore, the toxin is quite cell-type specific, and this limited spectrum of activity suggests that it would be non-toxic for most cells in the human body.

5. Contrary to the old literature, Shiga toxin is not a neurotoxin. By 1955, it was established that the paralysis observed in rabbits and mice (but not monkeys, guinea pigs, hamsters, or rats) when toxin is given intravenously is a reflection of the effect of toxin on the endothelium of small blood vessels, not a direct effect on nerve cells.

The request was summarized in the **Federal Register** of September 22, 1982 (47 FR 41924). The RAC discussed the request submitted by Dr. O'Brien at the October 25, 1982, meeting. The committee by a vote of twelve in favor, none opposed, and one abstention, recommended that the initial experiments be performed under P4 + EK1 containment conditions. The NIH accepted the RAC recommendation that P4 + EK1 containment is adequate to contain safely the experiments proposed by Drs. O'Brien and Holmes and appropriate language was added to Appendix F of the Guidelines.

In December 1983, Drs. O'Brien and Holmes requested reconsideration of containment levels in veiw of information which had recently become available. The requested approval at the P2 level of physical containment for the following reasons:

1. Epidemiology studies have been performed on over 150 *E. coli* strains isolated from human and animal stools. These studies have shown that the majority (80%) of the strains made detectable levels of Shiga-like toxin. Moreover, four of four substrains of the well-characterized bacterium *E. coli* K–12 were shown to make low levels of the toxin. Thus, cloning of the Shiga-like toxin gene from clinical isolates of *E. coli* into laboratory strains of *E. coli* K–12 will not involve the introduction of a "foreign" toxin into the organism.

2. Production of low levels of Shiga-like toxin was observed in 2 of 15 normal human gut flora *E. coli* strains from asymptomatic infants.

3. Strains of *Vibrio cholerae* and *Vibrio parahaemolyticus* were tested and shown to produce Shiga-like toxin. Thus, the gene(s) for Shiga-like toxin are present in naturally occurring isolates of the family *Vibrionaceae* and not restricted to the *Enterobacteriaceae*. In volunteer studies, some of the strains of *V. cholerae* that produce Shiga-lie toxin did not cause disease. Therefore, the ability to produce Shiga-like toxin is not equivalent with virulence in humans challenged by the oral route.

4. Phages from two clinical isolates of *E. coli* have been shown to control high-level production of Shiga-like toxin in *E. coli* K–12 host strains by phage conversion. Thus, either the structural gene(s) for the Shiga-like toxin or regulatory genes that control high-level production of the toxin are present on wild-type phages from clinical isolates of *E. coli*. In this sense, "cloning" of genes that affect production of Shiga-like toxin onto phage genomes has already occurred in nature.

In additon, the U.S. Cholera Panel of the National Institute of Allergy and Infectious Diseases (NIAID) recommended that NIH reconsider the ban:

* * * on Shiga toxin cloning experiments in containment facilities other than P4. This strict requirement will prevent most laboratories from deleting the Shiga gene from candidate *V. cholerae* and ETEC vaccine strains. Shiga toxin is now found in many nonpathogenic *E. coli*, including the common vector host, *E. coli* K–12.

The proposal was published in the January 5, 1984, **Federal Register** (49 FR 696). The RAC reviewed the proposal of Drs. O'Brien and Holmes at the February 6, 1984, meeting. By a vote of nine in favor, five opposed and four abstentions, the RAC recommended that Drs. O'Brien and Holmes and coworkers be allowed to proceed with cloning the gene for Shiga-like toxin under P2 physical containment conditions in *E. coli* K–12, restricted to using EK2 plasmid vectors, commencing first with the use of pBR325 and pBR322, and proceeding to other EK2 plasmid vectors only if those are unsatisfactory.

By a vote of eight in favor, four opposed, and five abstentions, the RAC passed the same motion but with the names of the investigators deleted from the motion.

It has been the practice of NIH not to accept RAC recommendations that do not indicate a clear concensus. Accordingly, NIH did not accept the RAC recommendations offered at the February 6, 1984, meeting. The investigators have approval, however, to conduct these experiments at the P4 level of containment under their previous permission which appears in

the Guidelines (48 FR 24569) under Appendix F–IV–H.

In a letter dated April 4, 1984, Drs. O'Brien and Holmes have now asked the RAC to address the following specific issues:

1. That the containment conditions required for cloning of the intact strutural gene(s) for Shiga-like toxin of *E. coli* into *E. coli* K–12 be reduced from P4 + EK1 to P3 + Ek1.

2. If the investigators are successful in cloning the structural gene(s) for Shiga-like toxin and if they can document that the amount of toxin produced by the clones is no greater than the amount made by highly toxinogenic clinical isolates of *E. coli* (i.e., approximately 10^7 50% cytotoxic doses/mg protein in cell lysates and 10^6 50% cytotoxic doses/ml in culture supernatants when bacteria are grown in iron-depleted glucose syncase media), they request permission to remove such clones from the original containment conditions and to perform subsequent work with them under P1 + K1 conditions.

3. If they can identify nontoxinogenic fragments of the structural gene(s) for Shiga-like toxin, the investigators request permission to:

a. Romove any such cloned nontoxic fragments (generated during the search for clones that contain intact toxin structural genes) from the original containment conditions to work with them under P1 + EK1 conditions; and

b. Directly clone any such nontoxic fragments into *E. coli* K–12 under P1 + EK1 conditions.

4. If the structural gene for Shiga-like toxin is shown to be present in a specific bacteriophage genome and its physical location is determined, then they request permission to:

a. Remove from the original containment conditions any clones of fragments of phage genome (generated during the process of obtaining cloned toxin structural genes) that do *not* correspond to toxin structural genes and to work with them under P1 + EK1 conditions; and

b. Directly clone any fragments of the phage genome that do not correspond to toxin structural genes into *E. coli* K–12 under P1 + EK1 conditions.

5. If in future experiments the investigators can isolate nontoxinogenic alleles of the structural gene(s) for Shiga-like toxin by transposonmediated mutagenesis (insertional inactivation) or by chemical mutagenesis, they request permission to clone these nontoxinogenic alleles of the toxin structural gene(s) into *E. coli* K–12 under P1 + EK1 conditions.

Dr. O'Brien and coworkers have supplied additional data in support of these requests which are available from ORDA.

III. Proposed Guidelines for Submission Under Appendix L

Appendix L of the Guidelines specifies conditions under which certain plants may be approved for "release into the environment" including field tests. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiments to NIH, review by the RAC Plant Working Group, and specific approval by NIH.

A RAC Working Group has now prepared draft submission guidelines for individuals preparing proposals under Appendix L of the Guidelines. This proposed guidance is as follows:

Items for Consideration to be Included in Proposal Submissions Under Appendix L

These annotated items were presented for consideration by prospective proposal submitters to facilitate the process of approval. The Working Group has found that the proposals so far submitted for their consideration have omitted information that is considered minimal and essential for their approval. Basically, the group would like to see detailed objectives, materials, and methods, including methodology for monitoring the experiments, and expected results. At a minimum summary data should be submitted to support the proposal. A check list of detailed requirements should include, but is not limited to:

A. Description of Plant Materials.

1. Give common and scientific names of plants and cultivars, if appropriate. "Tomato plants will be inoculated" is insufficient.

2. If appropriate, give data or information on the relative homogeneity of the plant cultivar, and specific genetic markers the cultivar is known to possess.

B. Vectors and Method of Introduction.

1. Describe the cloned DNA segment and its expression in the new host.

2. Give the method(s) by which the proposed DNA vector will be or has been constructed. Diagrams are very helpful and may be necessary for adequate understanding of the construct. Explain the advantages (and disadvantage(s), if appropriate) of your vectors, if other candidate vectors could be considered.

3. If microorganisms are used to introduce vectors or are vectors themselves, indicate how they compare with wild-type strains. If disabled pathogens are used to transmit the vector, indicate measures that will most likely prevent these microorganisms from regaining or acquiring pathogenic potential. If the vector is likely to survive independently of the hosts, refer to this possibility, and provide any available data to assess the probability of such transfer to likely organisms.

4. If microorganisms are used to introduce vectors, the assessment of subsequent absence of the microorganisms should be specified. Indicate the means of strain identification and retrieval.

C. Characteristics and Monitoring of Plants.

1. Provide data from greenhouse and/or growth chamber studies under simulated field conditions to support prospective field studies. Data should include morphological data for at least two generations of plants.

Specify plant monitoring procedures; frequency; types of data to be obtained, including leaf, seed, fruit, or root characteristics.

2. Provide data for field plot design on the following:

a. Total area;

b. Location: where, how many;

c. Plot design: replication, row spacing, planting, border rows, etc.;

d. Name cultivar(s), if appropriate;

e. Specify plant monitoring procedures: frequency; types of data to be obtained, including leaf, seed, fruit, or root characteristics; abnormalities, such as disease; insect population monitoring; collection of meteorological data, etc.; types of data to be sought, such as yield, resistance to stress, lodging, etc.;

f. specify monitoring of the vector and/or introduced DNA; and

g. specify access and security measures.

IV. Request To Field Test Genetically Engineered Plants

Cetus Madison Corporation requests permission to field test genetically engineered plants that have expressed disease resistance under greenhouse and growth chamber environments. This proposal will be reviewed in the portion of the RAC meeting closed to the public because it contains trade secrets (the processes for construction and testing of the organisms containing recombinant DNA) and/or commercially valuable information (the particular plants involved, the timing and location of the experiments and the details of how the experiments would be conducted and monitored) the disclosure of which cause Cetus Madison Corporation substantial competitive harm.

V. Request to Field Test Genetically Engineered Microorganisms

Advanced Genetic Sciences, Inc., of Greenwich, Connecticut, requests approval to field test genetically engineered *Pseudomonas* strains. The main body of the proposal is available from ORDA and will be reviewed in a portion of the meeting open to the public. This portion of the proposal includes information on bacterial ice nucleation and frost damage, cloning of ice nucleation genes, general information on construction of deletion mutants, biology of *Pseudomonas syringae*, identification of released strains, rationale for field trials, design of field trails, crops to be tested, biosafety considerations, duration, names of involved scientists, locations,

facilities, experience, precautions, emergency plan and references. Appendices to the proposal will be reviewed in the portion of the RAC meeting closed to the public because those Appendices contain trade secrets (the processes for construction and testing of the organisms containing recombinant DNA) and/or confidential commercial information (certain detailed information about the conduct of the experiment) the disclosure of which would cause Advanced Genetics Sciences, Inc., substantial competitive harm.

VI. Proposal to Amend Appendix G of the Guidelines, Physical Containment

The booklet, *Classification of Etiologic Agents on the Basis of Hazard* (U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333), has served since 1969 as a general reference for labortory activities utilizing infectious agents. The fourth edition of that booklet (July 1974) was included in the 1978 version of the National Institutues of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules and has since been a part of those Guidelines as Appendix B.

Now an "Interagency Working Group" constituted by the Centers for Disease Control (CDC) and the NIH has prepared a new set of guidelines for laboratory research with etiologic agents. These new guidelines are entitled "Biosafety in Microbiological and Biomedical Laboratories." The CDC/NIH guidelines designate four categories of biosafety levels for laboratory operation: Biosafety Levels 1, 2, 3, and 4. These levels are comparable to the P1, P2, P3, and P4 containment levels described in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

The CDC/NIH Interagency Working Group has proposed that RAC consider recommending a revision of the description of the P levels in the NIH Guidelines so that these descriptions would correspond to the biosafety levels set forth in the document "Biosafety in Microbiological and Biomedical Laboratories."

In order to effect this change, the following modifications of the Guidelines are proposed:

1. Section II, *Containment.*

a. In Section II, wherever the terms "P1, P2, P3, P4" appear the term "BL1" (for Biosafety Level 1) would be substituted for the term "P1;" the term "BL2" (for Biosafety Level 2) would be substituted for "P2;" the term "BL3" (for Biosafety Level 3) would be substituted for "P3;" and the term "BL4" (for Biosafety Level 4) would be substituted for "P4."

b. The fourth sentence of the first paragraph of Section II, *Containment,* would be deleted. That sentence reads as follows:

> Four levels of physical containment, which are designated as P1, P2, P3, and P4 are described in Appendix G.

c. The following language would be substituted for the fourth sentence of the first paragraph of Section II, *Containment:*

> Four biosafety levels are described in Appendix G. These biosafety levels consist of combinations of laboratory practices and techniques, safety equipment and laboratory facilities appropriate for the operations performed and the hazard posed by agents and for the laboratory function and activity.

2. Section III, *Guidelines for Covered Experiments.*

In Section III, wherever the terms "P1, P2, P3, P4" appear the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for "P2;" the term "BL3" would be substituted for "P3;" and the term "BL4" would be substituted for "P4."

3. Section IV, *Roles and Responsibilities.*

a. In Section IV, wherever the terms "P1, P2, P3, P4" appear the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for "P2;" the term "BL3" would be substituted for "P3;" and the term "BL4" would be substituted for "P4."

b. Section IV–C–4, *Other NIH Components,* would be modified to read as follows:

> IV–C–4. *Other NIH Components.* Other NIH components shall be responsible for certifying maximum containment (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

4. Appendix C, *Exemptions Under III–D–5.*

The second paragraph of Appendix C–II, *Experiments Involving E. coli K–12 Host-Vector Systems,* Appendix C–III, *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems,* and Appendix C–IV, *Experiments Involving Bacillus subtilis Host-Vector Systems* would be modified to read as follows:

> For the exempt experiments BL1 containment conditions are recommended.

5. Appendix F, *Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates.*

In Appendix F, wherever the terms "P1, P2, P3, P4" appear the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for "P2;" the term "BL3" would be substituted for "P3;" and the term "BL4" would be substituted for "P4."

6. Appendix G, *Physical Containment.*

a. The fourth sentence of the second paragraph of Appendix G–I, *Standard Practices and Training,* would be modified to read:

> If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be available to all workers.

b. The third paragraph of Appendix G–I, *Standard Practices and Training,* would be modified to read:

> The "Laboratory Safety Monograph" and "Biosafety in Microbiological and Biomedical Laboratories" [2] booklets describe practices, equipment, and facilities in detail.

c. In Appendix G–II, *Physical Containment Levels,* wherever the terms "P1, P2, P3, P4" appear the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for "P2;" the term "BL3" would be substituted for "P3;" and term "BL4" would be substituted for "P4."

d. The third sentence of the second paragraph of Appendix G–II, *Physical Containment Levels,* would be footnoted and would read as follows:

> It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms [2].

e. The fourth sentence of the second paragraph of Appendix G–II, *Physical Containment Levels,* currently reads as follows:

> For example, the "Classification of Etiologic Agents on the Basis of Hazard" [2] prepared by the Centers for Disease Control describes four general levels which roughly correspond to our description for P1, P2, P3 and P4; and the National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our P2, P3, and P4 levels [3].

This sentence would be modified to read:

> The National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our BL2, BL3, and BL4 levels [3].

f. Appendix G–II–A, *P1 Level,* would be deleted and the following language would be substituted for Appendix G–II–A:

> *Appendix G–II–A. Biosafety Level 1 (BL1) [13].*
>
> *Appendix G–II–A–1. Standard Microbiological Practices.*
>
> *Appendix G–II–A–1–a.* Access to the laboratory is limited or restricted at the

discretion of the laboratory director when experiments are in progress.

Appendix G–II–A–1–b. Work surfaces are decontaminated once a day and after any spill of viable material.

Appendix G–II–A–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–A–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–A–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G–II–A–1–f. Persons wash their hands after they handle materials involving organisms containing recombinant DNA molecules, and animals, and before leaving the laboratory.

Appendix G–II–A–1–g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–A–1–h. It is recommended that laboratory coats, gowns, or uniforms be worn to prevent contamination or soiling of street clothes.

Appendix G–II–A–2. Special Practices.

Appendix G–II–A–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–A–2–b. An insect and rodent control program is in effect.

Appendix G–II–A–3. Containment Equipment.

Appendix G–II–A–3–a. Special containment equipment is generally not required for manipulations of agents assigned to Biosafety Level 1.

Appendix G–II–A–4. Laboratory Facilities.

Appendix G–II–A–4–a. The laboratory is designed so that it can be easily cleaned.

Appendix G–II–A–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–A–4–c. Laboratory furniture is sturdy. Spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–A–4–d. Each laboratory contains a sink for hand-washing.

Appendix G–II–A–4–e. If the laboratory has windows that open, they are fitted with fly screens.

g. The following language would be substituted for Appendix G–II–B, *P2 Level:*

Appendix G–II–B. Biosafety Level 2 (BL2). [14].

Appendix G–II–B–1. Standard Microbiological Practices.

Appendix G–II–B–1–a. Access to the laboratory is limited or restricted by the laboratory director when work with organisms containing recombinant DNA molecules is in progress.

Appendix G–II–B–1–b. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G–II–B–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–B–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–B–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G–II–B–1–f. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

Appendix G–II–B–1–g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–B–1–h. Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

Appendix G–II–B–2. Special Practices.

Appendix G–II–B–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–B–2–b. The laboratory director limits access to the laboratory. The director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

Appendix G–II–B–2–c. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) enter the laboratory or animal rooms.

Appendix G–II–B–2–d. When the organisms containing recombinant DNA molecules in use in the laboratory require special provisions for entry (e.g., vaccination), a hazard warning sign, incorporating the universal biohazard symbol, is posted on the access door to the laboratory work area. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

Appendix G–II–B–2–e. An insect and rodent control program is in effect.

Appendix G–II–B–2–f. Laboratory coats, gowns, smocks, or uniforms are worn while in the laboratory. Before leaving the laboratory for nonlaboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing is removed and left in the laboratory or covered with a clean coat not used in the laboratory.

Appendix G–II–B–2–g. Animals not involved in the work being performed are not permitted in the laboratory.

Appendix G–II–B–2–h. Special care is taken to avoid skin contamination with organisms containing recombinant DNA molecules; gloves should be worn when handling experimental animals and when skin contact with the agent is unavoidable.

Appendix G–II–B–2–i. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G–II–B–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needlelocking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix G–II–B–2–k. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the laboratory director. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix G–II–B–2–l. When appropriate, considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel are collected and stored. Additional serum specimens may be collected periodically, depending on the agents handled or the function of the facility.

Appendix G–II–B–2–m. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

Appendix G–II–B–3. Containment Equipment.

Appendix G–II–B–3–a. Biological safety cabinets (Class I or II) (See Appendix G–III–12) or other appropriate personal protective or physical containment devices are used whenever:

Appendix G–II–B–3–a–(1). Procedures with a high potential for creating aerosols are conducted [15]. These may include centrifuging, grinding, blending, vigorous shaking or mixing, sonic disruption, opening containers of materials whose internal pressures may be different from ambient pressures, inoculating animals intranasally, and harvesting infected tissues from animals or eggs.

Appendix G–II–B–3–a–(2). High concentrations or large volumes of organisms containing recombinant DNA molecules are used. Such materials may be centrifuged in the open laboratory if sealed heads or centrifuge safety cups are used and if they are opened only in a biological safety cabinet.

Appendix G–II–B–4. Laboratory Facilities.

Appendix G–II–B–4–a. The laboratory is designed so that it can be easily cleaned.

Appendix G–II–B–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–B–4–c. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–B–4–d. Each laboratory contains a sink for handwashing.

Appendix G–II–B–4–e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G–II–B–4–f. An autoclave for decontaminating laboratory wastes is available.

h. The following language would be substituted for Appendix G–II–C, *P3 Level.*

Appendix G–II–C. Biosafety Level 3 (BL3) [16].

Appendix G–II–C–1. Standard Microbiological Practices.

Appendix G–II–C–1–a. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G–II–C–1–b. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–C–1–c. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–C–1–d. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the work area.

Appendix G–II–C–1–e. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

Appendix G–II–C–1–f. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–C–1–g. Persons under 16 years of age shall not enter the laboratory.

Appendix G–II–C–1–h. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring BL3 level physical containment, they shall be conducted in accordance with all BL3 level laboratory practices.

Appendix G–II–C–2. Special Practices.

Appendix G–II–C–2–a. Laboratory doors are kept closed when experiments are in progress.

Appendix G–II–C–2–b. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–C–2–c. The laboratory director controls access to the laboratory and restricts access to persons whose presence is required for program or support purposes. The director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

Appendix G–II–C–2–d. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements (e.g., immunization), and who comply with all entry and exit procedures enter the laboratory or animal rooms.

Appendix G–II–C–2–e. When organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or containment module, a hazard warning sign incorporating the universal biohazard symbol, is posted on all laboratory and animal room access doors. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director other responsible person(s), and indicates any special requirements for entering the laboratory, such as the need for immunizations, respirators, or other personal protective measures.

Appendix G–II–C–2–f. All activities involving organisms containing recombinant DNA molecules are conducted in biological safety cabinets or other physical containment devices within the containment module. No work in open vessels is conducted on the open bench.

Appendix G–II–C–2–g. The work surfaces of biological safety cabinets and other containment equipment are decontaminated when work with organisms containing recombinant DNA molecules is finished. Plastic-backed paper toweling used on nonperforated work surfaces within biological safety cabinets facilitates clean-up.

Appendix G–II–C–2–h. An insect and rodent control program is in effect.

Appendix G–II–C–2–i. Laboratory clothing that protects street clothing (e.g., solid front or wrap-around gowns, scrub suits, coveralls) is worn in the laboratory. Laboratory clothing is not worn outside the laboratory, and it is decontaminated before being laundered.

Appendix G–II–C–2–j. Special care is taken to avoid skin contamination with contaminated materials; gloves should be worn when handling infected animals and when skin contact with infectious materials is unavoidable.

Appendix G–II–C–2–k. Molded surgical masks or respirators are worn in rooms containing experimental animals.

Appendix G–II–C–2–l. Animals and plants not related to the work being conducted are not permitted in the laboratory.

Appendix G–II–C–2–m. Laboratory animals held in a BL3 area shall be housed in partial-containment caging systems, such as Horsfall units [11], open cages placed in ventilated enclosures, solid-wall and bottom cages placed on holding racks equipped with ultraviolet radiation lamps and reflectors.

Note.—Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

Appendix G–II–C–2–n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G–II–C–2–o. Vacuum lines are protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps.

Appendix G–II–C–2–p. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix G–II–C–2–q. Spills and accidents which result in overt or potential exposures to organisms containing recombinant DNA molecules are immediately reported to the laboratory director. Appropriate medical evaluation, surveillance, and treatment are provided and written records are maintained.

Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically, depending on the agents handled or the function of the laboratory.

Appendix G–II–C–2–s. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

Appendix G–II–C–2–t. Alternative Selection of Containment Equipment. Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL4 level of physical containment. Alternative combination of containment safeguards are shown in Table 1.

Appendix G–II–C–3. Containment Equipment.

Appendix G–II–C–a. Biological safety cabinets (Class I, II, or III) (see Appendix G–III–12) or other appropriate combinations of personal protective or physical containment devices (e.g., special protective clothing, masks, gloves, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals) are used for all activities with organisms containing recombinant DNA molecules which pose a threat of aerosol exposure. These include: manipulation of cultures and of those clinical or environmental materials which may be a source of aerosols; the aerosol challenge of experimental animals; and harvesting of tissues or fluids from experimental animals and embryonate eggs, and necropsy of experimental animals.

Appendix G–II–C–4. Laboratory Facilities.

Appendix G–II–C–4–a. The laboratory is separate from areas which are open to unrestricted traffic flow within the building. Passage through two sets of doors is the basic requirement for entry into the laboratory from access corridors or other contiguous areas. Physical separation of the high containment laboratory from access corridors or other laboratories or activities may also be provided by a double-doored clothes change room (showers may be included), airlock, or other access facility which requires passage through two sets of doors before entering the laboratory.

Appendix G–II–C–4–b. The interior surfaces of walls, floors, and ceilings are water resistant so that they can be easily cleaned. Penetrations in these surfaces are sealed or capable of being sealed to facilitate decontaminating the area.

Appendix G–II–C–4–c. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–C–4–d. Laboratory furniture is sturdy and spaces beteen benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–C–4–e. Each laboratory contains a sink for handwashing. The sink is foot, elbow, or automatically operated and is located near the laboratory exit door.

Appendix G–II–C–4–f. Windows in the laboratory are closed and sealed.

Appendix G–II–C–4–g. Access doors to the laboratory or containment module are self-closing.

Appendix G–II–C–4–h. An autoclave for decontaminating laboratory wastes is available preferably within the laboratory.

Appendix G–II–C–4–i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory through the entry area. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from the occupied areas and air intakes. Personnel must verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room can be discharged to the outside without being filtered or otherwise treated.

Appendix G–II–C–4–j. The HEPA-filtered exhaust air from Class I or Class II biological safety cabinets is discharged directly to the outside or through the building exhaust system. Exhaust air from Class I or II biological safety cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every twelve months. If the HEPA-filtered exhaust air from Class I or II biological safety cabinets is to be discharged to the outside through the building exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection [12]) that avoids any interference with the air balance of the cabinets or building exhaust system.

i. The following language would be substituted for Appendix G–II–D, *P4 Level:*

Appendix G–II–D. Biosafety Level 4 (BL4).

Appendix G–II–D–1. *Standard Microbiological Practices.*

Appendix G–II–D–1–a. Work surfaces are decontaminated at least once a day and immediately after any spill of viable material.

Appendix G–II–D–1–b. Only mechanical pipefitting devices are used.

Appendix G–II–D–1–c. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the laboratory.

Appendix G–II–D–1–d. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–D–2. Special Practices.

Appendix G–II–D–2–a. Biological materials to be removed from the Class III cabinets or from the maximum containment laboratory in a viable or intact state are transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which is removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

Appendix G–II–D–2–b. No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperatures or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix G–II–D–2–c. Only persons whose presence in the facility or individual laboratory rooms is required for program or support purposes are authorized to enter. The supervisor has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the laboratory director, biohazards control officer, or other person responsible for the physical security of the facility. Before entering, persons are advised of the potential biohazards and instructed as to appropriate safeguards for insuring their safety. Authorized persons comply with the instructions and all other applicable entry and exit procedures. A logbook signed by all personnel, indicates the date and time of each entry and exit. Practical and effective protocols for emergency situations are established.

Appendix G–II–D–2–d. Personnel enter and leave the facility only through the clothing change and shower rooms. Personnel shower each time they leave the facility. Personnel use the airlocks to enter or leave the laboratory only in an emergency.

Appendix G–II–D–2–e. Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing, including under garments, pants and shirts or jumpsuits, shoes, and gloves, is provided and used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When leaving the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room.

Appendix G–II–D–2–f. When materials that contain organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or animal rooms, a hazard warning sign, incorporating the universal biohazard symbol, is posted on all access doors. The sign identifies the agent, lists the name of the laboratory director or other responsible person(s), and indicates any special requirements for entering the area (e.g., the need for immunizations or respirators).

Appendix G–II–D–2–g. Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

Appendix G–II–D–2–h. An insect and rodent control program is in effect.

Appendix G–II–D–2–i. Materials (e.g., plants, animals, and clothing) not related to the experiment being conducted are not permitted in the facility.

Appendix G–II–D–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral part of unit) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Needles should not be bent, sheared, replaced in the needle guard, or removed from the syringe following use. The needle and syringe should be placed in a puncture-resistant container and decontaminated, preferably by autoclaving before discard or reuse. Whenever possible, cannulas are used instead of sharp needles (e.g., gavage).

Appendix G–II–D–2–k. A system is set up for reporting laboratory accidents and exposures and employee absenteeism, and for the medical surveillance of potential laboratory-associated illnesses. Written records are prepared and maintained. An essential ajunct to such a reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory associated illnesses.

Appendix G–II–D–2–l. Laboratory animals involved in experiments requiring BL4 level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems (such as Horsfall units [11]), open cages placed in ventilated enclosures, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors that are located in a specially designed area in which all personnel are required to wear one-piece positive pressure suits.

Appendix G–II–D–2–m. Alternative Selection of Containment Equipment. Experimental procedures involving a host-vector system that provides a one-step level of biological containment than that specified can be conducted in the BL4 facility using containment equipment requirements specified for the BL3 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

Appendix G–II–D–3. Containment Equipment.

Appendix G–II–D–3–a. All procedures within the facility with agents assigned to Biosafety Level 4 are conducted in the Class III biological safety cabinet or in Class I or II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system.

Appendix G–II–D–4. Laboratory Facility.

Appendix G–II–D–4–a. The maximum containment facility consists of either a

separate building or a clearly demarcated and isolated zone within a building. Outer and inner change rooms separated by a shower are provided for personnel entering and leaving the facility. A double-doored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room.

Appendix G–II–D–4–b. Walls, floors, and ceilings of the facility are constructed to form a sealed internal shell which facilitiates fumigation and is animal and insect proof. The internal surfaces of this shell are resistant to liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations in these structures and surfaces are sealed. Any drains in the floors contain traps filled with a chemical disinfectant of demonstrated efficacy against the target agent, and they are connected directly to the liquid waste decontamination system. Sewer and other ventilation lines contain HEPA filters.

Appendix G–II–D–4–c. Internal facility appurtenances, such as light fixtures, air ducts, and utility pipes, are arranged to minimize the horizontal surface area on which dust can settle.

Appendix G–II–D–4–d. Bench tops have seamless surfaces which are impervious to water and resistant to acids, alkalis, organic solvents and moderate heat.

Appendix G–II–D–4–e. Laboratory furniture is of simple and sturdy construction, and spaces beteen benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–D–4–f. A foot, elbow, or automatically operated handwashing sink is provided near the door of each laboratory room in the facility.

Appendix G–II–D–4–g. If there is a central vacuum system, it does not serve areas outside the facility. In-line HEPA filters are placed as near as practicable to each use point or service cock. Filters are installed to permit in-place decontamination and replacement. Other liquid and gas services to the facility are protected by devices that prevent backflow.

Appendix G–II–D–4–h. If water fountains are provided, they are foot operated and are located in the facility corridors outside the laboratory. The water service to the fountain is not connected to the backflow-protected distribution system supplying water to the laboratory areas.

Appendix G–II–D–4–i. Access doors to the laboratory are self-closing and lockable.

Appendix G–II–D–4–j. And windows are breakage resistant.

Appendix G–II–D–4–k. A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed.

Appendix G–II–D–4–l. A pass-through dunk tank, fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility.

Appendix G–II–D–4–m. Liquid effluents from laboratory sinks, biological safety cabinets, floors, and autoclave chambers are decontaminated by heat treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for heat decontamination of liquid wastes is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes from the shower room are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms.

Appendix G–II–D–4–n. An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the facility toward areas of highest potential risk within the facility. Manometers are used to sense pressure differentials between adjacent areas maintained at different pressure levels. If a system malfunctions, the manometers sound an alarm. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times.

Appendix G–II–D–4–o. The exhaust air from the facility is filtered through HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. Within the facility, the filters are located as near the laboratories as practicable in order to reduce the length of potentially contaminated air ducts. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Coarse filters and HEPA filters are provided to treat air supplied to the facility in order to increase the lifetime of the exhaust HEPA filters and to protect the supply air system should air pressures become unbalanced in the laboratory.

Appendix G–II–D–4–p. The treated exhaust air from Class I and II biological safety cabinets can be discharged into the laboratory room environment or the outside through the facility air exhaust system. If exhaust air from Class I or II biological safety cabinets is discharged into the laboratory the cabinets are tested and certified at 6-month intervals. *The treated exhaust air from Class III biological safety cabinets is discharged, without recirculation through two sets of HEPA filters in series, via the facility exhaust air system.* If the treated exhaust air from any of these cabinets is discharged to the outside through the facility exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection [12]) that avoids any interference with the air balance of the cabinets or the facility exhaust air system.

Appendix G–II–D–4–q. A specially designed suit area may be provided in the facility. Personnel who enter this area wear a one-piece positive pressure suit that is ventilated by a life support system. The life support system includes alarms and emergency backup breathing air tanks. Entry to this area is through an airlock fitted with airtight doors. A chemical shower is provided to decontaminate the surface of the suit before the worker leaves the area. The exhaust air from the suit area is filtered by two sets of HEPA filters installed in series. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is lower than that of any adjacent area. Emergency lighting and communication systems are provided. All penetrations into the internal shell of the suit area are sealed. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit area.

j. The following modifications would be made in Appendix G–III, *Footnotes and References of Appendix G:*

(1) The second footnote in Appendix G–III, *Footnotes and References of Appendix G* would be deleted. The following language would be substituted:

2. Biosafety in Microbiological and Biomedical Laboratories, U.S. Department of Health and Human Services (April 1984). Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland 20205.

(2) The following language would be added to the end of Appendix G–III–12:

National Sanitation Foundation Standard 49. 1976. Class II (Laminar Flow) Biohazard Cabinetry. Ann Arbor, Michigan.

(3) The following footnotes would be added to Appendix G–III:

13. Biosafety Level 1 is suitable for work involving agents of no known or minimal potential hazard to laboratory personnel and the environment. The laboratory is not separated from the general traffic patterns in the building. work is generally conducted on open bench tops. Special containment equipment is not required or generally used. Laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by a scientist with general training in microbiology or a related science (See Appendix G–III–2).

14. Biosafety Level 2 is similar to Level 1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. It differs in that (1) laboratory personnel have specific training in handling pathogenic agents and are directed by competent scientists, (2) access to the laboratory is limited when work is being conducted, and (3) certain procedures in which infectious aerosols are created are conducted in biological safety cabinets or other physical containment equipment (See Appendix G–III–2).

15. Office of Research Safety, National Cancer Institute, and the Special Committee of Safety and Health Experts. 1978. Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research. Bethesda, Maryland, National Institutes of Health.

16. Biosafety Level 3 is applicable to clincial, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents which may cause serious or potentially lethal disease as result of exposure by the inhalation route. Laboratory personnel have specific training in handling pathogenic and potentially lethal agents and are supervised by competent scientists who are experienced in working with these agents. All procedures involving the manipulation of infectious material are conducted within biological safety cabinets or other physical containment devices or by personnel wearing appropriate personal protective clothing and devices. The laboratory has special engineering and design features. It is recognized, however, that many existing facilities may not have all the facility safeguards recommended for Biosafety Level 3 (e.g., access zone, sealed penetrations, and directional airflow, etc.). In those circumstances, acceptable safety may be achieved for routine or repetitive operations (e.g., diagnostic procedures involving the propagation of an agent for identification, typing, and susceptibility testing) in laboratories where facility features satisfy Biosafety Level 2 recommendations provided the recommended 'Standard Microbiological Practices,' 'Special Practices,' and 'Containment Equipment' for Biosafety Level 3 are rigorously followed. The decision to implement this modification of Biosafety Level 3 recommendations should be made only by the laboratory director (See Appendix G–III–2).

7. Appendix H, *Shipment.*

a. Wherever the terms P1, P2, P3, P4 appear, the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for "P2;" the term "BL3" would be substituted for "P3;" and the term "BL4" would be substituted for "P4."

b. Appendix H–III of Appendix H, *Shipment,* would be modified to read as follows:

Appendix H–III. Information on packaging and labeling of etiologic agents is shown in Figures 1, 2, and 3. Additional information on packaging and shipment is given in the 'Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research,' available from Office of Recombinant DNA Activities and in 'Biosafety in Microbiological and Biomedical Laboratories (see Appendix G–III–2).'

8. Appendix K. *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules.*

a. Wherever the terms "P1, P2, P3, P4" appear, the term "BL1" would be substituted for the term "P1;" the term "BL2" would be substituted for the term "P2;" the term "BL3" would be substituted for the term "P3;" and the term "BL4" would be substituted for "P4."

b. Wherever the terms "P1–LS, P2–LS, P3–LS, P4–LS" appear, the term "BL1–LS" (for Biosafety Level 1—Large-Scale) would be substituted for the term "P1–LS;" the term "BL2–LS" would be substituted for "P2–LS;" and the term "BL3–LS" would be substituted for "P3–LS."

9. Section III–B–5 would be modified so as to correctly indicate the location of the *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules* in the Guidelines. That section would read as follows:

III–B–5. *Experiments Involving More than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, the large-scale containment recommendations of the NIH should be used (Appendix K).

TABLE I.—POSSIBLE COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological [1] containment	Laboratory facilities specified for	Laboratory practices specified for	Containment equipment specified for	Biological containment
BL3	HV2	BL3	BL3	BL3	HV2
BL3	HV2	BL3	BL3	BL4	HV1
BL3	HV1	BL3	BL3	BL3	HV1
BL3	HV1	BL3	BL3	BL2	HV2
BL4	HV1	BL4	BL4	BL4	HV1
BL4	HV1	BL4	[2]BL4	BL3	HV2

[1] See Appendix I for description of biological containment.
[2] In this case gloves shall be worn in addition to clothing specified in Appendix G–II–2–e.

Dated: April 12, 1984.

Richard M. Krause, M.D.,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

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federal register

Tuesday
April 24, 1984

Part III

Department of Health and Human Services

National Institutes of Health

Request for Public Comment on the Recommendations Offered in the Report "The Environmental Implications of Genetic Engineering"

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Public Comment on the Recommendations Offered in the Report "The Environmental Implications of Genetic Engineering"

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Request for public comment.

SUMMARY: This notice publishes for public comment the recommendations of the report "The Environmental Implications of Genetic Engineering" prepared by the staff of the Subcommittee on Investigations and Oversight of the Committee on Science and Technology of the U.S. House of Representatives.

DATES: Comments received by May 29 will be reproduced and distributed to the NIH Recombinant DNA Advisory Committee (RAC) for consideration at its next meeting on June 1, 1984.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Single copies of the report "The Environmental Implications of Genetic Engineering" and additional information may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6051.

SUPPLEMENTARY INFORMATION: On June 22, 1983, the House Subcommittee on Investigations and Oversight and the House Subcommittee on Science, Research, and Technology held a joint hearing to examine implications of deliberately introducing genetically engineered organisms into the environment.

The report "The Environmental Implications of Genetic Engineering" by the staff of the Subcommittee on Investigations and Oversight is based on these hearings. The report which was issued in February 1984 presents a summary of the staff review together with several recommendations.

Recommendations Offered by the Report, "The Environmental Implications of Genetic Engineering."

The report, "The Environmental Implications of Genetic Engineering," states that it addresses:

* * * the deliberate release of all "genetically engineered" organisms and not just those created through recombinant DNA techniques. While much of the discussion in the report involves recombinant DNA technology—the actually (sic) cutting and splicing of genes—"genetic engineering," encompasses far more than that particular technology. It is intended to include as concerns about the potential environmental effects of genetically engineered organisms created by other techniques—such as protoplast fusion (the fusing together of two unwalled cells), chemical mutation, and other procedures—as about the possible impacts of organisms created by recombinant DNA technology described by the RAC in their charter.

Generally, the conclusions of the report are:

(1) The potential environmental risks associated with the deliberate release of genetically engineered organisms are best described as "low probability of high consequence risks;" that is, while there is only a small possibility of occurrence, the damage that could occur is great.

(2) Predicting the specific type, magnitude or probability of environmental effects associated with deliberate release will be extremely difficult at the present time.

(3) The current regulatory framework does not guarantee that adequate consideration will be given to potential environmental effects of a deliberate release.

The report offers several recommendations, certain of which pertain to the NIH and its Recombinant DNA Advisory Committee (RAC). The NIH publishes these recommendations in order to solicit comment; the NIH is particularly interested in comments on NIH's appropriate future role and the steps to be taken before promulgating any changes from the current role. The recommendations listed in the report "The Environmental Implications of Genetic Engineering" are:

(1) The EPA should proceed with its stated intention to extend its authority to include all deliberately released organisms not specifically identified as part of the legal obligation of another agency. In view of EPA's stated conclusion that the Toxic Substances Control Act (TSCA) does provide it with authority to oversee deliberate releases and the fact that Congress intended TSCA to be "gap filling" legislation, no additional legislation or clarifying amendments are needed at this time. EPA should, however, establish formal communications and agreements with other agencies to ensure that gaps and redundancies in the regulatory structure do not occur. A major goal should be to permit research and commercialization to proceed with minimum interference while adequately addressing environmental and public health concerns.

(2) Until such time as EPA's regulations are promulgated, an interagency task force should be established to review all proposals for deliberate releases. EPA should take the initiative in organizing this panel. The panel should be comprised of representatives from EPA, the U.S. Department of Agriculture (USDA), NIH, and any other appropriate federal agency or entity directly involved from either the scientific or regulatory perspective. The panel should establish an environmentally oriented risk/benefit assessment program to evaluate current proposals for deliberate releases. The panel should also develop a uniform set of guidelines to govern deliberate releases. The panel should, moreover, serve the function of educating the public about the potential risks and benefits associated with this aspect of biotechnology. Consideration should be given to making this panel a permanent oversight body even after EPA has promulgated regulations to ensure that the broadest possible expertise is brought to bear in overseeing the technology.

(3) No deliberate release should be permitted by EPA, NIH, USDA, or any other federal agency until the potential environmental effects of the particular release have been considered by the interagency review panel. The panel shall consider the effects of any environmental release, regardless of size or intent. Each agency should evaluate proposals for deliberate releases according to a uniform set of guidelines to be developed by the interagency task force. It is recognized that initially decisions may be made on the basis of incomplete data.

(4) The task force should consider the need for oversight of research scale releases and, if appropriate, develop guidelines for reviewing proposals for such releases. The task force should prepare a report containing its conclusions on this matter within 90 days of its establishment. The report should be made available to the Subcommittee.

(5) The NIH should cease its practice of evaluating and approving proposals for deliberate release from commercial biotechnology companies. The NIH should review proposals only from parties engaged in NIH-sponsored research, and refer requests from industry to the appropriate agency.

(6) The NIH and USDA should revise the membership of their respective Recombinant DNA Advisory Committees (RAC) to include individuals specifically trained in ecology and the environmental sciences.

(7) The General Accounting Office should review the activities of USDA in overseeing biotechnology and evaluate the agency's authority to regulate deliberate releases under all relevant statutes, regulations, and executive orders.

Dated: April 17, 1984.

Richard M. Krause, M.D.,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the offical government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of

affected individual programs for the quidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in wich DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual program listed in the *Catalog of Federal Domestic Assistance* are affected.

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federal register

Tuesday
April 24, 1984

Part IV

Department of the Interior

Minerals Management Service

Navarin Basin Lease Sale 107 (March 1986) Call for Information and Intent To Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Navarin Basin
Lease Sale 107 (March 1986)
Call for Information
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION

Purpose of Call for Information

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23, with regard to proposed OCS Lease Sale 107 in the Navarin Basin area tentatively scheduled for March 1986.

This initial information gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the area described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for July 1984.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent on scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the State's coastal zone management program.

Description of Area

The Navarin Basin Call area is generally located in the western Bering Sea west of St. Matthew Island. It is bounded on the northwest by the U.S.-Russia Convention Line of 1867; on the north by 63° N. latitude; on the east by 174° W. longitude; and is bounded on the south and west as shown on the Call map.

The first oil and gas lease sale, Sale 83--Navarin Basin, is scheduled to be held on April 17, 1984. A deep stratigraphic test well was spudded in the Navarin Basin on May 26, 1983, and was completed on October 23, 1983. The number of acres being considered in this Call for Sale 107 is about 28 million.

Indications of interest and comments are requested for all Federal acreage within the boundaries of the Call area. Indications of interest are not requested for blocks excluded from the Call as listed below. Boundaries of the Call area are shown, in general, on the map at the end of this Call and are shown in detail on the standard Call for Information Map available free from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service (MMS), P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510.

The following list identifies the Official Protraction Diagrams and blocks as appropriate which comprise the Call area. The diagrams may be purchased for $2.00 each from the Regional Supervisor, Leasing and Environment, Alaska OCS Region.

NP 1-3 (approved November 2, 1983), all Federal blocks
NP 1-4 (approved November 2, 1983), all Federal blocks
NP 1-5 (approved November 2, 1983), all Federal blocks
NP 1-6 (approved April 30, 1981), all Federal blocks
NP 1-7 (approved November 2, 1983), all Federal blocks
except:
Blocks 225, 268, 269, 311 through 313, 354 through 357, 397 through 401, 441 through 445, 485 through 489, 529 through 533, 573 through 577, 617 through 621, 661 through 665, 705 through 709, 749 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, 969 through 974.
NP 1-8 (approved December 13, 1976), all Federal blocks
NO 1-1 (approved December 17, 1980), all Federal blocks
except:
Blocks 2 through 8, 46 through 52, 89 through 97, 133 through 142, 177 through 186, 221 through 231, 265 through 275, 309 through 319, 353 through 363, 397 through 407, 441 through 451, 485 through 495, 529 through 539, 573 through 583, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 803, 837 through 847, 881 through 891, 925 through 935, 969 through 979, 1013 through 1023, 1045 through 1048.
NO 1-2 (approved February 3, 1977), all Federal blocks
except:
Blocks 1013 through 1018.
NO 1-3 (approved December 17, 1980), the following Federal blocks only:
Blocks 13 through 31, 60 through 74, and 107 through 117.

NO 1-4 (approved February 18, 1977), all Federal blocks except:

Blocks 1 through 8, 45 through 53, 89 through 98, 133 through 143, 177 through 188, 221 through 232, 265 through 276, 309 through 321, 353 through 365, 397 through 409, 441 through 453, 485 through 497, 529 through 543, 573 through 587, 617 through 631, 661 through 675, 683 through 697, 705 through 719, 724 through 741, 749 through 763, 768 through 785, 793 through 807, 812 through 829, 837 through 851, 856 through 873, 881 through 917, 925 through 961, 969 through 1005.

Instructions on Call

The standard Call map delineates the Call area and shows the area as identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in any or all of the Federal acreage within the Call area that they wish to have included in the Navarin Basin Lease Sale 107. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map, available free from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area," telephone (907) 261-2453 or 261-2414. Interest should be shown by outlining the area(s) of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area for which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information submitted by individual companies will be held confidential and will be used as a criterion in determining the area to be analyzed in the EIS. Further consideration of areas for analysis in the EIS will be based on indications of interest, hydrocarbon potential, and a balancing with environmental, economic, and multiple use considerations.

In addition to indications of interest, comments are sought from all interested parties about particular geological, environmental, biological, archeological, or socioeconomic conditions or conflicts, or other information which might bear upon potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sale and the Alaska Coastal Management Program (ACMP). If possible, these comments should identify specific ACMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be submitted no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Indications of Interest for Leasing for the Call for Information for Navarin Basin Lease Sale 107 (March 1986)" or "Comments on the Call for Information for the Navarin Basin Lease Sale 107 (March 1986)," as appropriate. The original standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area." One copy of the standard Call map showing interest and any comments should also be sent to the Chief, Offshore Leasing Management Division, MMS, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091. Hand deliveries in the Washington, D.C., area may be made to the Chief, Offshore Leasing Management Division, Room 2510, Department of the Interior, 18th and C Sts., N.W., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for competitive bidding will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. A final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for March 1986.

Comments due on the Call:	June 1984
Area Identification:	July 1984
Scoping comments due:	August 1984
Draft EIS published:	April 1985
Hearings on draft EIS held:	May 1985
Final EIS published	October 1985
Proposed Notice of Sale published:	November 1985
Governor's comments due on proposed Notice:	January 1986
Final Notice of Sale published:	February 1986
Sale:	March 1986

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulation implementing the procedural provision of the National Environmental Policy Act of 1969 (40 CFR 1501.7), the Alaska OCS Region, MMS, is announcing its intent to prepare an EIS regarding the proposed Navarin Basin Lease Sale 107. The Notice of Intent serves to announce the scoping process which will be followed for this EIS. The scoping process is intended to involve Federal, State, and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

Scoping meetings will be held in appropriate locations for the purpose of obtaining comments and information regarding the scope of the EIS following a decision on an Area Identification. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Instructions on Notice of Intent

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale. Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Navarin Basin Lease Sale 107 (March 1986)." Comments are due no later than August 31, 1984.

Existing Information

Much information has already been collected and analyzed during consideration of past OCS activity in the same area. This information will be integrated with new information supplied during this process. Information already available includes an EIS covering part of this area for Sale 83 as well as the EIS for the 5-Year Oil and Gas Leasing Program.

In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used.

The following is a list of other information available in the DOI which will be available for decisions regarding OCS Lease Sale 107.

Navarin Basin Summary Reports and Index

1. Alaska Index, December 1981 through April 1983, prepared by MMS.
2. Bering Sea Summary Report, December 1983, prepared by MMS.

Navarin Basin Planning Area - Completed Environmental Studies

1. Distribution, Abundance, Diversity and Biology of Benthic Organisms in the Bering Sea; completed 1981
2. Assessment of Potential Interactions of Microorganisms and Pollutants from Petroleum Development in Lower Cook Inlet and the Beaufort Sea; completed 1981
3. Environmental Assessment of Alaskan Waters - Trace Element Methodology - Inorganic Elements; completed 1976
4. Baseline Characterization Marine Mammals; completed 1976
5. Abundance and Seasonal Distribution of Marine Mammals in Gulf of Alaska; completed 1980
6. Bowhead Whale: Migration, Distribution and Abundance in the Bering, Chukchi and Beaufort Seas 1975-78 With Notes on the Distribution and Abundance and Life History of White Whales; completed 1980
7. Lethal and Sublethal Effects Upon Select Marine Species; completed 1980
8. Sublethal Effects as Reflected by Morphological, Chemical, Physiological, and Behavioral Indices; completed 1982
9. Assessment of Available Literature: Oil Pollutant Effects on Subarctic/Arctic Biota; completed 1976
10. Reproductive Ecology of Pribilof Island Seabirds; completed 1983
11. The Interaction of Oil with Sea Ice; completed 1981
12. Ice Ridging and Pile-up; completed 1981
13. Natural Distribution of Trace Heavy Metals and Environmental Background in 3 Alaskan Shelf Areas; completed 1976
14. Summarize Existing Literature and Unpublished Data on the Distribution, Abundance, and Productivity of Demersal Fish, Shellfish, and Other Epibenthic Organisms; completed 1976
15. Morbidity and Mortality of Key Marine Mammal Species; completed 1978
16. Distribution, Abundance, and Feeding Ecology of Birds Associated with the Pack Ice; completed 1978
17. Trophic Relationships, Habitat Usage and Winter Ecology of Ice-Inhabiting Phocid Seals and Functionally Related Marine Mammals; completed 1980
18. Remote Sensing Application to OCS; completed 1982

19. Hydrocarbons: Natural Distribution and Dynamics on the Alaskan Outer Continental Shelf; completed 1976

20. Summarization of Existing Literature and Unpublished Data on the Distribution, Abundance and Productivity of Benthic Organisms of the Gulf of Alaska and Bering Sea; completed 1976

21. Food and Feeding Relationships in the Benthic and Demersal Fishes of the Gulf of Alaska and the Bering Sea; completed 1976

22. Preparation of Illustrated Keys to Skeletal Remains and Otoliths of Forage Fishes - Gulf of Alaska and Bering Sea; completed 1976

23. Historical and Statistical Oceanographic Data Analysis and Ship of Opportunity Program; completed 1976

24. Determine the Incidence and Pathology of Marine Fish Diseases in the Gulf of Alaska, Bering Sea and Beaufort Sea; completed 1976

25. Seasonal Distribution and Abundance of Marine Birds; completed 1976

26. Review and Analysis of Literature and Unpublished Data on Marine Birds; completed 1976

27. Population Dynamics of Marine Birds; completed 1975

28. Preliminary Catalog of Seabird Colonies; completed 1976

29. Marine Climatology of the Gulf of Alaska and the Bering and Beaufort Seas - Vol II; completed 1977

30. Alaska Marine Ichthyoplankton Key; completed 1976

31. Plankton Studies; completed 1981

32. Zooplankton: Species Composition, Distribution and Abundance; completed 1980

33. Bering Sea Ice Edge Ecosystem Study. Primary Productivity, Nutrient Cycling, and Organic Matter Transport; completed 1978

34. Modeling of Tides and Circulations of the Bering Sea; completed 1982

35. Characterization of Organic Matter in Sediments from Gulf of Alaska, Bering and Beaufort Seas; completed 1981

36. Nutrient Dynamics and Trophic System Energetics in Nearshore Beaufort Sea Waters; completed 1980

37. Oil Pooling Under Sea Ice; completed 1979

38. The Transport and Behavior of Oil Spilled In and Under Sea Ice - I; completed 1981

39. Transport Behavior of Oil Spilled In and Under Sea Ice - II; completed 1980

40. Compilation of a Homogeneous Earthquake Catalog for the Alaska-Aleutian Region; completed 1981

41. Bering Sea Meteorological Processes; completed 1981

42. Taxonomic Compositions, Seasonal Distribution, and Abundance of Decapod Larvae in the Eastern Bering Sea (From Several Research Units); completed 1982

43. Modern Populations, Migrations, Demography, Trophics, and Historical Status of the Pacific Walrus in Alaska; completed 1982

44. Distribution of Marine Mammals in the Coastal Zone During Summer and Autumn; completed 1982

45. Analysis of CTD Data From Bering Sea; completed 1982

46. Effects: Quality Assurance; completed 1982

47. Field Measurements to Verify Circulation Model Boundary Conditions; completed 1982

48. Endangered Whales in the Navarin Basin; completed 1982

49. Gray Whale Ecology - Chirikof Basin; completed 1982

50. Development of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas - I; completed 1980

51. Tissue Structure Studies and Other Investigations on the Biology of Endangered Whales in the Beaufort Sea; completed 1980

52. Development of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas - II; completed 1981

53. Effects of Whale Monitoring System Attachment Device in Whaling Tissues; completed 1980

54. Effects of Oil on the Feeding Mechanism of the Bowhead Whale - Baleen Fouling; completed 1980

55. Development of Satellite-Linked Methods of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas; interim report completed 1982

56. Investigations of the Potential Effects of Acoustic Stimuli Associated With Oil and Gas Exploration/Development on the Behavior of Migratory Gray Whales; interim report completed 1982

57. Possible Effects of Acoustic and Other Stimuli Associated With Oil and Gas Exploration/Development on the Behavior of the Bowhead Whale; interim report completed 1982

Navarin Basin Socioeconomic Studies

1. Navarin Basin Sociocultural Systems Baseline Analysis; completed 1982
2. Navarin Basin Statewide & Regional Demographic and Economic Systems Impacts Forecast; completed 1983
3. Navarin Basin Commercial Fishing Impacts Analysis; completed 1983
4. Navarin Basin Petroleum Technology Assessment; completed 1982
5. Navarin Basin Transportation Systems Impact Analysis; completed 1983
6. Marketability of Bering Sea Natural Gas; completed 1983
7. Bering Sea Cumulative Economic OCS Petroleum Development; completed 1982
8. Bering-Norton Socioeconomic Systems Analysis; completed 1980
9. Social Indicators for OCS Impact Monitoring; completed 1983
10. Economic Analysis of Cumulative OCS Development in the Bering Sea; completed 1982
11. Ethnographic Information on Unalaska; completed 1983

These study reports can be viewed at the Alaska OCS Regional Office, most public libraries in Alaska, or may be ordered directly from the U.S. Department of Commerce, National Technical Information Service by calling FTS 737-4650 or Commercial (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Wm D Bettenberg

Director, Minerals Management Service

APR 12 1984

William D. Bettenberg

Date: 4/6/84

Approved: APR 17 1984

Garrey E. Carruthers

Assistant Secretary for Land and Minerals Management

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April 24, 1984

Part V

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Maintenance Fees; Proposed Rules

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40442-4042]

Proposed Rules for Patent Maintenance Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent cases, Part I of Title 37, Code of Federal Regulations, to provide rules and procedures for the payment of patent maintenance fees. Pub. L. 96-517, enacted on December 12, 1980 and Pub. L. 97-247, enacted on August 27, 1982, provided for the payment of maintenance fees at intervals of 3½, 7½ and 11½ years from the date of grant of the patent for maintaining in force an original patent, a reissue patent of an invention, and under Pub. L. 96-517, a plant patent and reissues thereof. The proposed changes are intended to provide specific rules and procedures which will assist patentees in avoiding the inadvertent expiration of a patent for failure to pay the appropriate maintenance fee.

DATES: Comments must be submitted on or before June 26, 1984; a public hearing will be held on June 26, 1984, at 9:30 a.m., requests to present oral testimony should be received on or before June 19, 1984.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: R. Franklin Burnett, Room 3-11A13. The hearing will be held in Room 11C10, on the 11th floor of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11A13 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett by telephone at (703) 557-3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed primarily to (1) establish a set of rules and procedures for the payment of patent maintenance fees; and (2) effect the provisions of Pub. L. 96-517 and 97-247 with respect to payment of maintenance fees.

Discussion of Specific Rules

Section 1.1, if amended as proposed, would add a proposed new paragraph (d) to provide a "Box M. Fee" in the Patent and Trademark Office to which all maintenance fee correspondence and payments should be directed. Changes in small entity status in patents and changes in the "fee address" under §1.363, as well as payments of maintenance fees should be directed to "Box M. Fee".

The proposed change in §1.9, paragraph (d) is a mere change in citation and title of the rule of the Small Business Administration which relates to the small business size standard for paying reduced patent fees. This change was published in the **Federal Register** as a final rule on February 9, 1984 at 49 FR 5024-5048. The wording of the rule itself was not changed. This change is proposed to bring the wording of title 37, Code of Federal Regulations into conformance with title 13, Code of Federal Regulations.

Section 1.17, if amended as proposed, would establish in paragraph (h) a fee of $120 for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (h) of § 1.17 is also proposed to be amended to establish a fee of $120 for reconsideration of a decision on petition refusing to accept the delayed payment of a maintenance fee in an expired patent.

Section 1.19, if amended as proposed, would add proposed new paragraphs (f) and (g). Proposed new paragraph (f) would provide for a $10.00 fee for a microfiche copy of a patent file wrapper record. Microfiche copies of these patent files have recently become available for patents issued after January 1, 1984. No fee had previously been set by rule for this service. This fee is not directly related to maintenance fees but is proposed here for convenience. Proposed new paragraph (g) would establish a $3.00 fee for providing an uncertified statement indicating either the status of payment of maintenance fees due on a patent or the expiration of a patent. This charge does not apply to the receipt normally provided to the fee addressee as a result of the payment of a maintenance fee, but would apply any other time written evidence of the status of payment of maintenance fees on a patent is requested, whether by the patentee or a member of the public.

Section 1.20, if amended as proposed, would add new paragraphs (k), (l) and (m). Proposed new paragraph (k) would provide for a $100.00 surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six month, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982. Since Pub. L. 96-517 did not provide for small entities, the surcharge amount of $100 applies to all such patents. Proposed new paragraph (l) would provide for a $100 surcharge for patentees other than a small entity and a $50 surcharge for small entity patentees when paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant based on an application filed on or after August 27, 1982. This surcharge of $100 is subject to a 50% reduction for small entities pursuant to Pub. L. 97-247. Proposed new paragraph (m) would provide for a $500 surcharge for accepting payment of a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee. This $500 surcharge applies only under Pub. L. 97-247 where the patent is based on an application filed on or after August 27, 1982 and where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable. The requirement that the delay be "unavoidable" is the same as that for reviving an abandoned application under 35 U.S.C. 133. However, the amount of evidence required will depend upon when the showing that the delay was "unavoidable" is made. This surcharge does not apply to patents based on applications filed prior to August 27, 1982 since acceptance of a maintenance fee after expiration of a patent for non-timely payment is not possible under Pub. L. 96-517. Since this surcharge is provided for under 35 U.S.C. 41(c), it is not subject to a 50% reduction for small entities. The surcharge in proposed paragraph (m) is not in addition to the surcharge in proposed paragraph (1), but is in lieu thereof.

Section 1.33, if amended as proposed, would add a new paragraph (d) which would allow a "correspondence address" or change thereto to be filed during the enforceable life of the patent.

The "correspondence address" would be used in correspondence relating to maintenance fees unless a separate "fee address" has been specified. Proposed paragraph (d) would also include a reference to proposed § 1.363 relating to

the "fee address" to be used for maintenance fee purposes.

A new § 1.362 is proposed to be added to provide for times for payment of maintenance fees. Proposed new paragraph (a) would set forth the requirement that maintenance fees as set forth in § 1.20(e)–(j) must be paid in order to maintain a patent in force if the application maturing into a patent was filed on or after December 12, 1980 and is subject to the payment of maintenance fees. The maintenance fee amounts set in § 1.20(e)–(g) are subject to adjustment in accordance with the provisions of Pub. L. 96–517. The maintenance fee amounts set in § 1.20(h)–(j) are subject to adjustment in accordance with the provisions of Pub. L. 97–247 on October 1, 1985, and every third year thereafter, to reflect fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Other patent fees are also subject to similar adjustments.

Proposed new paragraph (b) of § 1.362 would stipulate that no maintenance fees are due for plant patents if the plant patent application was filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees. Proposed new paragraph (c) would define the pertinent application filing dates for purposes of determining whether maintenance fees are applicable. Paragraph (c)(1) would establish that for national applications not claiming benefit of an earlier application, the actual United States filing date controls. Paragraph (c)(2) would establish that for national applications claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date controls. Paragraphs (c)(3) would provide that for continuing national applications claiming benefit of a prior application under 35 U.S.C. 120, the actual United States filing date of the continuing application is the controlling date. Paragraph (c)(4) would provide that for a reissue application, the United States filing date of the application which matured into the original patent upon which the reissue application is based would control. Paragraph (c)(5) would establish that for an international application which has entered the United States as a designated office under 35 U.S.C. 371, the international filing date granted under Article 11(l) of the Patent Cooperation Treaty controls. This is consistent with 35 U.S.C. 363.

Paragraph (d) of proposed new § 1.362 would set forth the time periods when maintenance fees could be paid without a surcharge. Those periods, referred to generally as the "window period," are the six month periods preceding each due date, i.e., 3 years through 3 years and six months, 7 years through 7 years and six months, and 11 years through 11 years and six months after grant of the patent. The "due dates" are defined in 35 U.S.C. 41(b). A maintenance fee paid on the last day of a window period could be paid without surcharge. The last day of a window period is the same date (anniversary date) the patent was granted 3 years and six months, 7 years and six months, or 11 years and six months after grant of the patent.

Paragraph (e) of proposed new § 1.362 would set forth the grace periods during which maintenance fees, under either Pub. L. 96–517 or Pub. L. 97–247, may be paid with the surcharge under § 1.20 (k) or (l). The grace periods are the six month periods immediately following each due date, i.e., after 3 years and six months and up to 4 years, after 7 years and six months and up to 8 years, and after 11 years and six months and up to 12 years after grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring.

Paragraph (f) of proposed new § 1.362 would specify that where the last day for paying a maintenance fee falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee may be paid on the next succeeding day which is not a Saturday, Sunday, or federal holiday. For example, if the "window period" provided by proposed paragraph (d) for paying a maintenance fee without surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee could be paid without surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. Likewise, if the grace period provided by proposed paragraph (e) for paying a maintenance fee with surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee could be paid with surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. In the latter situation, the failure to pay the maintenance fee and surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday would result in the patent expiring on a date (4, 8, or 12 years after the date of grant) earliier than the last date on which the maintenance fee and surcharge could be paid. This situation results from the provisions of 35 U.S.C. 21, but those provisions do not extend the expiration date of the patent if the maintenance fee and any required surcharge are not paid when required. For example, if the grace period ended on Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g. Monday, but the patent would have expired on Saturday, if the maintenance fee and surcharge were not paid on the following Monday.

Paragraph (g) of proposed new § 1.362 would establish that if the proper fees are not received within the time period specified in paragraphs (d), (e), or (f) the patent would expire at the end of the grace period set forth in paragraph (e). Paragraph (g) also specifies that a patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

Proposed new § 1.363, if added as proposed, would provide for a "fee address" for maintenance fee purposes. Proposed new paragraph (a) would specify that the correspondence address used during prosecution of the application would be used unless 1) a "fee address" is provided for maintenance fee purposes when submitting the issue fee, 2) a correspondence address change for all purposes is filed after payment of the issue fee, or 3) a "fee address" or a change in the "fee address" is filed after payment of the issue fee.

Paragraph (b) of proposed new § 1.363 would specify that an assignment does not result in a change of address for maintenance fee purposes. Due to the possible expiration of a patent for failure to timely pay the appropriate maintenance fee, patentees should ensure that the Patent and Trademark Office is properly notified of the proper "fee address" to which all maintenance fee communications are to be directed. Under both Pub. L. 96–517 and Pub. L. 97–247 the burden is on the patentee to timely pay maintenance fees. The Patent and Trademark Office will attempt to assist patentees through appropriate courtesy notices. However, the failure to receive one or more notices will not relieve the patentee of the obligation to timely pay the appropriate maintenance fee to prevent the patent from expiring by operation of law if the appropriate maintenance fee is not paid. Proposed § 1.363 does not provide for maintenance fee correspondence to be directed to more than one address.

Proposed new § 1.366, if added as proposed, would establish the guidelines

and procedures for submission of maintenance fees, including any necessary surcharges. Proposed new paragraph (a) would state that the patentee may pay maintenance fees or any person or organization may pay maintenance fees on behalf of the patentee without filing in the Patent and trademark Office evidence of authorization by the patentee to pay maintenance fees. This will enable patentees to pay the maintenance fees themselves or authorize some person or organization to pay maintenance fees on their behalf. No verification of the authority to pay maintenance fees in a particular patent will be made by the Patent and trademark Office. while anyone may pay the maintenance fees on a patent, any Patent and Trademark Office notices relating to maintenance fees will be mailed to the "fee address" set forth in proposed § 1.363.

Paragraph (b) of proposed new § 1.366 specifies that a maintenance fee and any necessary surcharge for a patent must be submitted in the proper amount and at the proper time, i.e., within the periods set forth in proposed § 1.362. The maintenance fee and any necessary surcharge may be paid in the manner set forth in § 1.23, i.e., it should be in United States specie, Treasury notes, national bank notes, post office money orders, or by certified check. As indicated in § 1.23, if the maintenance fee payment is sent in any other form, the office may delay or cancel the credit until collection is made. For example, a personal or other uncertified check drawn on a United States bank which is not immediately negotiable, e.g., because of lack of signature or insufficient funds, would not constitute payment of a maintenance fee. However, a personal check drawn on a United States bank can be used if it is immediately negotiable. Any remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the maintenance fee required.

Paragraph (b) of proposed new § 1.366 also provides that maintenance fees may be paid by an authorization to charge a deposit account established pursuant to § 1.25. The authorization to charge the deposit account must be submitted within the periods set forth in § 1.366 and must be limited to maintenance fees payable on the date of submission. The authorization to charge the deposit account could not, under paragraph (b), be submitted prior to the third, seventh, or eleventh year after the grant of the patent. If an authorization to charge a deposit account were submitted to pay the maintenance fee due at three years and six months after grant, a new authorization to charge a deposit account or other form of payment would have to be submitted at the appropriate time for each of the maintenance fees due at 7 years and six months and 11 years and six months. Proposed paragraph (b) also specifies that any payment or authorization filed at any time other than that set forth in proposed § 1.362 (d) or (e) will not serve as a payment of the maintenance fee, except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner pursuant to proposed § 1.378. Paragraph (b) as proposed also specifies that a payment of less than the required amount, a payment in a manner other than that set forth in §1.23, or the filing of an authorization to charge a deposit account having insufficient funds, will not constitute payment of a maintenance fee on a patent. The authorization is required to authorize the immediate charging of the fee to the deposit account. An authorization would be improper if it only authorized the fee to be charged at a later date, e.g., on the last possible day of payment without surcharge. Such an authorization would not serve as payment of the maintenance fee. Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee. Paragraph (b) also specifies that the certificate of mailing procedures of § 1.8 or the mailing by "Express Mail" provisions of § 1.10 may be utilized in paying maintenance fees. The specific requirements of either § 1.8 or § 1.10 must be fully complied with if either is used.

Proposed paragraph (c) of new § 1.366 would establish the data necessary and desired when submitting maintenance fee payments Proposed new paragraph (c) would specify that maintenance fee payments must include at least the , (1) patent number, (2) patent issue date, (3) United States application serial number, and (4) United States application filing date. This information is necessary as a cross-check so that the fee will be credited to the proper patent. If less than the required information is submitted, the Office cannot ensure that proper credit will be made. Additionally, if notice is required that the proper identifying data has not been submitted, it would result in requiring the payment of a surcharge if the necessary data is submitted after the "window period" closes and was necessary to properly identify the patent for which the fee was being paid.

Paragraph (d) of proposed new § 1.366 would specify that the following information should also be submitted: (1) Whether it is the 3½, 7½, or 11½ year fee, (2) whether small entity status is being claimed with the payment, and (3) the amount of the maintenance fee and any surcharge being submitted. Although the submission of this information is not mandatory, it would expedite the processing of the maintenance fee payments.

Paragraph (e) of proposed new § 1.366 would specify that maintenance fee payments and any surcharges relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account. Maintenance fee payments and surcharge payments relating thereto which are co-mingled with payments for other fees or charges, e.g., application filing fees, issue fees, document supply fees, etc., will not be accepted. The maintenance fees require processing by a separate area of the Office and are not processed in the same manner as other fees and charges. Maintenance fees for a number of patents can be submitted together in one submission and one payment. Paragraph (e) specifies that if maintenance fee payments for more than one patent are submitted together, they should be submitted on as few sheets as possible, listing the patent numbers in increasing patent number order. If the payment submitted, which can be made as a single payment, is insufficient to cover the maintenance fees and surcharges for all the listed patents, the payment will be applied in the order the patents are listed. In such a circumstance where the fees are insufficient, the maintenance fee for one or more of the last listed patents will not be paid.

Paragraph (f) of proposed new § 1.366 serves as a reminder to patentees of the necessity to check for the loss of small entity status prior to paying each maintenance fee on a patent. This is already a requirement of § 1.28(b). Paragraph (f) provides that notification of any charge in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. If status as a small entity has been previously established by filing a statement and such status is checked and is found to be proper, no notification is required. It is not necessary to file new verified statements claim small entity status at this point if the status as a small entity

is still proper even if rights have been transferred to a small entity who has not previously filed a verified statement. The requirement is to notify the Patent and Trademark Office of the loss of entitlement and to pay the maintenance fee in the proper amount for other than a small entity where appropriate. The refund provisions of § 1.28(a) for later submitted small entity statements will apply to maintenance fees.

Paragraph (g) of proposed new § 1.366 would provide that maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a). A patentee cannot obtain a refund of a maintenance fee which was due and payable on the patent.

Proposed new § 1.377, if added as proposed, would provide a mechanism for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (a) of proposed new § 1.377 specifies that a patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

Paragraph (b) of proposed new §1.377 specifies that any petition under proposed new §1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the petition fee of $120 provided for in the proposed amendment to §1.17(h). Paragraph (b) also provides that the petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Patent and Trademark Office.

Paragraph (c) of proposed new §1.377 specifies that any petition filed under the section must comply with the requirements of paragraph (b) of §1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. The petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

Proposed new §1.378, if added as proposed, would establish the procedures for acceptance of the delayed payment of a maintenance fee in an expired patent in order to reinstate that patent. This procedure is only available under Pub. L. 97–247 where the application on which the patent is based was filed on or after August 27, 1982. If the maintenance fee is due under Pub. L. 96–517, i.e., the application on which the patent is based was filed on or after December 12, 1980, and before August 27, 1982, the delayed payment of the maintenance fee cannot be accepted after expiration of the patent and the patent cannot be reinstated.

Paragraph (a) of proposed new §1.378 provides that the Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable. The surcharge required by §1.20(m) must be paid as a condition of accepting payment of the maintenance fee. No separate petition fee is required for this petition. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but would be subject to the intervening rights provisions of 35 U.S.C. 41(c)(2).

Paragraph (b) of proposed new §1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed within six months of the expiration of the patent. Under proposed paragraph (b), the petition must include the required maintenance fee set forth in §1.20(h)–(j); the surcharge set forth in proposed §1.20(m); and a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee. In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, an argument that the patentee was ignorant of the requirement to pay maintenance fees would not constitute a showing of unavoidable delay. Evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and if it were shown that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

Paragraph (c) of proposed new § 1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed more than six months after the expiration of a patent. These requirements are much more stringent in view of the heavy burden of proof that the delay was unavoidable. The legislative history of Pub. L. 97–247, House Report No. 97–542 (Committee on the Judiciary), indicates that "[a]fter the expiration of a reasonable period of time, the patentee would bear a heavy burden of proof that the delay was unavoidable." The six month period provided for petition under proposed paragraph (b) is considered to be a reasonable period of time within which to seek reinstatement of a patent which expired for failure to pay the maintenance fee. Any petition filed more than six months after expiration must meet the more stringent requirements of proposed paragraph (c). Under proposed paragraph (c), the petition must include the same elements as in proposed paragraph (b) and, in addition, must demonstrate that the failure to pay the maintenance fee was unavoidable due to circumstances outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing in a petition under paragraph (c) must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable. In contrast to a petition under proposed paragraph (b), a showing in a petition under proposed paragraph (c) of an error in a docketing system would not be sufficient to find that the delay was unavoidable. Instead, a petition filed under paragraph (c) must demonstrate that the circumstances resulting in the delay were entirely outside the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee, e.g., serious efforts without success to raise the funds required to pay the maintenance fee.

Paragraph (d) of proposed new § 1.378 would require that a petition filed under proposed new § 1.378 be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Under proposed paragraph (d), the petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

Paragraph (e) of proposed new § 1.378 provides a mechanism for obtaining reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a). This mechanism is a petition for reconsideration which may be filed within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. In contrast to petitions filed under proposed paragraph (a), the petition for reconsideration filed under proposed paragraph (e) of new § 1.378 would require the separate petition fee set forth in the proposed amendment to ¶ 1.17(h). Proposed paragraph (e) also provides that after the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Proposed paragraph (e) also provides for refund of the maintenance fee and the surcharge set forth in §1.20(m) if the delayed payment of the maintenance fee is not accepted. The refund would be made following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Proposed paragraph (e) specifies that the fee for filing the petition for reconsideration will be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Environmental, energy, and other considerations: The proposed rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). Public Law 96–517 and 97–247 have both taken into consideration the impact they may have on small entities.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no 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.

This rule change does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Pub. L. 96–517 and Pub. L. 97–247, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below.

PART 1—[AMENDED]

It is proposed to amend 37 CFR, Part 1, as follows with deletions indicated by brackets and additions by arrows.

1. Section 1.1 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

►(d) Payments of maintenance fees in patents and other communications relating thereto should be additionally marked "Box M. Fee."◄

§ 1.9 [Amended]

2. Paragraph (d) of § 1.9 is proposed to be amended by changing the citation "13 CFR 121.3–18, published on September 30, 1982 at 47 FR 43273." to "13 CFR 121.12." and by changing the words "§ 121.3–18 Definition of small business for paying reduced patent fees under Title 35, U.S. Code" to "§ 121.12 Small business for paying reduced patent fees."

3. Section 1.17 is proposed to be amended by adding to the end of paragraph (h) the following:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

►—§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent

—§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent◄

* * * * *

4. Section 1.19 is proposed to be amended by adding new paragraphs (f) and (g) to read as follows:

§ 1.19 Document supply fees.

* * * * *

►(f) Microfiche copy of patent file record.....$10.00

(g) Uncertified statement as to status of the payment of maintenance fees due to a patent or expiration of a patent.....$3.00◄

5. Section 1.20 is proposed to be amended by adding new paragraphs (k), (l) and (m) to read as follows:

§ 1.20 Post-issuance fees.

* * * * *

►(k) Surcharge for paying a maintenance fee during the 6 month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982.....$100.00

(l) Surcharge for paying a maintenance fee during the 6 month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after August 27, 1982:

By a small entity (§ 1.9(f)).....$50.00

By other than a small entity.....$100.00

(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee on a patent based on an application filed on or after August 27, 1982, where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable.....$500.00◄

6. Section 1.33 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

►(d) A "correspondence address" or change thereto may be filed with the Patent and Trademark Office during the enforceable life of the patent. The "correspondence address" will be used in any correspondence relating to maintenance fees unless a separate "fee address" has been specified. See §1.363 for "fee address" used solely for maintenance fee purposes.◄

7. A new center heading and § 1.362 is proposed to be added to Subpart B to read as follows:

►Maintenance Fees

§ 1.362 Time for payment of maintenance fees.

(a) Maintenance fees as set forth in § 1.20(e)-(j) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for plant patents based on applications filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

(c) The application filing dates for purposes of payment of maintenance fees are as follows:

(1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

(2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.

(3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.

(4) For a reissue application, the United States filing date of the original non-reissue application on which the patent reissued is based.

(5) For an international application which has entered the United States as a designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

(d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee,

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee,

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20 (k) or (l) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee,

(2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee may be paid under paragraph (d) or paragraph (e) respectively on the succeeding day which is not a Saturday, Sunday, or federal holiday.

(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.◄

8. A new §1.363 is proposed to be added to Subpart B to read as follows:

►§1.363 Fee address for maintenance fee purposes.

(a) All notices, receipts, refunds, and other communications relating to payment or refund of maintenance fees will be directed to the correspondence address used during prosecution of the application as indicated in § 1.33(a) unless:

(1) a "fee address" for purposes of payment of maintenance fees is set forth when submitting the issue fee, or

(2) a change in the correspondence address for all purposes is filed after payment of the issue fee, or

(3) a "fee address" or a change in the "fee address" is filed for purposes of receiving notices, receipts and other correspondence relating to the payment of maintenance fees after the payment of the issue fee, in which instance, the latest such address will be used.

(b) An assignment of a patent application or patent does not result in a change of the "correspondence address" or "fee address" for maintenance fee purposes.◄

9. A new § 1.366 is proposed to be added to Subpart B to read as follows:

►§ 1.366 Submission of maintenance fees.

(a) The patentee may pay maintenance fees, or any person or organization may pay maintenance fees on behalf of a patentee. Authorization by the patentee need not be filed in the Patent and Trademark Office to pay maintenance fees on behalf of the patentee.

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the proper amount and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362 (d) or (e). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate of mailing procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees, identification of the patents for which maintenance fees are being paid must include the following:

(1) the patent number

(2) the patent issue date

(3) the United States application serial number, and

(4) the application filing date

(d) Payments of maintenance fees should identify the fee being paid for each patent as to whether it is the 3½, 7½ or 11½ year fee, whether small entity status is being changed or claimed, and the amount of the maintenance fee and any surcharge being paid.

(e) Maintenance fee payments and surcharge payments relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in §1.23 or by an authorization to charge a deposit account. If maintenance fee and surcharge payments for more than one patent are submitted together, they should be submitted on as few sheets as possible with the patent numbers listed in increasing patent number order. If the

payment submitted is insufficient to cover the maintenance fees and surcharges for all the listed patents, the payment will be applied in the order the patents are listed, beginning at the top of the listing.

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See § 1.28(b).

(g) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a).◄

10. A new § 1.377 is proposed to be added to Subpart B to read as follows:

►§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

(a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(h). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

(c) Any petition filed under this section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.◄

11. A new § 1.378 is proposed to be added to Subpart B to read as follows:

►§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent based on application filed on or after August 27, 1982.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(m) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but would be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section within six months of the expiration of the patent must include:

(1) the required maintenance fee set forth in § 1.20(h)–(j);

(2) the surcharge set forth in § 1.20(m); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section more than six months after the expiration of the patent must include:

(1) the required maintenance fee set forth in § 1.20(h)–(j);

(2) the surcharge set forth in § 1.20(m); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and the failure to timely pay the maintenance fee was due entirely to circumstances outside of he control of the patentee. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee and the circumstances which were outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

(e) Reconsideration of a decison refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(m) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The fee set forth in § 1.17(h) for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.◄

Dated: April 2, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84–10844 Filed 4–23–84; 8:45 am]

BILLING CODE 3510–16–M

federal register

Tuesday
April 24, 1984

Part VI

Department of Energy

Federal Energy Regulatory Commission

Natural Gas Policy Act; Determinations by Jurisdictional Agencies; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1104]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 19, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol Street, Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation.
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED APRIL 19, 1984
VOLUME 1104

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-AKRON/OIL CORP				RECEIVED:	03/20/84	JA: OH			
8425808		3412725525		107-TF		GORSKY #1A	MADISON	12.0	
8425806		3411926208		107-TF		MCLOUGHLIN #1	LICKING	19.0	
8425807		3411926209		107-TF		MCLOUGHLIN #2	LICKING	13.0	
-ALTEX INC				RECEIVED:	03/20/84	JA: OH			
8425809		3404520891		103		PICKERING #2	RICHLAND	12.0	NATIONAL GAS & OI
-AMERICAN ENERGY DEVELOPMENT INC				RECEIVED:	03/20/84	JA: OH			
8425811		3408520527		107-TF		SAM JACKSON #1	MADISON	35.0	
8425810		3408520526		107-TF		WARREN EARL BROWN SR #1	MADISON	35.0	
-ATLAS ENERGY GROUP INC				RECEIVED:	03/20/84	JA: OH			
8425812		3415522341		103	107-TF	CHAMPION MANOR #1	CHAMPION	0.0	COPPERWELD STEEL
-ATWOOD RESOURCES INC				RECEIVED:	03/20/84	JA: OH			
8425813		3403125238		103	107-TF	CHARLES OBRYON ETAL #3	TUNNEL HILL	15.0	
-BAKERWELL INC				RECEIVED:	03/20/84	JA: OH			
8425814		3407524229		103		SELLERS-BOLT UNIT #1	KILLBUCK	12.2	COLUMBIA GAS TRAN
-BB ENERGY CORP				RECEIVED:	03/20/84	JA: OH			
8425815		3408924863		103		HUPP #1	BOWLING GREEN	9.0	OHIO GAS MARKETIN
8425816		3408924864		103		HUPP #2	BOWLING GREEN	9.0	OHIO GAS MARKETIN
-BELDEN & BLAKE & CO 84				RECEIVED:	03/20/84	JA: OH			
8425819		3401921684		103		C & G GOOD COMM #4-341379	ROSE	36.5	
8425818		3401921682		103		L & S MIDAY COMM #3-341380	ROSE	36.5	
8425821		3415123968		103		L D KRABILL COMM #3-341383	MARLBORO	36.5	
8425817		3401921677		103		W & S FINDLEY COMM #3-341364	ROSE	36.5	
8425820		3415123964		103		WHITACRE GREER #40-341370	SANDY	36.5	
-BLAZE OIL AND GAS INC				RECEIVED:	03/20/84	JA: OH			
8425822		3407523904		103	107-TF	PAUL F REINING #5	NOODLE	10.0	COLUMBIA GAS TRAN
-BRASEL & BRASEL				RECEIVED:	03/20/84	JA: OH			
8425916		3410519850		108		FLOYD CARSON #5		1.0	COLUMBIA GAS TRAN
8425912		3405302700		108		RICHARD BARRETT #1		1.0	COLUMBIA GAS TRAN
8425911		3405302180		108		SMITH-SOWARDS #1		1.0	COLUMBIA GAS TRAN
8425913		3405303900		108		SMITH-SOWARDS #2		1.0	COLUMBIA GAS TRAN
8425914		3405303931		108		SMITH-SOWARDS #3		1.0	COLUMBIA GAS TRAN
8425915		3405305730		108		SMITH-SOWARDS #4		1.0	COLUMBIA GAS TRAN
-BRBCO INC				RECEIVED:	03/20/84	JA: OH			
8425823		3415321198		103	107-TF	ALL SAINTS #2	NORTHFIELD CENTER	0.0	
-CAVENDISH PETROLEUM OF OHIO INC				RECEIVED:	03/20/84	JA: OH			
8425824		3411926952		103	107-TF	OHIO POWER 49-A	RICH HILL	98.1	TEXAS EASTERN TRA
-CLINTON OIL CO				RECEIVED:	03/20/84	JA: OH			
8425934		3411926891		107-TF		B DICKSON #1-847	UNION	10.0	
8425933		3411926785		107-TF		COLLINS UNIT #1-824	SALEM	10.0	
8425932		3406720599		107-TF		DUANE L EDIE #4-757	MONROE	10.0	
8425936		3415522425		107-TF		E HILLMAN UNIT #1-742	BRISTOL	10.0	
8425937		3415522429		107-TF		E HILLMAN UNIT #2-743	BRISTOL	10.0	
8425929		3400722504		107-TF		F WARNER UNIT #1-838	GENEVA	10.0	
8425938		3415522488		107-TF		J BOLEK UNIT #1A-670	BRISTOL	10.0	
8425935		3415123962		107-TF		J CASTELLUCCI #1-844	WASHINGTON	10.0	

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8425939		3403124692		108		M W C D #5-579
8425931		3405520718		107-TF		R CORLETT #1-640
-CONSOLIDATED RESOURCES OF AMERICA				RECEIVED:	03/20/84	JA: OH
8425825		3405922257		108		PRESLEY/OLSHAWSKY UNIT #1
-D & M ENTERPRISES INC				RECEIVED:	03/20/84	JA: OH
8425826		3412726152		107-TF		FRED & MARY KREITZ #1
-DERBY OIL & GAS CORP				RECEIVED:	03/20/84	JA: OH
8425828		3416923719		103	107-TF	PAUL GRAHAM ETAL #3
8425827		3416923718		103	107-TF	RICHARD GRAHAM #2
-DON MCKEE DRILLING CO INC				RECEIVED:	03/20/84	JA: OH
8425829		3408323425		103		T F ANDREWS #2
-EDCO DRILLING & PRODUCING INC				RECEIVED:	03/20/84	JA: OH
8425832		3400722499		107-TF		BALDWIN SH-1A
8425831		3400722498		107-TF		BALDWIN SH-1B
8425830		3400722427		107-TF		SIMMONS GV-1A
-ELKHEAD GAS & OIL COMPANY				RECEIVED:	03/20/84	JA: OH
8425833		3408924443		103		ALBYN #1
-ENINUN INC				RECEIVED:	03/20/84	JA: OH
8425834A		3412726093		103		DONAHUE #2
8425834B		3412726093	D	107-TF		DONAHUE #2
-EVERFLOW EASTERN INC				RECEIVED:	03/20/84	JA: OH
8425835		3409921652		103	107-TF	EDEL #1
8425837		3409921662		103	107-TF	GRENAMEYER #1
8425836		3409921661		103	107-TF	GRENAMEYER #2
-FREDERICK PETROLEUM CORP				RECEIVED:	03/20/84	JA: OH
8425854		3411123018		103		B TILTON #4
8425861		3411123017		103		B TILTON #6
8425855		3411123019		103		B TILTON #7
8425858		3411123054		103		D ULLMAN #1
8425857		3411123050		103		D ULLMAN #5
8425856		3411123048		103		D ULLMAN #7
8425859		3412123072		103		S MILLER #1
8425860		3412123099		103		S MILLER #3A
8425862		3411123044		103		W BUCKEY #4A
-GASEARCH INC				RECEIVED:	03/20/84	JA: OH
8425863		3409921656		103	107-TF	MALONE #3
8425864		3409921658		103	107-TF	MALONE #4
-GLADOT-REAGAN OIL CO				RECEIVED:	03/20/84	JA: OH
8425865		3416725253		103	107-TF	CHRIS BROWN #1
-GREENLAND PETROLEUM CO				RECEIVED:	03/20/84	JA: OH
8425866		3412123068		103		NEWTON #1
-H & S DRILLING CO INC				RECEIVED:	03/20/84	JA: OH
8425867		3411926779		103		SLAUGHTER #1
-HOOVER PRODUCING & OPERATING				RECEIVED:	03/20/84	JA: OH
8425868		3411926890		103		K POUND #2-A
-J D DRILLING CO				RECEIVED:	03/20/84	JA: OH
8425874		3410522875		107-DV		ALBERT DANGELO #2
8425873		3410522814		107-DV		C T & L HAMM & V & M HAMM #1
8425870		3410522716		107-DV		CECIL & DOROTHY ROSEBURY #2
8425872		3410522777		107-DV		FOLEY - ROBINSON #1
8425869		3410522702		107-DV		HARLAN BALLARD #1
8425871		3410522769		107-DV		LILLIAN PROFFITT #1
-J O B INC				RECEIVED:	03/20/84	JA: OH
8425875		3416726657		107-DV		EDDY #1
-JEFFERSON OIL & GAS CO				RECEIVED:	03/20/84	JA: OH
8425876		3407322891		103		DUNLAP #1
-JONSU OIL CORP				RECEIVED:	03/20/84	JA: OH
8425877		3403125165		103		SMITH #1
-LANGASCO DRILLING CO				RECEIVED:	03/20/84	JA: OH
8425878		3402920972		107-DV		GRASSY VUE FARMS INC #1
8425879		3402920973		107-TF		ROGER BAKER #1
-LEADER EQUITIES INC				RECEIVED:	03/20/84	JA: OH
8425880		3407322918		103	107-TF	ANDERSON #1
8425881		3411926848		103	107-TF	LITTLE #1-A
-LOMAK PETROLEUM INC				RECEIVED:	03/20/84	JA: OH
8425882		3405520572		103	107-TF	A MUZVAR #1
-MARIETTA ROYALTY CO INC				RECEIVED:	03/20/84	JA: OH
8425883		3411672759		103		LUKE-THEOBALD #2
-MID-CON OIL COMPANY				RECEIVED:	03/20/84	JA: OH
8425884		3412726100		103		MAURICE COOPERRIDER #1
-MORELAND OIL & GAS				RECEIVED:	03/20/84	JA: OH
8425885		3408520487		107-TF		SATTERFIELD #1
8425886		3408520488		107-TF		SATTERFIELD #2
-MOUNTAIN GAS VIRGINIA LTD				RECEIVED:	03/20/84	JA: OH
8425888		3415321634		103	107-TF	GIER DEVELOPMENT #2
8425887		3415321542		103	107-TF	JOSYLN/BENNETT UNIT #2
-OHIO PURE OIL CORP				RECEIVED:	03/20/84	JA: OH
8425898		3407524196		103		KICK DL-1 (DL-3)
8425897		3407524189		103		KICK DL-2
8425899		3407524208		103		KICK K-15 (DL-4)
8425900		3407524222		103		KICK K-21 (DG 1)
8425892		3400523651		103		YOUNG - YO-14
8425890		3400523583		103		YOUNG YO-12
8425896		3407524169		103		YOUNG YO-13
8425891		3400523650		103		YOUNG YO-6
8425895		3400523662		103		YOUNG ZY-10
8425893		3400523659		103		YOUNG ZY-7
8425894		3400523660		103		YOUNG ZY-8
-ONEAL PETROLEUM INC				RECEIVED:	03/20/84	JA: OH
8425889		3411523034		103	107-TF	HIPP #3
-OXFORD OIL CO				RECEIVED:	03/20/84	JA: OH
8425940		3408924784		103		ALLYN-SEWARD UNIT #1
8425941		3412726188		103		HARRY WALSER #4
8425942		3416923513		107-TF		MILES FIRESTONE #1
8425939		3407322879		103		OXFORD FEE #3
-P/T DRILLING JOINT VENTURE				RECEIVED:	03/20/84	JA: OH
8425901		3400722411		107-TF		L & S PINTO #5
-PARTNERS PETROLEUM INC				RECEIVED:	03/20/84	JA: OH
8425902		3413323058		107-TF		CHADWICK-JIROUSEK UNIT #1
-PETRO EVALUATION SERVICES INC				RECEIVED:	03/20/84	JA: OH
8425903		3408524700		103	107-TF	BRENISER-KENNEY #1
-PINETOP ESTATES				RECEIVED:	03/20/84	JA: OH
8425904		3415321574		103	107-DP	BURKHARDT-BICKETT #1
-POI ENERGY INC				RECEIVED:	03/20/84	JA: OH

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FIELD NAME	PROD	PURCHASER
	10.0	COLUMBIA GAS TRAN
HUNTSBURG	10.0	
SENECAVILLE	10.0	COLUMBIA GAS TRAN
SALT LICK	6.0	OHIO OIL GATHERIN
WOOSTER	12.0	R S C ENERGY CORP
WOOSTER	12.0	RSC ENERGY CORP
JACKSON	0.0	COLUMBIA GAS TRAN
SHEFFIELD	18.0	
SHEFFIELD	18.0	
SHEFFIELD	18.0	
MADISON	10.0	NATIONAL GAS & OI
THORN	20.0	NATIONAL GAS & OI
THORN	20.0	NATIONAL GAS & OI
ELLSWORTH	0.0	
JACKSON	0.0	
JACKSON	0.0	
FRANKLIN	0.1	
FRANKLIN	0.1	
FRANKLIN	0.1	
FRANKLIN	0.1	
FRANKLIN	0.1	
FRANKLIN	0.1	
ELK	0.1	
ELK	0.1	
BETHEL	5.0	
AUSTINTOWN	20.0	
AUSTINTOWN	20.0	
ADAMS	4.0	GAS TRANSPORT INC
JACKSON	150.0	EAST OHIO GAS CO
CLINTON SLAUGHTER	6.0	NATIONAL GAS & OI
LICKING	18.3	NATIONAL GAS & OI
OLIVE	7.0	COLUMBIA GAS TRAN
SUTTON	6.0	COLUMBIA GAS TRAN
LEBANON	7.0	COLUMBIA GAS TRAN
OLIVE	8.0	COLUMBIA GAS TRAN
LEBANON	8.0	COLUMBIA GAS TRAN
LEBANNON	7.0	COLUMBIA GAS TRAN
LAWRENCE	7.0	COLUMBIA GAS TRAN
NEW STRAITSVILLE	11.0	OHIO OIL GATHERIN
MONROE	8.0	
BUTLER	42.0	YANKEE RESOURCES
BUTLER	40.0	YANKEE RESOURCES
WASHINGTON	12.0	
CASS	14.0	
HUNTSBURG	24.0	
WARREN	9.1	RIVER GAS CO
THORN	30.0	NATIONAL GAS & OI
MADISON	12.0	VIKING RESOURCES
MADISON	12.0	VIKING RESOURCES
HUDSON	0.0	EAST OHIO GAS CO
HUDSON	0.0	POI ENERGY INC
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	500.0	PALMER ENERGY
LOUDONVILLE	0.0	PALMER ENERGY
LOUNDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
LOUDONVILLE	1.0	PALMER ENERGY
MALTA	25.0	
PERRY	10.0	
THORN	8.0	
CHESTER	10.0	
GREEN	8.0	
NEW LYME	40.0	
MANTUA	72.0	YANKEE RESOURCES
PERRY	33.0	
NORTHAMPTON	0.0	EAST OHIO GAS CO

VOLUME 1184

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8425907		3405520655		103	107-TF	CHADWICK FARMS #RM-1	AUBURN	33.0	
8425906		3400722543		103	107-TF	D HANSON #RM-1	CHERRY VALLEY	40.0	
8425905		3400721095		103	107-TF	ROMAN #CG-2	COLEBROOK	18.0	
-QUESTA PETROLEUM CO				RECEIVED:	03/20/84	JA: OH			
8425908		3404520880		103		HOWARD ROWLES #1	PLEASANT	15.0	
8425910		3404520887		103		HOWARD ROWLES #1	PLEASANT	15.0	
8425909		3404520883		103		M MILLER #4	PLEASANT	15.0	
-R A HATFIELD & SON INC				RECEIVED:	03/20/84	JA: OH			
8425917		3416923568		103		OTT #2	BAUGHMAN	9.0	
-R C POLING CO INC				RECEIVED:	03/20/84	JA: OH			
8425919		3412726155		103		LESTER A MOORE #1-A	THORN	5.0	
8425918		3412726007		103		THEODORE SIDWELL #1	THORN	5.0	
-RED HILL DEVELOPMENT				RECEIVED:	03/20/84	JA: OH			
8425842		3405923291		103	107-TF	C LOGAN #1	LONDONDERRY	10.0	
8425851		3406720546		103	107-TF	D SAYRE #1	FREEPORT	28.0	
8425844		3405923293		103	107-TF	DOUGLASS #4	LONDONDERRY	14.0	
8425845		3405923294		103	107-TF	DOUGLASS #5	LONDONDERRY	14.0	
8425850		3406720525		103	107-TF	DUNLAP #1	WASHINGTON	20.0	
8425852		3406720548		103	107-TF	H JONES #1	FREEPORT	28.0	
8425841		3401921605		103	107-TF	H ROY LOGAN #1	PERRY	4.0	
8425840		3401921603		103	107-TF	J LEGGETT #1	PERRY	4.0	
8425853		3415723738		103	107-TF	K GARDNER #2	PERRY	4.0	
8425847		3405923340		103	107-TF	P COX #3	LONDONDERRY	10.0	
8425846		3405923339		103	107-TF	P COX #4	LONDONDERRY	6.0	
8425849		3406720519		103	107-TF	P LUYSTER #1	WASHINGTON	46.0	
8425843		3405923292		103	107-TF	R DOUGLAS #3	LONDONDERRY	14.0	
8425839		3401921590		103	107-TF	T PERRY #1	PERRY	4.0	
8425838		3401921589		103	107-TF	T PERRY #2	PERRY	9.0	
8425848		3406720518		103	107-TF	W CLAY #1	FREEPORT	7.0	
-REDMAN OIL CO INC				RECEIVED:	03/20/84	JA: OH			
8425920		3411523338		107-TF		C W DRUMMOND #1	MANCHESTER	73.0	COSHOCTON PIPE CO
-ROBERT W ORR JR				RECEIVED:	03/20/84	JA: OH			
8425921		3411926808		103	107-TF	EDWARD & JUANITA KRAMER WELL #1	WAYNE TWP	12.0	NATIONAL GAS & OI
-ROYAL-EMPIRE LEV DRLG PTNSP 83-1				RECEIVED:	03/20/84	JA: OH			
8425923		3408323413		103		KLINGENSMITH #1	JACKSON	5.0	NATIONAL GAS & OI
8425922		3407524223		103		TOM WILSON #1	RICHLAND	5.0	CUMBERLAND GAS CO
-STOCKER & SITLER INC				RECEIVED:	03/20/84	JA: OH			
8425924		3411926844		103	107-TF	CONSOL LEASE #3	SPRINGFIELD	71.0	NATIONAL GAS & OI
8425925		3411926845		103	107-TF	CONSOL LEASE #5	SPRINGFIELD	33.0	NATIONAL GAS & OI
-STRATA CORP				RECEIVED:	03/20/84	JA: OH			
8425926		3412726015		103	107-TF	CLAUDE MASTERSON #3	CLAYTON	30.0	TEXAS EASTERN TRA
8425927		3412726105		103	107-TF	FREEMAN-GERLICA #1	MONROE	20.0	TEXAS EASTERN TRA
8425928		3412726148		103	107-TF	GWIN #1	BEARFIELD	25.0	TEXAS EASTERN TRA
-TIGER OIL INC				RECEIVED:	03/20/84	JA: OH			
8425943		3410522737		103		V CROSS #1	RUTLAND	5.0	COLUMBIA GAS TRAN
-TRISTAR PETROLEUM RESOURCES				RECEIVED:	03/20/84	JA: OH			
8425944		3411122995		107-DV		WOODROW WEDDLE #1	GRAYSVILLE	16.3	COLUMBIA GAS TRAN
-VALENTINE OIL PROPERTIES				RECEIVED:	03/20/84	JA: OH			
8425945		3416727624		103		GARY DUNN #1	GRANDVIEW	18.3	
8425946		3416727625		103		GARY DUNN #2	GRANDVIEW	11.0	
-VIKING RESOURCES CORP				RECEIVED:	03/20/84	JA: OH			
8425949		3415321552		103	107-TF	AKRON JEWISH CENTER UNIT #1	COPLEY	30.0	
8425950		3415321566		103	107-TF	FRANK UNIT #3	COPLEY	30.0	
8425951		3415321622		103	107-TF	GRAF GROWERS UNIT #3	COPLEY	30.0	
8425947		3408520529		103	107-TF	JANOS #1	PERRY	30.0	
8425948		3409921666		103	107-TF	TAYLOR UNIT #1	BERLIN	30.0	
-W E SHRIDER CO				RECEIVED:	03/20/84	JA: OH			
8425952		3412761223		103		R DETWEILER #4	MONDAY CREEK	3.0	PARAMOUNT TRANSMI
-W J LYDIC INC				RECEIVED:	03/20/84	JA: OH			
8425953		3411923852	D	103		R WILSON #1	SPRINGFIELD	50.0	COLUMBIA GAS TRAN
-ZINK PETROLEUM CORP				RECEIVED:	03/20/84	JA: OH			
8425958		3415723936		103	107-TF	BEANS/BOSLER #2	UNION	10.0	M B OPERATING CO
8425957		3415723932		103	107-TF	BILL BEANS #1	UNION	10.0	M B OPERATING CO
8425954		3415723672		103	107-TF	CONOTTON #1	UNION	10.0	M B OPERATING CO
8425956		3415738980		103	107-TF	LEGGETT/GLASS #1	UNION	10.0	M B OPERATING CO
8425955		3415723748		103	107-TF	WIDDER #2	SANDY	10.0	M B OPERATING CO
-ZOAR PETROLEUM INC				RECEIVED:	03/20/84	JA: OH			
8425959		3403125200		103		ROBERT L STARNER #2	SPRING MOUNTAIN	10.0	NATIONAL GAS & OI

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

-CNG DEVELOPMENT CO				RECEIVED:	03/22/84	JA: PA			
8426000	22537	3703321692		103		A THOMAS #2 CNGD #122	PENN	90.0	
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	03/22/84	JA: PA			
8425970	20263	3706521449		108		BLAIR V RHODES WN-1603	MCCALMONT	0.2	GENERAL SYSTEM PU
8425960	20037	3703321367		108		C KEISER #1 WN-1932	PENN	16.0	GENERAL SYSTEM PU
8425971	20264	3703321377		108		G MADERIA #4 WN-1934	PENN	17.0	GENERAL SYSTEM PU
8425975	20376	3706326883		108		GRACE LYNCH #1 WN-1837	MONTGOMERY	4.0	GENERAL SYSTEM PU
8425969	20259	3703300540		108		WILLIAM KRACH #1 WN-1328	BRADY	21.0	GENERAL SYSTEM PU
-ELDER OIL & GAS CO				RECEIVED:	03/22/84	JA: PA			
8425986	21644	3703121151		103		ARNER #1-PERMIT # CLA-21151	BEALA	156.4	COLUMBIA GAS OF P
-GAMMA 79-S T JOINT VENTURE				RECEIVED:	03/22/84	JA: PA			
8425965	20190	3706522134		108		DICKEY #1	WINSLOW	25.0	NATIONAL FUEL GAS
8425966	20191	3706522135		108		DICKEY #2	WINSLOW	0.0	NATIONAL FUEL GAS
-IDC ASSOCIATES LTD I				RECEIVED:	03/22/84	JA: PA			
8425974	20285	3712326971		108		WAR-26971 - 1C-1	MEAD	2.0	UGI CORP
8425983	21217	3712328267		108		WAR-28267 - 1C-7	MEAD	2.0	
8425982	21216	3712328265		108		WAR-28268 - 1C-8	MEAD	2.0	UGI CORP
8425984	21218	3712328269		108		WAR-28269 - 1C-9	MEAD	2.0	UGI CORP
8425985	21219	3712328270		108		WAR-28270 1C-10	MEAD	2.0	UGI CORP
8425973	20284	3712328349		108		WAR-28349 - 1C-2	MEAD	2.0	UGI CORP
8425972	20283	3712328350		108		WAR-28350 - 1C-3	MEAD	2.0	UGI CORP
8425981	21212	3712328351		108		WAR-28351 - 1C-4	MEAD	2.0	UGI CORP
8425980	21211	3712328352		108		WAR-28352 - 1C-5	MEAD	2.0	UGI CORP
8425979	21210	3712328353		108		WAR-28353 - 1C-6	MEAD	2.0	UGI CORP
8425977	21208	3712329608		108		WAR-29608 - 1C-15	MEAD	2.0	UGI CORP
8425976	21207	3712329609		108		WAR-29609 - 1C-16	MEAD	2.0	UGI CORP
8425978	21209	3712330362		108		WAR-30362 - 1C-17	MEAD	2.0	UGI CORP
-KAPPA S T JOINT VENTURE 81				RECEIVED:	03/22/84	JA: PA			
8425963	20188	3706522610		108		C KRINER #1	WINSLOW	25.0	NATIONAL FUEL GAS
8425964	20189	3706522479		108		CARAFOLO #1	WINSLOW	25.0	NATIONAL FUEL GAS
-KRIEBEL GAS CO INC				RECEIVED:	03/22/84	JA: PA			
8425995	22319	3706327594		103		WITENSKI #5	ROCHESTER MILLS	30.0	
-MARK RESOURCES CORP				RECEIVED:	03/22/84	JA: PA			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8425996	22465	3708520548		102-2		ALEXANDER #2	HERMITAGE	30.0	NATIONAL FUEL GAS
8425997	22466	3708520548		107-TF		ALEXANDER #2	HERMITAGE	30.0	NATIONAL FUEL GAS
8425998	22467	3708520534		107-TF		PLANCHAK #1	HERMITAGE	20.0	NATIONAL FUEL GAS
8425999	22468	3708520534		102-2		PLANCHAK #1	HERMITAGE	20.0	NATIONAL FUEL GAS
-NRM PETROLEUM CORPORATION				RECEIVED:	03/22/84	JA: PA			
8426029	22592	3704923085		102-2		BOLYARD #1	MILL VILLAGE	0.0	COLUMBIA GAS TRAN
8426030	22593	3704923085		107-TF		BOLYARD #1	MILL VILLAGE	0.0	COLUMBIA GAS TRAN
8426023	22582	3704923272		102-2		BRACE A #1	ERIE	0.0	COLUMBIA GAS TRAN
8426024	22583	3704923272		107-TF		BRACE A #1	ERIE	0.0	COLUMBIA GAS TRAN
8426001	22560	3704923080		102-2		BROWN E #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426002	22561	3704923080		107-TF		BROWN E #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426011	22570	3704923299		102-2		LAUGHERY A #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426012	22571	3704923299		107-TF		LAUGHERY A #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426009	22568	3704923298		102-2		LAUGHERY A #2	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426010	22569	3704923298		107-TF		LAUGHERY A #2	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426033	22604	3704923251		102-2		MARSH #1	ERIE	0.0	COLUMBIA GAS TRAN
8426034	22605	3704923251		107-TF		MARSH #1	ERIE	0.0	COLUMBIA GAS TRAN
8426025	22584	3704923240		102-2		PFEFFER #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426026	22585	3704923240		107-TF		PFEFFER #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426017	22576	3704923236		102-2		RISJAN #4	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426018	22577	3704923236		107-TF		RISJAN #4	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426015	22574	3704923235		102-2		RISJAN #5	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426016	22575	3704923235		107-TF		RISJAN #5	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426013	22572	3704923177		102-2		ROBERTSON A #2	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426014	22573	3704923177		107-TF		ROBERTSON A #2	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426031	22602	3704923142		102-2		ROBERTSON B #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426032	22603	3704923142		107-TF		ROBERTSON B #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426019	22578	3704923216		102-2		SCOTT #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426020	22579	3704923216		107-TF		SCOTT #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426007	22566	3704923237		102-2		SEIB #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426008	22567	3704923237		107-TF		SEIB #1	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426021	22580	3704923238		102-2		SEIB #2	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426022	22581	3704923238		107-TF		SEIB #2	LE BOEUF	0.0	COLUMBIA GAS TRAN
8426027	22586	3704923253		102-2		SHCHOUCHFOFF #2	MILL VILLAGE	0.0	COLUMBIA GAS TRAN
8426028	22587	3704923253		107-TF		SHCHOUCHFOFF #2	MILL VILLAGE	0.0	COLUMBIA GAS TRAN
8426003	22562	3704923082		102-2		SMITH E #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426004	22563	3704923082		107-TF		SMITH E #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426005	22564	3704923281		102-2		WRONA #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8426006	22565	3704923281		107-TF		WRONA #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
-PEOPLES NATURAL GAS CO				RECEIVED:	03/22/84	JA: PA			
8425994	22279	3706327573		103		EDWARD P AVEY #3 - IND-27573	W PENNA - UPPER DEVON	60.0	PEOPLES NATURAL G
-PNB PETROLEUM CORP				RECEIVED:	03/22/84	JA: PA			
8425991	22107	3708520328		107-TF		C MORRISON UNIT #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8425992	22108	3708520328		103		C MORRISON UNIT #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8425993	22109	3708520403		107-TF		R MUSCHICK #1	FRENCH CREEK	24.0	TENNESSEE GAS PIP
-S T JOINT VENTURE - 81-B				RECEIVED:	03/22/84	JA: PA			
8425961	20183	3706522420		108		PACHETTI #1	WINSLOW	25.0	NATIONAL FUEL GAS
8425962	20184	3706522421		108		PACHETTI #2	WINSLOW	25.0	NATIONAL FUEL GAS
-S T JOINT VENTURE 81A				RECEIVED:	03/22/84	JA: PA			
8425987	21786	3706326288		103		CLAWSON #1	BLACKLICK	25.0	COLUMBIA GAS TRAN
8425988	21787	3706326289		108		CLAWSON #2	BLACKLICK	25.0	COLUMBIA GAS TRAN
8425989	21788	3706326290		108		CLAWSON #3	BLACKLICK	25.0	COLUMBIA GAS TRAN
8425990	21789	3707326291		108		CLAWSON #4	BLACKLICK	25.0	COLUMBIA GAS TRAN
8425967	20192	3706522391		108		LINDY #1	WINSLOW	25.0	NATIONAL FUEL GAS
8425968	20193	3706522393		108		LINDY #5	WINSLOW	25.0	NATIONAL FUEL GAS

[FR Doc. 84-11007 Filed 4-23-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1105]

NGPA Notices of Determination By Jurisdictional Agencies

Issued: April 19, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, D.C. 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservior
102–5: New res. on old OCS lease
103: New onshore production well

Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1105
ISSUED APRIL 19, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ABRAXAS PETROLEUM CORP				RECEIVED:	03/23/84	JA: TX			
8426087	F-01-075426	4228330974		103		TRI-BAR #1	TRI-BAR (OLMOS)	200.0	HOUSTON PIPE LINE
-ADOBE OIL & GAS CORPORATION				RECEIVED:	03/23/84	JA: TX			
8426192	F-08-078900	4231732839		103		EPLEY #4	SPRABERRY (TREND AREA	9.0	NORTHERN NATURAL
8426216	F-8A-079169	4244531152		103		MCMAHON #1	PRENTICE N W (SAN AND	9.0	AMOCO PRODUCTION
-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED:	03/23/84	JA: TX			
8426327	F-08-079505	4200300000		103		12-11	SHAFTER LAKE (YATES)	18.0	PHILLIPS PETROLEU
-AMINOIL USA INC				RECEIVED:	03/23/84	JA: TX			
8426154	F-03-078085	4215731399		102-4	103	DENTON A COOLEY #1	COOLEY (13200)	1.1	TEJAS GAS CORP
-AMOCO PRODUCTION CO				RECEIVED:	03/23/84	JA: TX			
8426244	F-8A-079397	4218930356		103		ANTON IRISH CLEARFORK UNIT #408	ANTON IRISH	33.0	WESTAR TRANSMISSI
8426243	F-8A-079396	4230330958		103		ANTON IRISH CLEARFORK UNIT #453	ANTON-IRISH	11.0	WESTAR TRANSMISSI
8426246	F-8A-079399	4221934036		103		CENTRAL MALLET UNIT #324	SLAUGHTER	47.0	AMOCO PRODUCTION
8426247	F-8A-079400	4221934035		103		CENTRAL MALLET UNIT #325	SLAUGHTER	14.0	AMOCO PRODUCTION
8426248	F-8A-079407	4221934037		103		CENTRAL MALLET UNIT #327	SLAUGHTER	39.0	AMOCO PRODUCTION
8426245	F-8A-079398	4221934031		103		CENTRAL MALLET UNIT #328	SLAUGHTER	5.0	AMOCO PRODUCTION
8426379	F-8A-079589	4207931748		103		DEAN "B" OPERATING AREA UNIT #155	SLAUGHTER	5.0	AMOCO PRODUCTION
8426378	F-8A-079588	4221934148		103		ELLWOOD "A" #160	SMYER	9.0	AMOCO PRODUCTION
8426251	F-08-079410	4200333669		102-4		FRANK COWDEN R/A "A" #35	COWDEN N (STRAWN)	88.0	AMOCO PRODUCTION
8426242	F-08-079395	4200333611		103		FULLERTON SAN ANDRES UNIT #60	FULLERTON SAN ANDRES	5.0	AMOCO PRODUCTION
8426370	F-08-079580	4200333612		103		FULLERTON SAN ANDRES UNIT #70	FULLERTON SAN ANDRES	8.0	AMOCO PRODUCTION
8426364	F-08-079574	4200333613		103		FULLERTON SAN ANDRES UNIT #71	FULLERTON SAN ANDRES	7.0	AMOCO PRODUCTION
8426241	F-08-079399	4200333614		103		FULLERTON SAN ANDRES UNIT #72	FULLERTON SAN ANDRES	21.0	AMOCO PRODUCTION
8426250	F-8A-079409	4221934014		103		LEVELLAND UNIT #789	LEVELLAND	23.0	AMOCO PRODUCTION
8426249	F-8A-079408	4221934009		103		LEVELLAND UNIT #792	LEVELLAND	84.0	AMOCO PRODUCTION
8426375	F-7C-079585	4245131276		103		LOUISE ANSON #18	H-J (STRAWN)	70.0	ARCO OIL & GAS CO
8426372	F-08-079582	4200333719		103		MIDLAND FARMS "AX" #3	FASKEN (PENN)	300.0	AMOCO PRODUCTION
8426377	F-08-079587	4213534315		103		NORTH COWDEN UNIT #1129	COWDEN NORTH	60.0	AMOCO PRODUCTION
8426376	F-08-079586	4213534314		103		NORTH COWDEN UNIT #1130	COWDEN NORTH	213.0	AMOCO PRODUCTION
8426380	F-8A-079590	4250132430		103		OWNBY/UPPER CLEARFORK/ UNIT #9-4	OWNBY/UPPER CLEARFORK	6.0	AMOCO PRODUCTION
8426252	F-8A-079411	4250132408		103		PRENTICE SOUTHWEST UNIT #63	PRENTICE (6700)	6.0	AMOCO PRODUCTION
8426374	F-08-079584	4200333783		103		UNIVERSITY MCFARLAND QUEEN CON 1205	MCFARLAND (QUEEN)	3.0	PHILLIPS PETROLEU
8426373	F-08-079583	4200333786		103		UNIVERSITY MCFARLAND QUEEN CON 1204	MCFARLAND (QUEEN)	2.0	PHILLIPS PETROLEU
8426382	F-8A-079595	4250132445		103		WASSON ODC UNIT #536	WASSON	40.0	SHELL OIL CO
8426383	F-8A-079596	4250132454		103		WASSON ODC UNIT #545	WASSON	75.0	SHELL OIL CO
8426371	F-8A-079581	4250132470		103		WASSON ODC UNIT #550	WASSON	104.0	SHELL OIL CO
8426369	F-8A-079579	4250132419		103		WASSON ODC UNIT #553	WASSON	31.0	SHELL OIL CO
8426368	F-8A-079578	4250132420		103		WASSON ODC UNIT #554	WASSON	37.0	SHELL OIL CO
8426366	F-8A-079576	4250132421		103		WASSON ODC UNIT #555	WASSON	48.0	SHELL OIL CO
8426385	F-8A-079598	4250132423		103		WASSON ODC UNIT #556	WASSON	33.0	SHELL OIL CO
8426384	F-8A-079597	4250132438		103		WASSON ODC UNIT #577	WASSON	176.0	SHELL OIL CO
8426367	F-8A-079577	4250132437		103		WASSON ODC UNIT #578	WASSON	108.0	SHELL OIL CO
8426365	F-8A-079575	4250132436		103		WASSON ODC UNIT #579	WASSON	36.0	SHELL OIL CO
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/23/84	JA: TX			
8426048	F-06-072214	4242330657		102-4		WILL WALTON #3	CHAPEL HILLS NE (TRAV	120.0	
-AUTRY C STEPHENS				RECEIVED:	03/23/84	JA: TX			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8426331	F-7C-079522	4238300000		103		HABY #2
8426332	F-7C-079523	4238300000		103		SUSAN PATTERSON #5
-AZMUTH PRODUCTION CO				RECEIVED:	03/23/84	JA: TX
8426165	F-02-078455	4246932126		102-4		WILLIAMS-PETERSON #1
-B & L RESOURCES				RECEIVED:	03/23/84	JA: TX
8426337	F-09-079532	4250333529		103		HINSON "C" #2 (RRC #19774)
-BEACH EXPLORATION INC				RECEIVED:	03/23/84	JA: TX
8426184	F-8A-078833	4203330963		103		SHORTES "A" #1
-BEST PETROLEUM EXPLORATION INC				RECEIVED:	03/23/84	JA: TX
8426144	F-09-077718	4223700000		103		SANDERS WEST #3
-BILL FORNEY INC				RECEIVED:	03/23/84	JA: TX
8426146	F-03-077859	4248132531		102-4		ANIELA PITTS #2-T
-BIRDWELL BAKER				RECEIVED:	03/23/84	JA: TX
8426112	F-03-076408	4247130239		102-4		CENTRAL COAL & COKE #1
-BOB BLACK OPERATING				RECEIVED:	03/23/84	JA: TX
8426182	F-7C-078816	4239932899		102-4		E MICHAELIS "A" #1 (OIL)
-BRIGHT & COMPANY				RECEIVED:	03/23/84	JA: TX
8426064	F-04-073706	4221531032		102-4	103	G FLORES JR #1
-BRITTON OPERATING INC				RECEIVED:	03/23/84	JA: TX
8426217	F-09-079178	4223735545		102-4		P B KEYSER #3
-BROCK HYDROCARBONS INC				RECEIVED:	03/23/84	JA: TX
8426050	F-10-072303	4219500000		102-4	103	ANDERSON #1-304
-BURGER KEN				RECEIVED:	03/23/84	JA: TX
8426221	F-10-079252	4217931479		103		GILL "B" #3 (ID# 05477)
8426220	F-10-079251	4217931349		103		GILL "B" #4 (ID# 05477)
-BURNS PETROLEUM				RECEIVED:	03/23/84	JA: TX
8426412	F-09-079675	4223735581		102-4		ALLAR CO #3
8426413	F-09-079676	4200937287		103		COWAN & MCKINNEY "GO" #2
-C & K PETROLEUM INC				RECEIVED:	03/23/84	JA: TX
8426124	F-08-076913	4243131407		103		GUNTER 35-4
-C F LAWRENCE & ASSOC INC				RECEIVED:	03/23/84	JA: TX
8426075	F-08-074972	4237134483		103		IRT "61" #4
8426074	F-7C-074966	4210534514		103		SHANNON "G" #4
-CAL ENERGY PROPERTIES INC				RECEIVED:	03/23/84	JA: TX
8426069	F-7B-074674	4242933722		102-4		VAN WINKLE "B" #2
-CARPENTER WALTER G				RECEIVED:	03/23/84	JA: TX
8426130	F-7B-077197	4236333160		102-4		BARRON #B-3 (108622)
-CASS OIL CO				RECEIVED:	03/23/84	JA: TX
8426125	F-7C-077055	4243532988		103	107-TF	ALLISON-MIERS 7102
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	03/23/84	JA: TX
8426142	F-03-077602	4204131024		102-2		H FRANCIS #1
8426055	F-04-072989	4221500000		108		W L GOLDSTON #2
-CHARLES PITTS CO				RECEIVED:	03/23/84	JA: TX
8426133	F-7B-077456	4204932377		102-4		VELMA MARTIN #1 (16376)
8426411	F-7B-079673	4204933868		102-4		VELMA MARTIN #2 (16376)
8426410	F-7B-079672	4204933869		102-4		VELMA MARTIN #3 (16376)
-COCKRELL OIL CORP				RECEIVED:	03/23/84	JA: TX
8426068	F-02-074617	4212331180		102-4		CHARLES GARRETT #1
-CONCORD PETROLEUM CORP				RECEIVED:	03/23/84	JA: TX
8426116	F-02-076504	4223900000		107-TF		L RANCH CO - WELL #1
8426117	F-02-076505	4223900000		107-TF		L RANCH CO - WELL #3
8426118	F-02-076506	4223900000		107-TF		L RANCH CO - WELL #5
8426119	F-02-076507	4223900000		107-TF		L RANCH CO - WELL #6
-CONOCO INC				RECEIVED:	03/23/84	JA: TX
8426262	F-08-079433	4237134442		103		C CANON #5 ID#20055
8426172	F-08-078510	4238931437		102-4	103	GEORGE OLSEN "8" #1 ID (ASSIGN)
8426263	F-08-079435	4238931461		102-4	103	HUCKABEE #3 ID 28343
8426178	F-7B-078791	4215131636		103		ROUNDTOP PALO PINTO UNIT #171 1146
8426211	F-08-079048	4210300000		108		UNIVERSITY-C #3 ID 11210
8426061	F-04-073573	4247933233		102-2	107-TF	VAQUILLAS RANCH A #18
8426085	F-04-075389	4247933651		102-2	107-TF	VAQUILLAS RANCH A #35
-CORNELL OIL CO				RECEIVED:	03/23/84	JA: TX
8426071	F-8A-074723	4250132315		103		CORNELL UNIT #3048
-COTTON PETROLEUM CORPORATION				RECEIVED:	03/23/84	JA: TX
8426232	F-10-079381	4229530798		102-4		MAY MARY #1
-CROMEENS PETROLEUM INC				RECEIVED:	03/23/84	JA: TX
8426143	F-7B-077703	4223735415		102-4		HALSELL #3
-DEL MAR PETROLEUM INC				RECEIVED:	03/23/84	JA: TX
8426210	F-7B-079031	4243933737		102-4		ANDERSON #1-A
-DRILLERS ENERGY SEARCH INC				RECEIVED:	03/23/84	JA: TX
8426072	F-04-074892	4240900000		102-4		SIDNEY BISHOP #2 ID # PENDING
-EDWIN L COX				RECEIVED:	03/23/84	JA: TX
8426052	F-8A-072823	4216900000		102-4		HUNTLEY #3-S
8426053	F-8A-072825	4216900000		102-4		HUNTLEY #4 "S"
8426054	F-8A-072826	4216900000		102-4		HUNTLEY #9 "S"
-ENCINO OIL CORP				RECEIVED:	03/23/84	JA: TX
8426235	F-02-079385	4239131664		102-4		MCDONNEL UNIT #1
-ENER-G'S				RECEIVED:	03/23/84	JA: TX
8426237	F-10-079387	4206531340		103		GINA #2 (ID# 05488)
8426236	F-10-079386	4206531516		103		GINA #4 (ID# 05488)
-ENERGY PRODUCTION CORP				RECEIVED:	03/23/84	JA: TX
8426097	F-7C-075635	4238332573		102-4	103	ENERGY-VAUGHN "25" S-D
-EXXON CORPORATION				RECEIVED:	03/23/84	JA: TX
8426333	F-08-079524	4217331422		102-4		E WILDE #1
8426226	F-06-079368	4200131522		103		G W EATON ESTATE #36
8426222	F-04-079313	4242731603		103		J C MCGILL JR ST 23 (108545)
8426400	F-04-079640	4227331474		103		KING RANCH ALAZAN 354 (06999)
8426401	F-04-079641	4227331805		103		KING RANCH BORREGOS M-38-E (06544)
8426402	F-04-079642	4227331788		103		KING RANCH BORREGOS 590-D (06544)
8426080	F-04-075297	4242731758		103		MCGILL BROS 495-D (ID PENDING)
8426398	F-04-079638	4226130844		102-4		MRS S K EAST 154 (108452)
8426399	F-04-079639	4204730834		102-4		RJ KLEBERG JR TR VIBORAS 90F 108640
8426218	F-08-079239	4222733308		102-4		S WALDRON #8
8426161	F-04-078199	4226130701		102-4		SARITA FIELD O & G UT 161-D 108610
8426381	F-03-079594	4207131487		103		W C TYRRELL TRUST #43
8426191	F-05-078883	4216130805		102-4	107-TF	ZELMA A WILSON #1
-FOSSIL PRODUCTION CO				RECEIVED:	03/23/84	JA: TX
8426335	F-08-079527	4233532635		102-4		MCCABE "A" #1 ID #28600
-GENERAL PRODUCTION CO INC				RECEIVED:	03/23/84	JA: TX
8426193	F-03-078912	4205132599		102-2		JOHN PLASEK "C" #2
-GETTY OIL COMPANY				RECEIVED:	03/23/84	JA: TX
8426264	F-08-079436	4210333294		103		NORTH MCELROY #3944-F 20377
8426265	F-08-079437	4210333295		103		NORTH MCELROY UNIT #3945-F 20377
8426266	F-08-079438	4210333298		103		NORTH MCELROY UNIT #3958-F 20377

VOLUME 1105

FIELD NAME	PROD	PURCHASER
CALVIN (DEAN	36.5	EL PASO NATURAL G
CALVIN (DEAN)	36.5	EL PASO NATURAL G
WILLIAMS (FRIO 3450)	127.8	HOUSTON PIPE LINE
JEAN N W (MISS)	11.0	GAS ASSOCIATED SY
ACKERLY (DEAN SAND)	16.0	TEXACO INC
KENNEDY (ATOKA)	0.0	LONE STAR GAS CO
SE BONUS (7400)	73.0	VENTURE PIPELINE
MORGAS EAST (JACKSON	0.0	
FRITZESS (GRAY SAND)	69.0	UNION TEXAS PETRO
SULLIVAN CITY (4850)	73.0	TENNESSEE GAS PIP
DENNIS (BRYSON)	108.0	TEXAS UTILITIES F
ANDERSON (MORROW LOWE	0.0	
PANHANDLE GRAY	40.0	CABOT PIPELINE CO
PANHANDLE GRAY	40.0	CABOT PIPELINE CO
CRUM (MARBLE FALLS)	35.0	SOUTHWESTERN GAS
ARCHER COUNTY REGULAR	12.0	ASSOCIATED GAS GA
CONGER (PENN)	0.0	VALERO TRANSMISSI
LEHN-APCO	0.0	APACHE GAS CORP
TODD (SAN ANDRES)	0.0	
VAN WINKLE (BEND CONG	36.0	WARREN PETROLEUM
W B C (STRAWN)	82.0	TEXAS UTILITIES F
SAWYER (CANYON)	80.0	EL PASO NATURAL G
KURTEN (BUDA)	0.0	
LOS INDIOS WEST	0.0	TENNESSEE GAS PIP
GROSVENOR SW (DUFFER)	11.0	EL PASO HYDROCARB
GROSVENOR SW (DUFFER)	36.0	EL PASO HYDROCARB
GROSVENOR SW (DUFFER)	36.0	EL PASO HYDROCARB
GARRETT FIELD (YEGUA	144.0	VALERO TRANSMISSI
WEST RANCH FIELD	50.0	MOBIL PRODUCING T
WEST RANCH FIELD	50.0	MOBIL PRODUCING T
WEST RANCH FIELD	50.0	MOBIL PRODUCING T
WEST RANCH FIELD	50.0	MOBIL PRODUCING T
SHEFFIELD SW	0.0	W WILSON CORP
JESS BURNER	13.9	EL PASO NATURAL G
JESS BURNER	34.7	EL PASO NATURAL G
ROUND TOP/PALO PINTO	1.5	LONE STAR GAS CO
DUNE	1.2	PHILLIPS PETROLEU
GATO CREEK (LOBO-1)	791.0	E I DU PONT DE NE
GATO CREEK (LOBO 1)	1515.0	E I DUPONT DENEMO
WASSON	0.0	SHELL OIL CO
PUNDT	0.0	DIAMOND CHEMICALS
KEVIN (ATOKA)	0.0	SOUTHWESTERN GAS
KERRY (BIG SALINE CON	523.0	SOUTHWESTERN GAS
HIBERNIA (4350)	140.0	HOUSTON PIPE LINE
HUNTLEY	3.6	MIDPLAINS PIPELIN
HUNTLEY	11.0	MIDPLAINS PIPELIN
HUNTLEY	3.2	MIDPLAINS PIPELIN
BONNIE VIEW (6250)	183.0	LONE STAR GAS CO
PANHANDLE CARSON	83.0	GETTY OIL CO
PANHANDLE CARSON	51.0	GETTY OIL CO
TEXON SD (FUSSELMAN)	11.0	DORCHESTER GAS PR
WILDE LAKE (FSLM)	24.0	
NECHES (WOODBINE)	18.0	UNITED GAS PIPELI
JAY SIMMONS (24-A & B	100.0	TRUNKLINE GAS CO
ALAZAN NORTH (ALL ZON	21.0	ARMCO STEEL CORP
BORREGOS (COMBINED ZO	36.0	ARMCO STEEL CORP
BORREGOS (COMBINED ZO	27.0	ARMCO STEEL CORP
JAY SIMMONS (D)	132.0	TRUNKLINE GAS CO
RITA N W (5-D)	73.0	ARMCO STEEL CORP
VIBORAS (G-59 VIII)	255.0	ARMCO STEEL CORP
MOORE (DEEP FSLM)	20.0	EL PASO NATURAL G
SARITA (15-S C)	295.0	NATURAL GAS PIPEL
ANAHUAC	36.0	HOUSTON PIPELINE
NAN-SU-GAIL (COTTON V	1003.0	TEJAS GAS CORP
JAMESON N (ODOM)	27.0	SUN EXPLORATION &
WILLARD (NAVARRO)	0.0	FERGUSON CROSSING
MCELROY	1.0	PHILLIPS PETROLEU
MCELROY	1.0	PHILLIPS PETROLEU
MCELROY	1.0	PHILLIPS PETROLEU

VOLUME 1105

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-GLENN PETROLEUM CORP				RECEIVED:	03/23/84	JA: TX			
8426163	F-04-078306	4213136315		102-4		ESTELLA GARCIA #3-L	SAN DIEGO SW (YEGUA)	67.0	UNITED GAS PIPELI
8426162	F-04-078305	4213136315		102-4		ESTELLA GARCIA #3-U	SAN DIEGO SW (HOCKLEY	225.0	UNITED GAS PIPELI
-GOLDKING PRODUCTION COMPANY				RECEIVED:	03/23/84	JA: TX			
8426120	F-03-076559	4248100000		102-4		POOLE #3	S LISSIE	0.0	TENNESSEE GAS PIP
-GULF COAST VENTURE				RECEIVED:	03/23/84	JA: TX			
8426122	F-04-076679	4224900000		107-PE		TOM COLLARD #1 ID #035053	MAGNOLIA CITY WEST (F	180.0	VALLEY GAS TRANSM
-GULF MINERALS OPERATING CO				RECEIVED:	03/23/84	JA: TX			
8426190	F-02-078880	4212331334		102-4		ZENGERLE #3	ANNA BARRE WEST (Y-1)	300.0	TRANSCONTINENTAL
-GULF OIL CORPORATION				RECEIVED:	03/23/84	JA: TX			
8426397	F-08-079637	4213534252		103		GOLDSMITH C A #1380	GOLDSMITH (5600)	13.7	PHILLIPS PETROLEU
8426396	F-08-079636	4213534275		103		GOLDSMITH C A #1387	GOLDSMITH (5600)	20.2	PHILLIPS PETROLEU
8426391	F-08-079631	4213534308		103		GOLDSMITH C A #1405	GOLDSMITH (CLEARFORK)	5.6	PHILLIPS PETROLEU
8426390	F-08-079630	4213534313		103		GOLDSMITH C A #1406	GOLDSMITH (CLEARFORK)	25.4	PHILLIPS PETROLEU
8426392	F-08-079632	4213534367		103		GOLDSMITH C A #1407	GOLDSMITH (5600)	14.9	PHILLIPS PETROLEU
8426395	F-08-079635	4213534294		103		GOLDSMITH C A ETAL #1399	GOLDSMITH (5600)	20.5	PHILLIPS PETROLEU
8426394	F-08-079634	4213534304		103		GOLDSMITH C A ETAL #1403	GOLDSMITH (5600)	20.8	PHILLIPS PETROLEU
8426393	F-08-079633	4213534306		103		GOLDSMITH C A ETAL #1404	GOLDSMITH (5600)	20.5	PHILLIPS PETROLEU
8426389	F-08-079629	4213534412		103		GOLDSMITH SAN ANDRES UNIT #1430	GOLDSMITH	76.0	PHILLIPS PETROLEU
8426073	F-10-074910	4221131602		102-4		ISAACS #5-209	CANADIAN SW/DOUGLAS L	129.4	
8426045	F-10-071128	4239330944		102-4		JOHN HAGGARD #50	QUINDUNO (WOLFCAMP LI	13.1	NATURAL GAS PIPEL
8426070	F-08-074685	4222732542		103		LILLIAN SPALDING #2	KNOTT WEST/SPRABERRY	21.0	GETTY OIL CO
-HLH PETROLEUM CORP				RECEIVED:	03/23/84	JA: TX			
8426164	F-03-078395	4204131017		102-4		KELLER #1	KURTEN (BUDA)	75.6	FERGUSON CROSSING
-HNG OIL COMPANY				RECEIVED:	03/23/84	JA: TX			
8426137	F-7C-077523	4243500000		103	107-TF	GALBREATH "66" #6	SAWYER (CANYON)	290.0	INTRATEX GAS CO
8426136	F-7C-077521	4243500000		103	107-TF	JONES "118" #6	SAWYER (CANYON)	290.0	INTRATEX GAS CO
8426141	F-7C-077531	4243500000		103	107-TF	REED "116" #6	SAWYER (CANYON)	92.0	INTRATEX GAS CO
8426138	F-7C-077525	4243500000		103	107-TF	SAWYER "112" #6	SAWYER (CANYON)	128.0	INTRATEX GAS CO
8426139	F-7C-077526	4243500000		103	107-TF	SAWYER "128" #6	SAWYER (CANYON)	200.0	INTRATEX GAS CO
8426140	F-7C-077528	4243500000		103	107-TF	SAWYER "168" #6	SAWYER (CANYON)	180.0	INTRATEX GAS CO
-HOME PETROLEUM CORPORATION				RECEIVED:	03/23/84	JA: TX			
8426047	F-02-071851	4223931275		103		FLOYD E APPLING ESTATE UNIT #1	APPLING POINT (F-21-A	0.0	ALUMINUM CO OF AM
-HUFO PRODUCTION CORP				RECEIVED:	03/23/84	JA: TX			
8426066	F-10-074094	4206500000		103		ELLER #16	PANHANDLE CARSON COUN	0.0	CABOT PIPELINE CO
-HUMBLE EXPLORATION CO INC				RECEIVED:	03/23/84	JA: TX			
8426096	F-03-075615	4214931412		102-2		DELILAH #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8426095	F-03-075603	4228700000		102-2		PLUECKHAHN #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-HUSKY OIL COMPANY				RECEIVED:	03/23/84	JA: TX			
8426043	F-7C-070878	4209530666		102-2		G WHITEHEAD #11	SOUTH BRANCH (HOMECRE	0.0	CIBOLO GAS INC
8426044	F-7C-070880	4209530624		102-2		G WHITEHEAD #6	SOUTH BRANCH (CROSSCU	182.5	CIBOLO GAS INC
-J B HERRMANN				RECEIVED:	03/23/84	JA: TX			
8426177	F-10-078717	4223331779		103		KILLOUGH #2	PANHANDLE - HUTCHINSO	43.8	PHILLIPS PETROLEU
-J M HUBER CORPORATION				RECEIVED:	03/23/84	JA: TX			
8426225	F-10-079364	4223331689		103		MAGNOLIA HERRING #31	PANHANDLE	55.0	COLORADO INTERSTA
-JEM PETROLEUM CORP				RECEIVED:	03/23/84	JA: TX			
8426387	F-10-079604	4229531168		102-4		SCHULTZ #1	BECHOLD (MORROW LOWER	185.0	PRAIRIE STATES GA
-JET OIL COMPANY				RECEIVED:	03/23/84	JA: TX			
8426175	F-10-078691	4229531360		103		BORN #2-110	FRASS (TONKAWA)	332.0	PHILLIPS PETROLEU
-JFP WELL SERVICE INC				RECEIVED:	03/23/84	JA: TX			
8426126	F-03-077131	4224531642		102-4		ST LEASE #2010 DS	HIGH ISLAND 13 BLK 13	1.8	
-JOHN L COX				RECEIVED:	03/23/84	JA: TX			
8426094	F-08-075520	4231732790		103		BRYANT #2	SPRABERRY (TREND AREA	10.0	PHILLIPS PETROLEU
8426051	F-08-072355	4232931164		103		CRESPI #4 (RRC #22066)	SPRABERRY (TREND AREA	10.0	PHILLIPS PETROLEU
8426040	F-08-069662	4232931153		103		CRESPI "G" #4 RRC #22919	SPRABERRY (TA)	10.0	PHILLIPS PETROLEU
8426166	F-08-078457	4231732809		103		MADISON B #2 (# 21163)	SPRABERRY (TA)	10.0	PHILLIPS PETROLEU
8426081	F-7C-075334	4246132042		103		MOBIL-NEAL "D" #1	BENEDUM (FUSSELMAN)	10.0	PHILLIPS PETROLEU
8426049	F-7C-072232	4238332575		103		ROCKER B "H" #6 RRC #04586	SPRABERRY (TA)	10.0	EL PASO NATURAL G
8426090		4238332650		103		ROCKER B "M" #30	SPRABERRY (TA)	10.0	EL PASO NATURAL G
8426089	F-7C-075434	4238332736		103		ROCKER B "N" #24	SPRABERRY (TA)	10.0	EL PASO NATURAL G
8426088	F-7C-075433	4238332738		103		ROCKER B "N" #25 RRC #05142	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8426084	F-7C-075339	4238332649		103		ROCKER B "O" #23 RRC #05172	SPRABERRY (TA)	10.0	EL PASO NATURAL G
8426093	F-7C-075515	4238332733		103		ROCKER B "P" #25 RRC #05173	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8426092	F-7C-075451	4238332734		103		ROCKER B "Q" #20	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8426091	F-7C-075450	4238332697		103		ROCKER B "R" #17 RRC #05377	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8426082	F-7C-075336	4238332735		103		ROCKER B "R" #18 RRC #05377	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8426167	F-7C-078458	4238332818		103		RUCKER B "R" #20 RRC #05377	SPRABERRY (TA)	10.0	EL PASO NATURAL G
8426083	F-7C-075338	4246132063		103		WYATT #1	BENEDUM (FUSSELMAN)	10.0	PHILLIPS PETROLEU
-KASPAR A G				RECEIVED:	03/23/84	JA: TX			
8426206	F-7C-079007	4246132065		103		HALFF ESTATE #2	AMACKER-TIPPETT (DEVO	91.2	EL PASO NATURAL G
8426057	F-7C-073141	4246132017		103		HOLLY #4-L 10220	AMACKER-TIPPETT SW (9	7.3	PHILLIPS PETROLEU
8426207	F-7C-079008	4246132057		103		HOLLY #7	AMACKER-TIPPETT SW (W	73.0	PHILLIPS PETROLEU
-KATIE PETROLEUM CO				RECEIVED:	03/23/84	JA: TX			
8426196	F-09-078917	4249700000		108		A H DAWSON #1 RRC ID #10439	ALVORD ATOKA CONGLOME	4.7	CITIES SERVICE OI
8426198	F-09-078919	4249700000		108		BUN JOHNSON UNIT #1 - RRC #028951	BOONESVILLE (BCG) FIE	12.0	NATURAL GAS PIPEL
8426197	F-09-078918	4249700000		108		D L HARRIS WELL #1 RRC ID #09905	CHICO WEST (5700') CO	3.0	NATURAL GAS PIPEL
8426195	F-09-078916	4249700000		108		J T MCDONALD #09973	PARK SPRINGS SOUTH (C	3.7	NATURAL GAS PIPEL
8426199	F-09-078920	4249700000		108		R L MORRIS WELL #1-T RRC #037422	CHICO WEST (5700') CO	4.0	NATURAL GAS PIPEL
8426194	F-09-078915	4249700000		108		W R CALLAWAY WELL #1 RRC ID #06996	HODGE (UPPER CONGLOME	2.8	CITIES SERVICE OI
-KATLACO OPERATING CO INC				RECEIVED:	03/23/84	JA: TX			
8426037	F-7B-068253	4213334556		102-4		CAGLE THOMAS "B" #1 (20641)	HANVEY (LAKE SAND)	0.0	EL PASO HYDROCARB
8426038	F-7B-068531	4213334798		102-4		KATLACO FEE #5 (20652)	ARDINGER (LAKE SAND U	0.0	EL PASO HYDROCARB
-KEITH D GRAHAM				RECEIVED:	03/23/84	JA: TX			
8426160	F-03-078143	4205131683		102-2		RIES #1	CLAYTON (TAYLOR)	438.0	CHAMPLIN PETROLEU
-KERR-MCGEE CORPORATION				RECEIVED:	03/23/84	JA: TX			
8426407	F-10-079648	4223330845		108		PITTS #108	PANHANDLE (HUTCHINSON	3.4	GETTY OIL CO
8426405	F-10-079645	4223330773		108		PITTS #93	PANHANDLE (HUTCHINSON	4.3	GETTY OIL CO
8426406	F-10-079646	4223330768		108		PITTS #94	PANHANDLE (HUTCHINSON	1.8	GETTY OIL CO
-LESTER CLARK				RECEIVED:	03/23/84	JA: TX			
8426230	F-7B-079375	4242933886		103		A A ATKINS "A" #10	STEPHENS COUNTY REGUL	13.5	DAMSON GAS PROCES
-LOGUE AND PATTERSON INC				RECEIVED:	03/23/84	JA: TX			
8426152	F-03-077986	4248100000		102-4		EMILY HAWES #1	LOUISE (5950 STRINGER	109.0	HGI CORP
-MALOUF ABRAHAM CO INC.				RECEIVED:	03/23/84	JA: TX			
8426076	F-10-075011	4221131598		103		FISHER ESTATE #1	CANADIAN S E (DOUGLAS	0.0	WESTAR TRANSMISSI
-MARALO INC				RECEIVED:	03/23/84	JA: TX			
8426212	F-8A-079104	4216532738		103		L B RUSSELL #2	CARM-ANN (SAN ANDRES)	12.8	PHILLIPS PETROLEU
-MARSHALL EXPLORATION INC				RECEIVED:	03/23/84	JA: TX			
8426046	F-03-071400	4222530447		103		HOUSTON-ADAMS #1	FT TRINIDAD SOUTH (OT	120.0	SOUTH TEXAS GATHE
8426107	F-03-076185	4231330473		102-4	103	M Y VICK #7	MADISONVILLE NE (GEOR	200.0	LONE STAR GAS CO
8426134	F-03-077486	4231330430		102-4		PASTUSEK #1	MADISONVILLE (WOODBIN	180.0	LONE STAR GAS CO
-MCDONALD PRODUCTION CO				RECEIVED:	03/23/84	JA: TX			
8426067	F-7B-074529	4215131692		103		J G WARSHAW #2	CLAYTONVILLE (CANYON	0.0	TIPPERARY CORP
-MERCURY EXPLORATION CO				RECEIVED:	03/23/84	JA: TX			
8426183	F-7B-078819	4205934660		102-4		DUSEK #1	PANCAKE WATTS (ELLENB	20.0	LONE STAR GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-MESA PETROLEUM CO						
8426127	F-10-077151	4235731385		RECEIVED:	03/23/84	JA: TX
8426128	F-8A-07715	4211531886		103		LANCE #2-11
-MGJ INC				103		THOMAS "11" #2
8426114	F-02-076459	4217500000		RECEIVED:	03/23/84	JA: TX
-MITCHELL ENERGY CORPORATION				107-TF		SCHULZE #1
8426041	F-7B-069889	4236300000		RECEIVED:	03/23/84	JA: TX
8426039	F-09-068747	4249700000		108		CLAYTON -C- #2 100645
8426035	F-02-055151	4217500000		108		D B WHITEHEAD #5 100982
8426104	F-05-075992	4229330675		108-SA		R R LYTTON #1
8426145	F-09-077794	4249732577		103	107-TF	RALPH SPENCE #1
-MOBIL PRDG TEXAS & NEW MEXICO INC				103		WM H TEDROW WELL #2
8426356	F-08-079566	4233531785		RECEIVED:	03/23/84	JA: TX
8426340	F-08-079540	4233532555		103		BRENNAND #1
8426342	F-08-079542	4233532556		103		BRENNAND #10
8426341	F-08-079541	4233532557		103		BRENNAND #11
8426343	F-08-079543	4233532558		103		BRENNAND #12
8426363	F-08-079573	4233532050		103		BRENNAND #13
8426344	F-08-079544	4233532049		103		BRENNAND #2
8426362	F-08-079572	4233532051		103		BRENNAND #3
8426361	F-08-079571	4233532442		103		BRENNAND #4
8426359	F-08-079569	4233532443		103		BRENNAND #5
8426358	F-08-079568	4233532444		103		BRENNAND #6
8426339	F-08-079539	4233532445		103		BRENNAND #7
8426360	F-8A-079570	4216532757		103		BRENNAND #8
8426180	F-08-078799	4230130462		103		H & J SEC 127 #6
8426179	F-8A-078798	4221934124		102-4		J LOGAN ABERNATHY B 28N #1
8426234	F-8A-079383	4221934105		103		NORTH CENTRAL LEVELLAND UNIT #399
8426174	F-08-078622	4232931206		103		NORTH CENTRAL LEVELLAND UNIT #406
8426357	F-08-079567	4230130459		103		PARKS FIELD UNIT #2 2313
8426233	F-08-079382	4230130458		102-4		W D JOHNSON 34-N #6
-MOJAVE ENERGY CO				102-4		W D JOHNSON 34-N #7
8426042	F-08-070824	4232931083		RECEIVED:	03/23/84	JA: TX
-MORGAS				103		JACK D BURKES #1
8426261	F-10-079431	4248300000		RECEIVED:	03/23/84	JA: TX
-MOSBACHER PRODUCTION CO				108		EDNA #1 099270
8426213	F-02-079107	4228531754		RECEIVED:	03/23/84	JA: TX
-NEUMIN PRODUCTION CO				102-4		H F KESSLER #1
8426267	F-02-079440	4205731255		RECEIVED:	03/23/84	JA: TX
-NEWTON OIL & GAS CORP				102-4	103	STATE TRACT "H" RRC 108459
8426113	F-01-076436	4228331006		RECEIVED:	03/23/84	JA: TX
-NORTH CENTRAL OIL CORPORATION				102-4		LYSSY #2
8426086	F-09-075417	4249732592		RECEIVED:	03/23/84	JA: TX
8426100	F-03-075938	4204130947		103		J D KARNES #2
8426098	F-03-075936	4204130909		102-2	103	T A M U S - TRACT B #3
8426099	F-03-075937	4204130919		102-2	103	T A M U S TRACT B #1
8426101	F-03-075939	4204130956		102-2	103	T A M U S TRACT B #2
-NORTH STAR PETROLEUM CORPORATION				102-2	103	T A M U S TRACT B #4
8426109	F-10-076236	4223300000		RECEIVED:	03/23/84	JA: TX
-OLSEN ENERGY INC				103		YAKE "B" #2
8426200	F-08-078947	4247532988		RECEIVED:	03/23/84	JA: TX
-PARKER & PARSLEY INC				103		DORR #9
8426077	F-8A-75112	4211500000		RECEIVED:	03/23/84	JA: TX
-PEARSON-SIBERT OIL CO OF TEXAS				103		COPE "83" #1
8426388	F-7C-079617	4208130171		RECEIVED:	03/23/84	JA: TX
-PENNZOIL PRODUCING COMPANY				108		MILLICAN REEF UNIT #2-P
8426063	F-04-073613	4221500000		RECEIVED:	03/23/84	JA: TX
8426079	F-06-075228	4200530159		108-ER		KAWAHATA UNIT #2
-PERRY OIL & GAS CO				102-4		KIRKLAND #2
8426151	F-03-077981	4214900000		RECEIVED:	03/23/84	JA: TX
-PETRO-LEWIS CORPORATION				102-3		MARK UNIT WELL #1
8426150	F-01-077979	4247933488		RECEIVED:	03/23/84	JA: TX
-PETROLEUM CORP OF DELAWARE				103	107-TF	O S PETTY B 2-5
8426219	F-08-079245	4230130215		RECEIVED:	03/23/84	JA: TX
-PHILIP B BERRY P/A NO 2				102-4		BASS 46 #2-L
8426056	F-06-073105	4236730774		RECEIVED:	03/23/84	JA: TX
-PHILLIPS PETROLEUM COMPANY				103		J C LANGLEY WELL #1 RRC #171837
8426121	F-10-076567	4234100000		RECEIVED:	03/23/84	JA: TX
-PMT OPERATING CO				108		VIOLA #1
8426062	F-7B-073598	4204900000		RECEIVED:	03/23/84	JA: TX
-PRINGLE PETROLEUM INC				103		LANCASTER #1
8426102	F-03-075984	4220100000		RECEIVED:	03/23/84	JA: TX
-R A W ENERGY CORP				102-4		BROWN ESTATE #4 - ID #108336
8426181	F-7B-078802	4241735161		RECEIVED:	03/23/84	JA: TX
8426202	F-7B-078980	4208333655		102-4		BERNSTEIN #6
-R K G ENGINEERING INC				102-4		LAVELLE #1
8426214	F-08-079139	4237134587		RECEIVED:	03/23/84	JA: TX
-RICHARDSON ENERGY CORP				103		EL WEDO A - #3
8426148	F-7B-077952	4242900000		RECEIVED:	03/23/84	JA: TX
8426149	F-7B-077953	4242900000		103		D SIKES "F" #2
-RIO PETROLEUM INC				103		D SIKES "F" #3
8426285	F-10-079460	4217900000		RECEIVED:	03/23/84	JA: TX
8426282	F-10-079457	4217900000		108		J S MORSE -A- #1
8426280	F-10-079455	4217900000		108		J S MORSE -A- #10
8426279	F-10-079454	4217900000		108		J S MORSE -B- #1
8426277	F-10-079452	4217900000		108		J S MORSE -B- #2
8426273	F-10-079448	4217900000		108		J S MORSE -B- #4
8426272	F-10-079447	4217900000		108		J S MORSE -C- #4
8426271	F-10-079446	4217900000		108		J S MORSE -D- #3
8426269	F-10-079444	4217900000		108		J S MORSE -D- #4
8426268	F-10-079443	4217900000		108		J S MORSE #1
8426281	F-10-079456	4217900000		108		J S MORSE #2
8426284	F-10-079459	4217900000		108		J S MORSE A #11
8426283	F-10-079458	4217900000		108		J S MORSE A #5
8426278	F-10-079453	4217900000		108		J S MORSE A #9
8426270	F-10-079445	4217900000		108		J S MORSE B #3
8426276	F-10-079451	4217900000		108		J S MORSE D #5
8426275	F-10-079450	4217900000		108		J S MORSE-C- #1
8426274	F-10-079449	4217900000		108		J S MORSE-C- #2
-ROY PRODUCTION CO				108		J S MORSE-C- #3
8426334	F-10-079526	4248300000		RECEIVED:	03/23/84	JA: TX
-RUPERTSLAND RESOURCES INC				108		VERMILLION #1 026712
8426131	F-03-077250	4214900000		RECEIVED:	03/23/84	JA: TX
-S K ROGERS OIL CO				102-2		LUCK #1
				RECEIVED:	03/23/84	JA: TX

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FIELD NAME	PROD	PURCHASER
FARNSWORTH CONNER (DE	5.0	
WELCH SE (SPRABERRY)	23.0	
BRANDT 4700' (YEGUA)	75.0	VALERO TRANSMISSI
TALUS (CONGL)	0.0	CORONADO TRANSMIS
BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
BRANDT	0.0	TEXAS EASTERN TRA
PERSONVILLE NORTH (CO	547.5	SOUTHWESTERN GAS
BOONSVILLE (BEND CONG	292.7	NATURAL GAS PIPEL
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
IATAN EAST HOWARD	0.4	GETTY OIL CO
SEMINOLE EAST (SAN AN	13.0	PHILLIPS PETROLEU
DIMMIT (CHERRY CANYON	11.0	INTRATEX GAS CO
LEVELLAND	15.0	AMOCO PRODUCTION
LEVELLAND	3.0	AMOCO PRODUCTION
PARKS (SPRABERRY)	20.0	EL PASO NATURAL G
DIMMIT (CHERRY CANYON	37.0	INTRATEX GAS CO
DIMMIT (CHERRY CANYON	35.0	INTRATEX GAS CO
GERMANTA (GRAYBURG)	30.0	PHILLIPS PETROLEU
PANHANDLE EAST	12.0	EL PASO NATURAL G
EVANS (7815) FIELD	18.0	
STEAMBOAT PASS SE	149.7	ALUMINUM CO OF AM
TRI BAR NORTH (OLMOS)	0.0	HOUSTON PIPE LINE
BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPE
BRYAN (WOODBINE)	0.0	VANGUARD PIPELINE
BRYAN (WOODBINE)	0.0	VANGUARD PIPELINE
BRYAN (WOODBINE)	0.0	VANGUARD PIPELINE
BRYAN (WOODBINE)	0.0	VANGUARD PIPELINE
PANHANDLE HUTCHINSON	0.0	PANHANDLE PRODUCI
DORR (QUEEN SAND)	1.0	PERRY PIPELINE CO
TEX-HAMON (DEAN)	0.0	
MILLICAN (STRAWN REEF	14.5	SUN EXPLORATION &
HIDALGO (ELKINS)	0.0	VAL GAS CO
RED LAND NORTH	0.0	ENERGY GATHERING
GIDDINGS (AUSTIN CHAL	35.0	PHILLIPS PETROLEU
CATARINA S W	66.4	VALERO TRANSMISSI
WHEAT (CHERRY CANYON)	12.7	PHILLIPS PETROLEU
TRAWICK	0.0	EASTEX GAS TRANSM
PANHANDLE WEST	0.0	EL PASO NATURAL G
BROWN COUNTY REGULAR	130.0	SIOUX PIPELINE CO
AMAREX (7070 YEGUA) F	365.0	BADISCHE CORP
BERNSTEIN (BEND CONGL	100.0	WARREN PETROLEUM
LAKE COLEMAN (MORRIS	150.0	UNION TEXAS PETRO
CHENOT (WOLFCAMP)	0.0	TRANSWESTERN PIPE
STEPHENS COUNTY REGUL	26.0	BRAZOS FUEL CO
WILDCAT (APPLYING FOR	26.0	BRAZOS FUEL CO
PANHANDLE GRAY COUNTY	1.5	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.4	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	2.0	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.3	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.3	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.3	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.9	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.4	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.9	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.0	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.7	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.8	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.3	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.8	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.7	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	1.9	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	2.8	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.6	PHILLIPS PETROLEU
EAST PANHANDLE	12.5	HIGH PLAINS NATUR
GIDDINGS (AUSTIN CHAL	125.0	PHILLIPS PETROLEU

VOLUME 1105

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8426349	F-8A-079558	4221933597		103		CARTER #1	LEVELLAND	5.0	AMOCO PRODUCTION
8426350	F-8A-079559	4221934117		103		CARTER #2	LEVELLAND	0.0	AMOCO PRODUCTION
8426348	F-8A-079557	4221934107		103		MARATHON #1	LEVELLAND	5.0	AMOCO PRODUCTION
8426347	F-8A-079556	4221934165		103		MARATHON #2	LEVELLAND	0.0	AMOCO PRODUCTION
8426355	F-8A-079564	4221933894		103		MITCHELL #1	LEVELLAND	5.0	AMOCO PRODUCTION
8426354	F-8A-079563	4221934109		103		MITCHELL #2	LEVELLAND	5.0	AMOCO PRODUCTION
8426353	F-8A-079562	4221934108		103		MITCHELL #3	LEVELLAND	5.0	AMOCO PRODUCTION
8426352	F-8A-079561	4221934170		103		MITCHELL #4	LEVELLAND	5.0	AMOCO PRODUCTION
8426386	F-8A-079680	4207931840		103		ROULAIN #1	LEVELLAND	5.0	CABOT PIPELINE CO
8426345	F-8A-079552	4207931715		103		SNODGRASS "B" #2	LEVELLAND	0.0	CITIES SERVICE OI
8426346	F-8A-079555	4221900000		103		TURNER #1	LEVELLAND	5.0	AMOCO PRODUCTION
8426351	F-8A-079560	4221933896		103		WHIRLEY #1	LEVELLAND	5.0	AMOCO PRODUCTION
-SCARTH OIL & GAS CO				RECEIVED:	03/23/84	JA: TX			
8426171	F-10-078489	4235700000		107-TF		CALLIHAM #1497 046042	PERRY (CLEVELAND)	0.0	
-SCHURMAN OIL & GAS INC				RECEIVED:	03/23/84	JA: TX			
8426078	F-06-075169	4240131708		102-4		IRION #1-C	SHEA	700.0	
-SHELL WESTERN E&P INC				RECEIVED:	03/23/84	JA: TX			
8426105	F-04-076047	4250531450		107-DP		G G HINOJOSA #8	FANDANGO (WILCOX UPPE	70.0	UNITED TEXAS TRAN
8426111	F-01-076277	4231131851		102-4		L S MCCLAUGHERTY #4	A W P (OLMOS)	300.0	HOUSTON PIPELINE
8426115	F-04-076496	4250531546		107-DP		M T LONGORIA #3	FANDANGO (WILCOX 1550	800.0	UNITED TEXAS TRAN
-SIERRA PRODUCTION CO				RECEIVED:	03/23/84	JA: TX			
8426103	F-04-075986	4213136316		102-4	103	FELIX SAENZ #1	MAURICIO (7200 YEGUA)	275.0	SOUTHERN GAS PIPE
-SKLAR & PHILLIPS OIL CO				RECEIVED:	03/23/84	JA: TX			
8426106	F-06-076173	4242330702		103	107-TF	RUTH CORLEY #1	OVERTON (COTTON VALLE	183.0	UNITED GAS PIPE L
-SOUTHERN UNION EXPLORATION COMPANY				RECEIVED:	03/23/84	JA: TX			
8426168	F-7C-078469	4209530682		102-4	103	MALCORINE W STASNEY #5	FUZZY CREEK	19.0	J-W OPERATING CO
-STARDUST LEASING INC				RECEIVED:	03/23/84	JA: TX			
8426108	F-03-076204	4229131581		102-4		HIRSCH ET AL #1	COTTONWOOD (VICKSBURG	180.0	LONE STAR GAS CO
-STATEX PETROLEUM INC				RECEIVED:	03/23/84	JA: TX			
8426186	F-10-078866	4221100000		103		YOUNG #12-66	HEMPHILL (GRANITE WAS	450.8	WESTAR TRANSMISSI
8426187	F-10-078867	4221100000		103		YOUNG #13-65	HEMPHILL (GRANITE WAS	272.0	WESTAR TRANSMISSI
8426188	F-10-078868	4221131569		103		YOUNG #14-65	HEMPHILL (GRANITE WAS	398.6	WESTAR TRANSMISSI
8426189	F-10-078869	4221131579		103		YOUNG #15-65	HEMPHILL (GRANITE WAS	386.4	WESTAR TRANSMISSI
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/23/84	JA: TX			
8426158	F-7B-078123	4242933671		103		ALEX DICKIE #13	STEPHENS COUNTY REGUL	3.0	DAMSON GAS PROCES
8426170	F-7B-078480	4242933809		103		BLACK-STOKER (CADDO) UNIT #26	STEPHENS COUNTY REGUL	10.0	WARREN PETROLEUM
8426254	F-09-079415	4223700000		108		CHERRYHOMES "D" GAS #1	BOONSVILLE	1.0	LONE STAR GAS CO
8426240	F-09-079391	4250300000		108		CPB GAHAGAN #3X	YOUNG COUNTY REG	1.0	SUN GAS TRANSMISS
8426239	F-09-079390	4250300000		108		CPB GAHAGAN #4	YOUNG COUNTY REGULAR	0.1	SUN GAS TRANSMISS
8426416	F-7B-079693	4242932102		103		EAST ELIASVILLE (CADDO) UNIT #73	STEPHENS COUNTY REGUL	3.0	BRECKENRIDGE GASO
8426059	F-04-073183	4235531241		103		H L MCCANN #23	LUBY	56.0	FLORIDA GAS TRANS
8426417	F-08-079694	4233500000		108		J F MCCABE "A" #1	JAMESON N	2.0	LONE STAR GAS CO
8426155	F-08-078120	4233532584		103		J F MCCABE "A" #15	JAMESON N	7.0	LONE STAR GAS CO
8426257	F-08-079419	4233500000		108		J F MCCABE "A" #3	JAMESON N	3.0	LONE STAR GAS CO
8426229	F-7B-079373	4236300000		108		J N STUART #172	PALO PINTO COUNTY REG	0.4	SOUTHWESTERN GAS
8426227	F-7B-079370	4236300000		108		J N STUART #192 U	STUART	10.0	SOUTHWESTERN GAS
8426255	F-7B-079416	4213300000		108		JULIA DAVIS #2	EASTLAND COUNTY REGUL	2.0	
8426238	F-7C-079389	4244330318		103		MCKAY CREEK "B" #4	MCKAY CREEK (CABALLOS	7.0	EL PASO NATURAL G
8426260	F-7B-079422	4213300000		108		N CENTRAL RANGER UNIT #5-26	EASTLAND COUNTY REGUL	0.4	
8426415	F-7B-079691	4213300000		108		NORTHWEST RANGER UNIT #6-6	EASTLAND COUNTY REGUL	0.5	
8426414	F-7B-079690	4213300000		108		O H DELANO #13	EASTLAND COUNTY REGUL	0.3	
8426256	F-09-079417	4249700000		108		R H PHILLIPS "A" #1	BOONSVILLE	17.0	NATURAL GAS PIPEL
8426147	F-04-077868	4242700000		108		RODRIQUEZ-PENA GAS UNIT #2	KELSEY SOUTH	16.0	FLORIDA GAS TRANS
8426253	F-7B-079413	4214300000		108		T P FEE 41 B #2	X-RAY	14.0	LONE STAR GAS CO
8426418	F-08-079695	4233500000		108		V T MCCABE #22	JAMESON N	10.0	LONE STAR GAS CO
8426259	F-08-079421	4233500000		108		V T MCCABE #38	JAMESON N	15.0	LONE STAR GAS CO
8426156	F-08-078121	4233532455		103		V T MCCABE #47	JAMESON NORTH	38.0	LONE STAR GAS CO
8426169	F-08-078479	4233532604		103		V T MCCABE #52	JAMESON N	108.0	LONE STAR GAS CO
8426258	F-08-079420	4233500000		108		V T MCCABE "A" #18	JAMESON NORTH	2.0	LONE STAR GAS CO
8426419	F-08-079696	4233500000		108		V T MCCABE "B" #22	JAMESON NORTH	1.0	LONE STAR GAS CO
8426157	F-08-078122	4233532573		103		V T MCCABE "C" #18	JAMESON N	15.0	LONE STAR GAS CO
8426228	F-7B-079371	4213300000		108		W C GARDNER #1	GAILEY-ALLEN	14.0	SOUTHWESTERN GAS
8426159	F-7B-078128	4242932686		103		W H ACKERS "A" #26	STEPHENS COUNTY REGUL	2.0	DAMSON GAS PROCES
-SUNRISE ENTERPRISES				RECEIVED:	03/23/84	JA: TX			
8426330	F-09-079512	4207700000		103		L H BROWNING "A" #1	FREDDIE (CONGL 5900)	11.0	FAGADAU ENERGY CO
-SUPERIOR OIL CO				RECEIVED:	03/23/84	JA: TX			
8426065	F-08-073990	4247532027		102-4	103	WILLIAMS PAUL J #2	COLLIE (DELAWARE)	278.0	
-TAHOE OIL & CATTLE CO				RECEIVED:	03/23/84	JA: TX			
8426324	F-08-079500	4231732500		103		TAHOE-CAMPBELL #1	SPRABERRY (TREND AREA	58.4	PHILLIPS PETROLEU
8426323	F-08-079499	4231732694		103		TAHOE-CAMPBELL #2	SPRABERRY (TREND AREA	62.1	PHILLIPS PETROLEU
8426322	F-08-079498	4231732715		103		TAHOE-CAMPBELL #3	SPRABERRY TREND AREA	58.4	PHILLIPS PETROLEU
8426325	F-08-079501	4231732719		103		TAHOE-HYATT REGIENCY #2	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
-TAMARACK PETROLEUM CO INC				RECEIVED:	03/23/84	JA: TX			
8426328	F-08-079507	4232931248		103		MATTHEWS #2 (RRC #25838)	SPRABERRY (TREND AREA	18.0	PHILLIPS PETROLEU
-TDC ENGINEERING INC				RECEIVED:	03/23/84	JA: TX			
8426338	F-04-079536	4247933686		102-4	107-TF	R ORTIZ #2 ID #108532	ORTIZ (5800)	152.0	UNITED TEXAS TRAN
-TED TRUE INC				RECEIVED:	03/23/84	JA: TX			
8426058	F-10-073165	4234131005		103		BRENT 64-5	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
-TEX-WELL OIL & GAS CORP				RECEIVED:	03/23/84	JA: TX			
8426404	F-10-079644	4206531602		103		KYLE #1 (ID #05630)	PANHANDLE CARSON	116.0	GETTY OIL CO
8426403	F-10-079643	4206531601		103		KYLE #2 (ID #05630)	PANHANDLE CARSON	114.0	GETTY OIL CO
-TEXACO INC				RECEIVED:	03/23/84	JA: TX			
8426223	F-08-079357	4200331630		103		J E MABEE "A" NCT-1 #32-A	MABEE	0.4	
8426224	F-08-079358	4230130343		102-4		LOVING "AS" FEE #1	DIMMITT NE	3.3	
8426110	F-08-076264	4230130475		102-4		LOVING "AZ" FEE #1	DIMMITT	32.5	
8426129	F-8A-077179	4216532684		103		WHARTON UNIT #149	HARRIS	14.6	PHILLIPS PETROLEU
-TEXLAND-RECTOR & SCHUMACHER				RECEIVED:	03/23/84	JA: TX			
8426307	F-8A-079483	4210730704		103		PRICE-THOMAS 1106-1	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426306	F-8A-079482	4210730705		103		PRICE-THOMAS 1106-2	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426305	F-8A-079481	4210730716		103		PRICE-THOMAS 1106-3	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426304	F-8A-079480	4210730719		103		PRICE-THOMAS 1117-1	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426303	F-8A-079479	4210730717		103		PRICE-THOMAS 1117-2	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426302	F-8A-079478	4210730727		103		PRICE-THOMAS 1117-3	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426301	F-8A-079477	4210730732		103		PRICE-THOMAS 1117-4	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426300	F-8A-079476	4210730731		103		PRICE-THOMAS 1117-5	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426299	F-8A-079475	4210730776		103		PRICE-THOMAS 1117-6	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426298	F-8A-079474	4210730777		103		PRICE-THOMAS 1117-7	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426297	F-8A-079473	4210730778		103		PRICE-THOMAS 1117-8	FORBES (GLORIETA)	0.0	MID PLAINS FORBES
8426296	F-8A-079472	4216932185		103		PRICE-THOMAS 1117-9	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426295	F-8A-079471	4210730729		103		PRICE-THOMAS 1118-1	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426294	F-8A-079470	4210730735		103		PRICE-THOMAS 1118-2	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426293	F-8A-079469	4216932007		103		PRICE-THOMAS 1118-4	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426321	F-8A-079497	4210730575		103		PRICE-THOMAS 15-1	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426312	F-8A-079488	4210730690		103		PRICE-THOMAS 15-10	FORBES GLORIETA	1.0	MID PLAINS FORBES

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8426311	F-8A-079487	4210730707		103		PRICE-THOMAS 15-11	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426310	F-8A-079486	4210730720		103		PRICE-THOMAS 15-12	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426309	F-8A-079485	4210730758		103		PRICE-THOMAS 15-13	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426308	F-8A-079484	4210730760		103		PRICE-THOMAS 15-14	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426320	F-8A-079496	4210730668		103		PRICE-THOMAS 15-2	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426319	F-8A-079495	4210730669		103		PRICE-THOMAS 15-3	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426318	F-8A-079494	4210730670		103		PRICE-THOMAS 15-4	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426317	F-8A-079493	4210730686		103		PRICE-THOMAS 15-5	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426316	F-8A-079492	4210730687		103		PRICE-THOMAS 15-6	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426315	F-8A-079491	4210730688		103		PRICE-THOMAS 15-7	FORBES GLORIETA	1.0	MID PLAINS FORBES
8426314	F-8A-079490	4210730685		103		PRICE-THOMAS 15-8	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
8426313	F-8A-079489	4210730695		103		PRICE-THOMAS 15-9	FORBES (GLORIETA)	1.0	MID PLAINS FORBES
-TOPPER OIL CO				RECEIVED:		03/23/84 JA: TX			
8426209	F-10-079017	4223331789		103		J A WHITTENBURG #4 (01013)	PANHANDLE	0.0	PHILLIPS PETROLEU
-TRIO OIL CO				RECEIVED:		03/23/84 JA: TX			
8426215	F-10-079140	4234131070		103		ANN #1 (ID#)	PANHANDLE MOORE	121.0	TRANS-PAN GATHERI
-TXO PRODUCTION CORP				RECEIVED:		03/23/84 JA: TX			
8426123	F-7C-076706	4210534562		103	107-TF	BAGGETT "C" #1	OZONA NW	0.0	DELHI GAS PIPELIN
8426185	F-10-078865	4219530878		102-4		HARRIS "M" #1	ZEMKO (MORROW)	160.0	DELHI GAS PIPELIN
8426132	F-7C-077307	4223532145		103		JONES K #6	DOVE CREEK (CANYON)	150.0	COLUMBIA GAS TRAN
8426060	F-7C-073249	4223532079		102-4		LINDLEY "40" #13	ROCK PERM	12.0	NORTHERN NATURAL
8426036	F-03-064054	4231330403		102-4		THOMPSON "S" #1	MARLAPP (DEXTER Q)	0.0	LONE STAR GAS CO
-UNION OIL COMPANY OF CALIF				RECEIVED:		03/23/84 JA: TX			
8426329	F-8A-079508	4216532617		103		NORTH RILEY UNIT #232	RILEY NORTH	30.0	PHILLIPS PETROLEU
8426326	F-8A-079503	4216532620		103		NORTH RILEY UNIT #92-R	RILEY NORTH	30.0	PHILLIPS PETROLEU
-UNITED PETROLEUM CORP				RECEIVED:		03/23/84 JA: TX			
8426135	F-10-077491	4223331796		103		CROSBY-HATCHER "C" #1	PANHANDLE-HUTCHINSON	54.0	DIAMOND CHEMICALS
8426173	F-10-078517	4223331797		103		CROSBY-HATCHER "D" #1	PANHANDLE-HUTCHINSON	54.0	DIAMOND CHEMICALS
-W B YARBOROUGH				RECEIVED:		03/23/84 JA: TX			
8426176	F-03-078704	4286446000		102-2		STANDARD TRUST CO #1	S L P (NAVARRO)	0.0	SOUTH CEN-TEX GAS
-WAGNER & BROWN				RECEIVED:		03/23/84 JA: TX			
8426409	F-08-079668	4243131393		103		GLASS "G" #5-14	CONGER (PENN)	250.8	TEXAS UTILITIES F
8426408	F-08-079667	4243131392		103		GLASS "G" #6-14	CONGER (PENN)	368.9	TEXAS UTILITIES F
-WALTER OIL & GAS CORP				RECEIVED:		03/23/84 JA: TX			
8426201	F-09-078949	4207733181		102-4		MCNEILL #2	BELLEVUE WEST (CADDO)	10.0	FAGADAU ENERGY CO
-WARREN AMERICAN OIL CO				RECEIVED:		03/23/84 JA: TX			
8426231	F-7C-079380	4210534695		103		UNIVERSITY OF TEXAS 234 #3	BLOCK 46 EAST (GRAYBU	0.0	J L DAVIS
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:		03/23/84 JA: TX			
8426289	F-08-079465	4210333142		103		M B MCKNIGHT #144	SAND HILLS (MCKNIGHT)	88.7	EL PASO NATURAL G
8426287	F-08-079463	4210333343		103		P J LEA ETAL (TR A) #161	LEA (SAN ANDRES)	22.6	EL PASO NATURAL G
8426288	F-08-079464	4210333344		103		P J LEA ETAL (TR A) #164	LEA (SAN ANDRES)	104.6	EL PASO NATURAL G
8426290	F-08-079466	4210333345		103		P J LEA ETAL (TR A) #165	LEA (SAN ANDRES)	48.4	EL PASO NATURAL G
8426291	F-08-079467	4210333339		103		P J LEA ETAL (TRB) #167	LEA (SAN ANDRES)	18.3	EL PASO NATURAL G
8426292	F-08-079468	4210333338		103		P J LEA ETAL (TRB) #170	LEA (SAN ANDRES)	17.7	EL PASO NATURAL G
8426286	F-08-079462	4210333337		103		P J LEA ETAL #169	LEA (SAN ANDRES)	5.6	EL PASO NATURAL G
-WCS PETROLEUM CO				RECEIVED:		03/23/84 JA: TX			
8426153	F-03-078038	4228731526		102-2		GERDES-KELLOGG UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	PERRY PIPELINE CO
-WEST TEXAS OIL & GAS CORP				RECEIVED:		03/23/84 JA: TX			
8426208	F-8A-079010	4226300000		103		WALLACE RANCH #2	WEST JAYTON (STRAWN S	0.0	
8426205	F-8A-079006	4226300000		103		WALLACE RANCH "B" #4	JAYTON WEST (STRAWN S	0.0	
8426204	F-8A-079005	4226300000		103		WALLACE RANCH "B" #5	JAYTON WEST (STRAWN S	0.0	
8426203	F-8A-079003	4226300000		103		WALLACE RANCH A #3	JAYTON WEST (STRAWN S	0.0	
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED:		03/23/84 JA: TX			
8426336	F-03-079528	4229131631		102-4		B E QUINN #1	COLONEL (LOWER WILCOX	350.0	

[FR Doc. 84-11008 Filed 4-23-84; 8:45 am]
BILLING CODE 6717-01-C

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NGPA Notices of Determination By Jurisdictional Agencies

Issued: April 19, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket Rm83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date of notice is issued by the commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED APRIL 19, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	03/26/84	JA: LA			
8426490	84-0286	1701724828		103		CADDO LEVEE BOARD #1	NORTH MISSIONARY LAKE	3.7	ARKANSAS LOUISIAN
-GETTY OIL COMPANY				RECEIVED:	03/26/84	JA: LA			
8426491	84-0313	1703100000		107-TF		J D SAMPLE #2 CV RA SUP	LOGANSPORT	40.0	TENNESSEE GAS PIP
-MCRAE EXPLORATION INC				RECEIVED:	03/26/84	JA: LA			
8426489	84-0293	1711121139		107-TF		NOLAN #1 CV RA SUD	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
-TEXACO INC				RECEIVED:	03/26/84	JA: LA			
8426492	84-0317	1710121119		103		WAX BAYOU CO INC #59	BATEMAN LAKE	735.0	KAISER ALUMINUM &
-WHELESS INDUSTRIES INC				RECEIVED:	03/26/84	JA: LA			
8426493	84-0297	1711920220		107-TF		BROWNING #1 WHELESS SMK C RA SUZ	EAST DYKESVILLE	365.0	ARKANSAS LOUISIAN
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-HUNT ENERGY CORPORATION ET AL				RECEIVED:	03/23/84	JA: MI			
8426486		2114300000		103		MEADOWS #1-23	ST HELEN	3.7	DOW CHEMICAL CO
8426487		2114300000		103		SCHWALM #1-23	ST HELEN	14.6	DOW CHEMICAL CO
8426488		2114300000		103		SCHWALM #2-23	ST HELEN	5.5	DOW CHEMICAL CO
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-ENSTAR PETROLEUM INC				RECEIVED:	03/26/84	JA: NM			
8426466		3002528523		103		MC CLURE "E" #1	DENTON (WOLD CAMP)	20.0	
-GETTY OIL COMPANY				RECEIVED:	03/26/84	JA: NM			
8426462		3001523757		103		MALAGA HARROUN 6 COM #1	UNDESIGNATED ATOKA	365.0	EL PASO NATURAL G
8426477		3002510047		108		R L BRUNSON #1		14.8	GETTY OIL CO
8426463		3001524287		103		SALT MOUNTAIN 36 STATE #1	BRUSHY DRAW DELAWARE	9.9	CONOCO INC
-PHILLIPS OIL CO				RECEIVED:	03/26/84	JA: NM			
8426464		3002528438		103		PHILLIPS "E" STATE #34	MALJAMAR GB/SA	3.0	EL PASO NATURAL G
-SAMEDAN OIL CORPORATION				RECEIVED:	03/26/84	JA: NM			
8426467		3002528476		103		PARKS "A" #10	WANTZ (ABO)	73.0	GETTY OIL CO
-SOUTHLAND ROYALTY CO				RECEIVED:	03/26/84	JA: NM			
8426461		3002528378		103		SCHARB "9" #3	SCHARB	2.0	WARREN PETROLEUM
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	03/26/84	JA: NM			
8426465		3002528484		103		LEA "UA" STATE #1	S E SCHARB WOLFCAMP	0.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:	03/26/84	JA: NM			
8426474		3001524704		103		BONNIE "YM" #1	PENASCO DRAW S/A YESO	0.0	TRANSWESTERN PIPE
8426475		3002528475		103		COQUINA "WK" ST #2	SAUNDERS PERMO UPPER	0.0	WARREN PETROLEUM
8426473		3002528284		103		HANLADDIE "WR" ST #2	SAUNDERS PERMO UPPER	0.0	WARREN PETROLEUM
8426469		3004120704		103		HOWARD "XY" #1-Y	UNDES TOMAHAWK S/A	0.0	
8426470		3001524649		103		PEON "GK" #2	ATOKA-GLORIETA-YESO	0.0	TRANSWESTERN PIPE
8426471		3001524637		103		STONEWALL "WM" ST #6	AVALON DELAWARE	0.0	PHILLIPS PETROLEU
8426472		3001524623		103		STONEWALL "YE" ST #1	AVALON DELAWARE	0.0	PHILLIPS PETROLEU
8426476		3004120708		103		WILCOX "TS" #3	TOMAHAWK S/A	0.0	
8426468		3002528529		103		WOODPECKER "SY" ST #8	SAUNDERS PERMO UPPER	0.0	WARREN PETROLEUM
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-BEREA OIL AND GAS CORPORATION				RECEIVED:	03/26/84	JA: NY			

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8426594	5203	3101318281		102-2	107-TF	MARING UNIT #2	WILDCAT	11.0	COLUMBIA GAS TRAN
8426581	5183	3101318262		102-2	107-TF	NEAR UNIT #1	WILDCAT	12.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC				RECEIVED:	03/26/84	JA: NY			
8426591	5613	3100917096		102-2	107-TF	A HERSCHBERGER #1 KA-119	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426580	5867	3100917091		102-2	107-TF	A MAST UNIT #1 KX-4	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426566	5601	3100917041		102-2	107-TF	A MILLER #2 KA-110	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426598	5562	3101317639		102-2	107-TF	DAVID BRUMAGIN #1 KA-143	MINA	30.0	COLUMBIA GAS TRAN
8426579	5549	3101318380		102-2	107-TF	H RHEBERGEN UNIT #2 KV-53	CLYMER	0.0	COLUMBIA GAS TRAN
8426565	5597	3100917225		102-2	107-TF	J MILLER #1 KX-10	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426574	5840	3100917089		102-2	107-TF	KURTZ-HOSTETLER UNIT #1 KX-1	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426576	5547	3101318366		102-2	107-TF	MERLE HOLTHOUSE #1 KV-52	CLYMER	30.0	COLUMBIA GAS TRAN
8426563	5611	3100917275		102-2	107-TF	NOAH SHELTER #1 KX-13	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426562	5836	3100916209		102-2	107-TF	PEARL TINGUE #1 KA-114	CONEWANGO	30.0	COLUMBIA GAS TRAN
8426599	5558	3101318131		102-2	107-TF	PEEK N PEAK #1 KV-50	FRENCH CREEK	30.0	COLUMBIA GAS TRAN
8426564	5595	3100917099		102-2	107-TF	YODER UNIT #1 KA-122	CONEWANGO	30.0	COLUMBIA GAS TRAN
-ECLIPSE ENERGY CORP				RECEIVED:	03/26/84	JA: NY			
8426592	7035	3101317655		103		KINGS ROAD PARTNERS #1	LAKE SHORE	10.0	NATIONAL FUEL GAS
-EMPIRE EXPLORATION CORP				RECEIVED:	03/26/84	JA: NY			
8426590	7154	3100918615		107-TF		HORACE MOREY #6283 (JO)	WILDCAT	7.0	COLUMBIA GAS TRAN
-ENVIROGAS INC				RECEIVED:	03/26/84	JA: NY			
8426567	5594	3101318251		107-TF		G CRONK #1	ELLINGTON - MEDINA	18.0	
8426569	5707	3101318259		107-TF		M RICE #3	CHAUTAUQUA - MEDINA	18.0	COLUMBIA GAS TRAN
8426568	5580	3101318182		107-TF		R WILSON #1	POLAND - MEDINA	18.0	COLUMBIA GAS TRAN
-NRM PETROLEUM CORPORATION				RECEIVED:	03/26/84	JA: NY			
8426571	5878	3100918483		102-2	107-TF	CRANDALL #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426587	5886	3100918560		102-2	107-TF	GREEN-O'NEILL UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426586	5888	3100918498		102-2	107-TF	HITCHCOCK-WAGNER UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426589	5865	3100918435		102-2	107-TF	MOSHER-MEADE UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426572	5890	3100918412		102-2	107-TF	SENN & CRANDALL UNIT A#1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426570	5880	3100918539		102-2	107-TF	SWANSON ONEILL UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426585	5882	3100918499		102-2	107-TF	VANWERT HITCHCOCK UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8426588	5884	3100918436		102-2	107-TF	WALTERS-SENN UNIT #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
-PERRY GAS CO				RECEIVED:	03/26/84	JA: NY			
8426584	5721	3112117036		102-2		DUEPPENGIESER #3		0.0	COLUMBIA GAS TRAN
-TRAHAN PETROLEUM INC				RECEIVED:	03/26/84	JA: NY			
8426582	5330	3101318215		102-2		ABBEY #3 #31-013-18215	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426596	5250	3101318217		102-2	107-TF	ABBEY #4 31-013-18217	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426583	5292	3101318218		102-2	107-TF	CARPENTER #2 #31-013-18218	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426575	5252	3101318096		102-2	107-TF	CHESTER #1 #31-013-18096	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426573	5282	3101317991		102-2	107-TF	CROSS #1 #31-013-17991	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426597	5284	3101318109		102-2	107-TF	O CARLSON #1 #31-013-18109	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426595	5364	3101318191		102-2	107-TF	REICH #1 #31-013-18191	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426578	5248	3101318066		102-2	107-TF	TENPAS #2 #31-013-18066	ELLINGTON	36.0	COLUMBIA GAS TRAN
8426593	5575	3101318433		102-2		WAAG #1 #31-013-18433	WILDCAT	36.0	COLUMBIA GAS TRAN
8426577	5336	3101318318		102-2	107-TF	WEHRENBERG #2 #31-013-18318	ELLINGTON	36.0	COLUMBIA GAS TRAN
********** OKLAHOMA CORPORATION COMMISSION **********									
-AGATE PETROLEUM INC				RECEIVED:	03/23/84	JA: OK			
8426440	27217	3500321100		103		LOESER #1-15 OTC #003-82675	BYRON EAST	75.0	SUN EXPLORATION &
8426439	27218	3500321082		103		SETTLE # 1-15 OTC # 003-82951	BYRON EAST	180.0	SUN EXPLORATION &
-AMES OIL AND GAS CORP				RECEIVED:	03/26/84	JA: OK			
8426632	24975	3511721599		102-2		JACK LYONS #2	PAWNEE "A" PROSPECT	9.4	COLORADO GAS COMP
-ANADARKO PRODUCTION COMPANY				RECEIVED:	03/23/84	JA: OK			
8426455	27032	3500321098		103		PAGE B#2-3	LAMBERT S E	65.0	PIONEER GAS PRODU
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/23/84	JA: OK			
8426457	27110	3500722603		103		GOETZINGER TRUST UNIT #2	MOCANE - LAVERNE	182.0	NORTHERN NATURAL
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/26/84	JA: OK			
8426645	27119	3513721547		103		E VELMA W BLOCK HUMPHREYS SAND #416	SHO-VEL-TUM	36.5	GETTY OIL CO
-AVANTI ENERGY CORP				RECEIVED:	03/23/84	JA: OK			
8426459	26984	3503920937		103		LAWTER #1-11	CUSTER	82.5	PUBLIC SERVICE CO
-CANADIAN EXPLORATION CORP				RECEIVED:	03/26/84	JA: OK			
8426610	27090	3501722660		103		SMITH #19-2	NORTHWEST MUSTANG	36.0	PHILLIPS PETROLEU
-CHANSE PETROLEUM CORPORATION				RECEIVED:	03/26/84	JA: OK			
8426628	27180	3503700000		103		DEEBA #1		12.0	KERR MCGEE CORP
-CHOCTAW GAS CO				RECEIVED:	03/23/84	JA: OK			
8426447	27195	3512121023		103		PATRICK #2	FEATHERSTON	180.0	SE TRANSMISSION &
-CIMARRON PETROLEUM CORPORATION				RECEIVED:	03/23/84	JA: OK			
8426438	27232	3505920994		103		CPC #78-5 WOOLFOLK		20.0	MICHIGAN WISCONSI
-CLYDE M BECKER				RECEIVED:	03/26/84	JA: OK			
8426630	27273	3507100000		108		STATE #1		6.7	CITIES SERVICE OI
-D & J OIL CO OF OKLAHOMA INC				RECEIVED:	03/26/84	JA: OK			
8426648	27087	3508120989		108		COKER 1-26	NW CARNEY	19.0	SUN-GAS CO
-DAWSON-MARKWELL EXPLORATION CO				RECEIVED:	03/23/84	JA: OK			
8426453	27146	3504723476		103		KAISER #1	EAST KREMLIN	110.0	UNION TEXAS PETRO
-EARLSBORO ENERGIES CORP				RECEIVED:	03/26/84	JA: OK			
8426638	25132	3514920305		102-2		ANNA TREDER #1-13	DILL CITY WEST	3.0	
-ENERGY RESERVES GROUP INC				RECEIVED:	03/23/84	JA: OK			
8426450	27118	3509120218		108		HAMPTON #1-36	STIDHAM	19.8	PHILLIPS PETROLEU
-GETTY OIL COMPANY				RECEIVED:	03/26/84	JA: OK			
8426614	27131	3506120619		103		HOLLINGSHEAD #22	WEST STIGLER	300.0	
8426605	27047	3513900000		103		PERKINS "A" #2	N E GUYMON	27.4	NORTHWEST CENTRAL
-GILL JOHN K				RECEIVED:	03/26/84	JA: OK			
8426615	27133	3511124652		103		DODIE #1	BALD HILL	130.0	PHILLIPS PETROLEU
-GIPSON OIL CO				RECEIVED:	03/23/84	JA: OK			
8426454	27184	3513322332		103		REED #3	LITTLE RIVER	54.0	ARKANSAS LOUISIAN
-HOLDER A C				RECEIVED:	03/26/84	JA: OK			
8426601	26832	3507122785		103		HYND 3-25		18.0	CHASE GATHERING S
-IRA E RONGEY				RECEIVED:	03/26/84	JA: OK			
8426635	25126	3503725053		102-2		LEWIS #4 API 037-25053	GLENPOOL	109.5	PHILLIPS PETROLEU
-JAY PETROLEUM INC				RECEIVED:	03/26/84	JA: OK			
8426637	25130	3508322296		102-2		LEO #1	N W MERRICK	182.5	SUN EXPLORATION &
-JEFFERSON-WILLIAMS ENERGY CORP				RECEIVED:	03/23/84	JA: OK			
8426460	26987	3508322357		103		BRUCE HONEYCUTT #1-A	HONEYCUTT	350.0	EASON OIL CO
-L E JONES PRODUCTION COMPANY				RECEIVED:	03/23/84	JA: OK			
8426452	27138	3513700000		108		LAVERNE AITSON #2	WEST MARLOW	20.0	NATURAL GAS OPERA
-LITZENBERGER EXPLORATION				RECEIVED:	03/26/84	JA: OK			
8426640	26780	3515100000		103		SIMPSON WALKER TRUST # 1-13	WILDCAT	0.0	PANHANDLE EASTERN
-LONG ROYALTY CO				RECEIVED:	03/26/84	JA: OK			
8426620	25867	3501100000		103		CHEYENNE ARAPAHO TRIBAL LANDS #3-6	NORTHWEST CANTON	267.0	PHILLIPS PETROLEU
-LU-RAY PETROLEUM INC				RECEIVED:	03/23/84	JA: OK			
8426448	27194	3508100000		108		MABEE #1	WELLSTON	39.8	POLL GAS INC
-LU-RAY PETROLEUM INC				RECEIVED:	03/26/84	JA: OK			
8426644	27143	3504721715		108		CURBY #1	LUCIEN	9.3	AMINOIL USA INC

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MACKELLAR INC				RECEIVED:	03/23/84	JA: OK			
8426451	27135	3507323879		103		JINDRA #2	SOONER TREND	0.0	CONOCO INC
-MULLEN J S JR				RECEIVED:	03/26/84	JA: OK			
8426608	27081	3501922823		103		LACEY MULLEN ESTATE #1	SHO-VEL-TUM	10.2	MOBIL OIL CORP
8426609	27082	3501922836		103		LACY MULLEN ESTATE #2	SHO-VEL-TUM	11.3	MOBIL OIL CORP
-PETROLEUM RESOURCES CO				RECEIVED:	03/23/84	JA: OK			
8426445	27197	3511700000		103		BURKDOLL #2		0.0	PHILLIPS PETROLEU
8426446	27196	3511700000		103		BURKDOLL #2		0.0	PHILLIPS PETROLEU
8426442	27202	3511700000		103		KEETON #1	DEQUINSE	3.7	PHILLIPS PETROLEU
8426443	27201	3511700000		103		KEETON #2	DEQUINSE	11.0	PHILLIPS PETROLEU
8426444	27199	3511700000		103		KEETON #3-17	DEQUINSE	11.0	PHILLIPS PETROLEU
-PETROLEUM RESOURCES CO				RECEIVED:	03/26/84	JA: OK			
8426611	27091	3512500000		103		SIKES #1	SHAWNEE LAKE	0.0	BETHEL GAS PROCES
-RED EAGLE OIL CO				RECEIVED:	03/26/84	JA: OK			
8426613	27130	3509322769		103		CORNELSEN #1	N W OKEENE	0.0	PHILLIPS PETROLEU
-ROBERT P LAMMERTS				RECEIVED:	03/26/84	JA: OK			
8426631	24531	3507323654		102-4		UHLENHAKE 1-12		0.0	PHILLIPS PETROLEU
-RUSSMARK ENERGY				RECEIVED:	03/26/84	JA: OK			
8426612	27095	3507323902		103		GEIS #1-4	SOONER TREND	250.0	PHILLIPS PETROLEU
-SAMEDAN OIL CORPORATION				RECEIVED:	03/26/84	JA: OK			
8426618	25383	3501755224		102-2		SPEAR #5-8	N E CALUMET	0.0	PHILLIPS PETROLEU
-SAMSON RESOURCES COMPANY				RECEIVED:	03/26/84	JA: OK			
8426616	27428	3501521320		107-DP		HAMILTON #1-3		119.9	OKLAHOMA GAS & EL
-SANGUINE LTD				RECEIVED:	03/26/84	JA: OK			
8426617	24817	3501521513		102-4	103	GRANGER #1		17.2	
-SANTA FE MINERALS INC				RECEIVED:	03/23/84	JA: OK			
8426441	27216	3503920814		103		FRANSEN #25-1		275.0	TRANSWESTERN PIPE
-SANTA FE MINERALS INC				RECEIVED:	03/26/84	JA: OK			
8426623	27257	3512521158		103		IRONS #32-2		1.0	TRANSOK INC
-SANTA FE-ANDOVER OIL CO				RECEIVED:	03/23/84	JA: OK			
8426449	27191	3507323797		103		KRITTENBRINK #35-4		110.0	DELHI GAS PIPELIN
-SOUTHLAND ROYALTY CO				RECEIVED:	03/26/84	JA: OK			
8426603	27040	3507323857		103		ANNA ANNUSCHAT #1-10	OKARCHE NW	60.0	PHILLIPS PETROLEU
8426647	27103	3509322062		108		WOODRING #2-31	ORION	7.3	PHILLIPS PETROLEU
-STRIKER DRILLING CO				RECEIVED:	03/26/84	JA: OK			
8426619	25855	3508122129		103		CORY #2		0.0	NATURAL GAS ENTER
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/23/84	JA: OK			
8426458	26977	3505121468		103		NORGE MARCHAND #62-2	N W CHICKASHA	54.0	TRANSOL PIPELINE
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/26/84	JA: OK			
8426636	25127	3512920993		102-2		GOVIE MILLER #1	UNNAMED	614.0	
-TENNECO OIL COMPANY				RECEIVED:	03/26/84	JA: OK			
8426643	27173	3501521605		103		MERIWETHER #1-5	N SICKLES	30.0	
8426629	27176	3510322127		103		SNYDER #1-14	SOUTH LONE ELM	0.5	
8426642	27174	3510321783		103		S LONE ELM CLEVELAND S U #75	SOUTH LONE ELM	10.0	AMINOIL U S A INC
8426641	27175	3510321967		103		S LONE ELM CLEVELAND S U #74	SOUTH LONE ELM	0.3	AMINOIL U S A INC
-THE WIL-MC OIL CORP				RECEIVED:	03/26/84	JA: OK			
8426604	27046	3508300000		103		LOGSDEN #1	MULHALL	16.4	EASON OIL CO
-THK OIL PRODUCERS				RECEIVED:	03/26/84	JA: OK			
8426607	27067	3514320532		103		CAMPBELL #1		0.0	WEST-TUL GAS CO
-TXO PRODUCTION CORP				RECEIVED:	03/23/84	JA: OK			
8426437	27235	3505920212		108		STATE #23-1	SE DOBY	9.0	TRANSWESTERN PIPE
-TXO PRODUCTION CORP				RECEIVED:	03/26/84	JA: OK			
8426633	25053	3507920492		102-4	103	BAKER "M" #1	CAMERON	102.0	
8426600	26683	3512921015		107-DP		BRADSHAW "A" #1	NW BERLIN	0.0	DELHI GAS PIPELIN
8426627	27251	3503920947		103		IRWIN STATE #1	NE ANTHON	0.0	DELHI GAS PIPELIN
8426634	25123	3514910384		102-2		LOWRY STATE #1	SW BURNS FLAT	0.0	
8426626	27252	3505921229		103		O'HERM #1	W MAY	0.0	DELHI GAS PIPELIN
8426625	27253	3504321851		103		OAKLEY "B" #1	N PUTNAM	0.0	DELHI GAS PIPELIN
-UNION TEXAS PETROLEUM				RECEIVED:	03/23/84	JA: OK			
8426456	27105	3509300000		108		F WALKER #1	HODGE I	1.0	PANHANDLE EASTERN
-UNION TEXAS PETROLEUM				RECEIVED:	03/26/84	JA: OK			
8426646	27109	3504700000		108		F ANDERSON #1	HODGE II	0.0	PANHANDLE EASTERN
-UNIT DRILLING & EXPLORATION CO				RECEIVED:	03/26/84	JA: OK			
8426650	24901	3507720267		102-4		GOLIGHTLY #1	PANOLA	1100.0	ARKANSAS LOUISIAN
-VAUGHN GOOD				RECEIVED:	03/26/84	JA: OK			
8426624	27255	3505300000		103		BIGGS #1-8	SOONER TREND	0.0	UNION TEXAS PETRO
-VIERSEN & COCHRAN				RECEIVED:	03/26/84	JA: OK			
8426602	27029	3504321814		103		WAVERLY POLLOCK #1-25	WATONGA TREND	96.0	PHILLIPS PETROLEU
-W C PAYNE				RECEIVED:	03/26/84	JA: OK			
8426606	27053	3507323881		103		GARRETT "B" #2	SOONER TREND	0.0	CONOCO INC
-WARD PETROLEUM CORP				RECEIVED:	03/26/84	JA: OK			
8426622	26194	3502720763		103		BIGELOW #1		35.0	SUN EXPLORATION &
8426621	26193	3502720777		103		FRANK #1		40.0	SUN EXPLORATION &
-WESTERN PACIFIC PETROLEUM INC.				RECEIVED:	03/26/84	JA: OK			
8426639	26789	3504723478		103		WYATT #2-1	EAST BROWN	0.0	ARCO OIL & GAS CO
-WHITE OPERATING CO				RECEIVED:	03/26/84	JA: OK			
8426649	26933	3508300000		103		GRAFF #2 API #08322363	SW CRESCENT	38.0	CONOCO INC
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ASHLAND EXPLORATION INC				RECEIVED:	03/26/84	JA: WV			
8426483		4701900147		108-SA		EASTERN GAS & FUEL #40 - 040000	PAINT CREEK	16.0	COLUMBIA GAS TRAN
8426482		4704500819		108-SA		ELK CREEK COAL LAND CO #16-035270	LOGAN-WYOMING	10.0	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	03/22/84	JA: WV			
8426429		4709320060		102-4		G MILLER UNIT # 7A	CANAAN VALLEY	30.0	BROOKLYN UNION GA
8426424		4709300065		102-4		R BEALL #1	DRY FORK	30.0	BROOKLYN UNION GA
-BEREA OIL AND GAS CORPORATION				RECEIVED:	03/26/84	JA: WV			
8426485		4700121620		108		BRADSHAW #2	BARKER	5.9	CONSOLIDATED GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	03/22/84	JA: WV			
8426433		4709702305		103		BROOKS LEACHMAN 12731	BANKS DISTRICT	8.0	GENERAL SYSTEM PU
8426431		4709702516		103		EDNA TENNEY #1 12723	MEADE	42.0	GENERAL SYSTEM PU
8426426		4700500988		108		FEDERAL COAL CO 10798	SHERMAN	5.0	GENERAL SYSTEM PU
8426432		4700101776		103		HERMAN POLING #1 12786	BARKER	3.0	GENERAL SYSTEM PU
8426434		4708300479		103		K E KELLEY WN-12688	MIDDLE FORK	6.5	GENERAL SYSTEM PU
8426436		4709702252		103		LOYAL C REGER 12691	MEADE DISTRICT	5.4	GENERAL SYSTEM PU
8426427		4709702572		103		MARY ZICKEFOOSE HRS 12818	WASHINGTON	55.0	GENERAL SYSTEM PU
8426435		4708300484		103		MIDLAND ENTERPRISES INC WN-12692	MIDDLE FORK	9.7	GENERAL SYSTEM PU
8426428		4709702552		103		WOODY LUMBER CO 12825	WASHINGTON	20.0	GENERAL SYSTEM PU
-JAMES F SCOTT				RECEIVED:	03/22/84	JA: WV			
8426430		4701731970		102-4		CHARLES ROSS S-437	GREENBRIER	0.2	CONSOLIDATED GAS
-OFS KEYSTONE CORP				RECEIVED:	03/22/84	JA: WV			
8426425		4708506131		107-DV		GRAYAM #1 (LANDVOIGT)	UNION	0.0	CONSUMERS GAS UTI
-SPARTAN GAS COMPANY				RECEIVED:	03/22/84	JA: WV			
8426423		4710900868		107-TF		Y & O COAL CO 87-S-278	OCEANA	8.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8426422		4710900906		107-TF		Y & O COAL CO 93-S-295	OCEANA	50.0	COLUMBIA GAS TRAN
8426421		4710900910		107-TF		Y & O COAL CO 97-S-300	OCEANA	70.0	COLUMBIA GAS TRAN
8426420		4710900911		107-TF		Y & O COAL CO 98-S-301	OCEANA	395.0	COLUMBIA GAS TRAN
-STONEWALL GAS CO INC				RECEIVED:	03/26/84	JA: WV			
8426484		4704103072		108		ARTHUR B GOULD #2 85-S	HACKER'S CREEK DISTRI	20.0	CONSOLIDATED GAS
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER, CO									
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	03/26/84	JA: CO F			
8426481	CD0223-84	0510308566		108		FEDERAL #3-14-4-104	COLUMBINE SPRING	20.5	NORTHWEST PIPELIN
-NATOMAS NORTH AMERICA INC				RECEIVED:	03/26/84	JA: CO F			
8426478	CD 0128-83	0506706481		107-TF		PINE RIVER #3-31	IGNACIO	0.0	EL PASO NATURAL G
8426479	CD 0129-83	0506706482		107-TF		PINE RIVER #4-32	IGNACIO-BLANCO	0.0	EL PASO NATURAL G
8426480	CD0130-83	0506706483		107-TF		PINE RIVER 2-29	IGNACIO-BLANCO	0.0	EL PASO NATURAL G
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM									
-AMOCO PRODUCTION CO				RECEIVED:	03/26/84	JA: NM L			
8426545	RNM0209-83	3001522601		103		GREENWOOD PRE-GRAYBURG FED C COM #1	NORTH SHUGART ATOKA	11.3	GAS CO OF NEW MEX
-BELCO DEVELOPMENT CORP				RECEIVED:	03/26/84	JA: NM L			
8426535	RNM 0234-83	3001524420		103		JAMES RANCH #14	LOS MEDANOS	0.0	NATURAL GAS PIPEL
-DINERO OPERATING CO				RECEIVED:	03/26/84	JA: NM L			
8426536	RNM 0232-83	3001524314		103		AMINOIL FEDERAL # 1	MALAGA ATOKA MORROW	1000.0	UNITED GAS PIPE L
-EXXON CORPORATION				RECEIVED:	03/26/84	JA: NM L			
8426551	RNM0176-83	3001524373		103		YATES C FEDERAL #12	AVALON (DELAWARE)	10.0	PHILLIPS PETROLEU
8426548	RNM0190-83	3001524386		103		YATES C FEDERAL #13	AVALON (DELAWARE)	48.0	PHILLIPS PETROLEU
8426539	RNM 0217-83	3001524524		103		YATES C FEDERAL #17	AVALON (DELAWARE)	49.0	PHILLIPS PETROLEU
8426547	RNM0198-83	3001524331		103		YATES C FEDERAL #4	AVALON-DELAWARE	1.0	PHILLIPS PETROLEU
8426546	RNM0199-83	3001524335		103		YATES C FEDERAL #7	AVALON-DELAWARE	20.0	PHILLIPS PETROLEU
*GETTY OIL COMPANY				RECEIVED:	03/26/84	JA: NM L			
8426542	RNM0212-83	3002528096		103		FEDERAL 15 COM "B" #1	EAST BOOTLEG RIDGE -	401.0	UNITED GAS PIPELI
8426543	RNM0211-83	3000561965		107-TF		GETTY GC FEDERAL COM #1	PECOS SLOPE ABO	274.0	TRANSWESTERN PIPE
8426544	RNM0211-83	3000561965		103		GETTY GC FEDERAL COM #1	PECOS SLOPE ABO	274.0	TRANSWESTERN PIPE
-MARBOB ENERGY CORPORATION				RECEIVED:	03/26/84	JA: NM L			
8426552	RNM0171-83	3001524526		103		M DODD "B" #35	GRAYBURG JACKSON	109.0	PHILLIPS PETROLEU
-MARTIN YATES III				RECEIVED:	03/26/84	JA: NM L			
8426531	RNM 0255-83	3001524280		103		BOULTER FED #4	LOCO HILLS-A-G-SA	0.0	
8426532	RNM 0254-83	3001524526		103		BOULTER FED #5	TURKEY TRACK 7 RIV Q	0.0	PHILLIPS PETROLEU
-MCCLELLAN OIL CORPORATION				RECEIVED:	03/26/84	JA: NM L			
8426528	RNM 0330-83	3000562047		102-4	107-TF	"PJ" FEDERAL COM #2	PECOS SLOPE	182.5	TRANSWESTERN PIPE
-MESA PETROLEUM CO				RECEIVED:	03/26/84	JA: NM L			
8426559	RNM0058-84	3000562064		102-3	107-TF	FRANCIS FEDERAL COM #1	PECOS SLOPE ABO	1260.0	TRANSWESTERN PIPE
8426527	RNM 0056-84	3000562061		102-3	107-TF	TRAVIS FEDERAL COM #1	PECOS SLOPE ABO	900.0	TRANSWESTERN PIPE
-MENBOURNE OIL COMPANY				RECEIVED:	03/26/84	JA: NM L			
8426550	RNM0177-83	3002528211		103		FEDERAL "E" #6 ID #16686	QUERECHO PLAINS - QUE	9.0	PHILLIPS PETROLEU
8426549	RNM187-83	3002528212		103		FEDERAL "E" #7 ID # N/A	QUERECHO PLAINS-QUEEN	22.0	PHILLIPS PETROLEU
-READ & STEVENS INC				RECEIVED:	03/26/84	JA: NM L			
8426541	RNM0348-83	3000561437		107-TF		WEST HAYSTACK FEDERAL #2	WILDCAT (ABO)	47.0	TRANSWESTERN PIPE
-SANDERS PETROLEUM CORP				RECEIVED:	03/26/84	JA: NM L			
8426529	RNM 0359-83	3000561262		102-2	107-TF	HUGGINS DRAW #2	PECOS SLOPE ABO (GAS)	100.0	TRANSWESTERN PIPE
-SUPERIOR OIL CO				RECEIVED:	03/26/84	JA: NM L			
8426530	RNM 0256-83	3002528252		103		GOVERNMENT "10" # 1	SCHARB	479.0	PHILLIPS PETROLEU
-UNION OIL COMPANY OF CALIF				RECEIVED:	03/26/84	JA: NM L			
8426556	RNM0166-83	3000520883		103		CHAVEROO "A" FEDERAL #1	CHAVEROO SAN ANDRES	1.5	
8426555	RNM0169-83	3001523282		103		FEDERAL "AJ" #1	ESPERANZA DELAWARE	3.0	
8426553	RNM0170-83	3001522680		103		PENNZOIL FEDERAL #2	ESPERANZA DELAWARE	3.0	
-YATES PETROLEUM CORPORATION				RECEIVED:	03/26/84	JA: NM L			
8426554	RNM0167-83	3000520901		103		CENTER "XI" FED #1	UND TOMAHAWK S/A	0.0	CITIES SERVICE CO
8426533	RNM 0252-83	3000520880		103		DELUNA FEDERAL #1	UND QUEEN	0.0	CABOT CORP
8426538	RNM 0227-83	3001524282		103		EASTERN SHORE "TL" FED #1	UND UPPER PENN	0.0	TRANSWESTERN PIPE
8426534	RNM 0245-83	3001524172		103		ESTELLE "TA" FED #1	WILDCAT MORROW	0.0	
8426561	RNM0243-83	3001524172		102-4		ESTELLE "TA" FED #1	WILDCAT MORROW	0.0	
8426526	RNM 0063-84	3000562089		102-2	107-TF	FEDERAL "HY" #10	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8426537	RNM 0231-83	3001524478		103		LAKE SHORE "XH" FED COM #1	UND MORROW	0.0	
8426557	RNM0164-83	3000561953		103		LONG ARROYO "WH" FED #1	WILDCAT (ATOKA & MORR	0.0	TRANSWESTERN PIPE
8426558	RNM0163-83	3000561945		103		SALT GRASS "WS" FED #1	WILDCAT MORROW	0.0	TRANSWESTERN PIPE
8426560	RNM0060-84	3000562051		102-2	107-TF	SHIRLEY "YA" FED #1	UND PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8426540	RNM0214-83	3000520869		103		UNION "SI" FED #6	TOMAHAWK SAN ANDRES	0.0	CITIES SERVICE CO
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
-CONOCO INC				RECEIVED:	03/26/84	JA: LA W			
8426522	G3-3922	1772440245		102-1		MAIN PASS BLK 296 #B-13	MAIN PASS BLOCK	5.0	SOUTHERN NATURAL
8426519	G3-3889	1772440244		102-5		MAIN PASS BLK 296 #B-14D	MAIN PASS	0.0	SOUTHERN NATURAL
8426513	G3-3885	1772440247		102-5		MAIN PASS BLK 296 #B-16D	MAIN PASS	5.0	SOUTHERN NATURAL
8426518	G3-3895	1772440253		102-5		MAIN PASS BLK 296 #B-18D	MAIN PASS	5.0	SOUTHERN NATURAL
8426515	G3-3864	1772440227		102-5		MAIN PASS BLK 296 #B-3	MAIN PASS	10.0	SOUTHERN NATURAL
8426514	G3-3884	1772440247		102-5		MAIN PASS BLK 296 B-16	MAIN PASS	50.0	SOUTHERN NATURAL
-MARATHON OIL COMPANY				RECEIVED:	03/26/84	JA: LA W			
8426507	G3-3611	1772240068		102-5		SOUTH PASS BLK 89 WELL B-4A	SOUTH PASS SOUTHEAST	550.0	TEXAS EASTERN TRA
8426508	G3-3595	1772240086		102-5		SOUTH PASS BLK 89 WELL B-9	SOUTH PASS SOUTHEAST	550.0	TEXAS EASTERN TRA
8426504	299B-G2-3208	1770640386		102-5		VERMILION BLK 369 WELL # A-2	VERMILION BLOCK	0.3	TEXAS EASTERN TRA
8426500	299B-G2-3198	1770640442		102-5		VERMILION BLK 369 WELL # B-7	VERMILION	0.5	TEXAS EASTERN TRA
8426499	299B-G2-3197	1770640409		102-5		VERMILION BLK 369 WELL #A-10	VERMILION	2.5	TEXAS EASTERN TRA
8426498	299B-G2-3199	1770640433		102-5		VERMILION BLK 369 WELL #A-13	VERMILION	4.5	TEXAS EASTERN TRA
8426501	299B-G2-3196	1770640412		102-5		VERMILION BLK 369 WELL A-8	VERMILION	2.5	TEXAS EASTERN TRA
8426506	299B-G2-3205	1770640430		102-5		VERMILION BLK 369 WELL B-5	VERMILION	0.5	TEXAS EASTERN TRA
8426505	299B-G2-3206	1770640434		102-5		VERMILION BLK 369 WELL B-6	VERMILION	5.0	TEXAS EASTERN TRA
8426495	299B-G2-3210	1770640442		102-5		VERMILION BLK 369 WELL B-7D	VERMILION	0.5	TEXAS EASTERN TRA
8426496	299B-G2-3211	1770640460		102-5		VERMILION BLK 369 WELL B-9	VERMILION	0.2	TEXAS EASTERN TRA
8426497	299B-G2-3212	1770640460		102-5		VERMILION BLK 369 WELL B-9D	VERMILION	0.2	TEXAS EASTERN TRA
8426520	299B-G2-3200	1770640420		102-5		VERMILION BLK 369, WELL # B-4	VERMILION	4.0	TEXAS EASTERN TRA
8426521	299B-G2-3201	1770640394		102-5		VERMILION BLK 369, WELL A-4	VERMILION	0.3	TEXAS EASTERN TRA
8426503	299B-G2-3207	1770640388		102-5		VERMILION BLK 370 WELL # A-3S/T	VERMILION	0.3	TEXAS EASTERN TRA
8426494	299B-G2-3209	1770640408		102-5		VERMILION BLK 370 WELL A-9	VERMILION	0.5	TEXAS EASTERN TRA
8426523	299B-G2-3204	1770640400		102-5		VERMILION BLK 370, WELL A-6	VERMILION	2.0	TEXAS EASTERN TRA
8426525	299B-G2-3202	1770640413		102-5		VERMILION BLK 386, WELL B-1	VERMILION BLOCK 369	8.0	TEXAS EASTERN TRA
8426524	299B-G2-3203	1770640450		102-5		VERMILION BLK 386, WELL B-8	VERMILION	10.0	TEXAS EASTERN TRA
-ODECO OIL & GAS CO				RECEIVED:	03/26/84	JA: LA W			
8426516	G3-3795	1770040412		102-5		OCS-2828 A-2B	WEST CAMERON	1000.0	MICHIGAN-WISCONSI
8426517	G3-3762	1770040374		102-5		OCS-2829 #A-1B	WEST CAMERON 116	1400.0	MICHIGAN-WISCONSI
-SHELL OFFSHORE INC				RECEIVED:	03/26/84	JA: LA W			
8426509	G3-3589	1781740076		102-5		MC 194 FLD OCS-G 2638 # A-14	MISSISSIPPI CANYON	899.0	SOUTHERN NATURAL
-SUPERIOR OIL CO				RECEIVED:	03/26/84	JA: LA W			
8426502	G2-3322	1770040457		102-5		OCS 0245 # H-1	WEST CAMERON	2000.0	TEXAS EASTERN TRA
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/26/84	JA: TX W			
8426510	G3-3573	4270940720		102-5		OCS G-2688 HIGH ISL BLK A-467 #B-2D	HIGH ISLAND BLOCK	1100.0	TRANSCO GAS SUPPL
8426512	G3-3561	4270940736		102-5		OCS G-3242 HIGH ISL A-466 #B-4(HP)	HIGH ISLAND BLOCK	1460.0	TRANSCO GAS SUPPL
8426511	G3-3562	4270940736		102-5		OCS G-3242 HIGH ISL A-466 #B-4(JH)	HIGH ISLAND BLOCK	1460.0	TRANSCO GAS SUPPL

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Tuesday
April 24, 1984

Part VII

Environmental Protection Agency

40 CFR Parts 124 and 270

Hazardous Waste Management System—The Hazardous Waste Permit Program; Procedures for Decisionmaking; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[SW-FRL 2536-8]

Hazardous Waste Management System—The Hazardous Waste Permit Program; Procedures for Decisionmaking

AGENCY: Environmental Protection Agency.
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today amending its hazardous waste permit regulations. These regulations were promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA) and were included in the Consolidated Permit Regulations (which have since been deconsolidated). These amendments will allow an owner or operator of an existing hazardous waste management facility who submits an incomplete Part A of the RCRA permit application to receive a notice of the deficiency and an opportunity to cure it before being subject to EPA enforcement for operating without a permit. The Agency is also amending the regulations to require that if the Administrator denies a request for a panel hearing on an initial permit for an existing hazardous waste management facility, he must give his reasons for the denial.

Today's actions are prompted by a settlement stipulation concerning these issues in the *NRDC v. EPA* lawsuit on the Consolidated Permit Regulations. These amendments will not have any economic impact on the regulated community, nor will they have any impact on public health or the environment.

DATE: These amendments are effective October 24, 1984.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or in Washington, D.C. at 382-3000. For specific information on these amendments, contact Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2222.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980 and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations established the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 45 FR 33066-33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations governing five permit programs. On April 1, 1983, the Consolidated Permit Regulations were deconsolidated. Each permit program now appears in a separate part of the Code of Federal Regulations. The changes proposed today concern only the RCRA portion of the Consolidated Permit Regulations, now codified at 40 CFR Part 270.

On May 10, 1983, EPA proposed amendments to the hazardous waste permit regulations, 40 CFR Parts 270 and 124 (48 FR 21098). These proposed amendments: (1) Ensure that owners and operators of hazardous waste management facilities are notified of defects in Part A of their permit applications and given an opportunity to correct these defects; and (2) set forth conditions when a permit applicant may request a hearing under Subpart F and ensure that if the Administrator denies a request for a panel hearing on an initial permit, he must give his reasons for the denial.

EPA has received a number of comments on these amendments. Almost all of the commenters strongly support the amendments as they were proposed. Therefore, today we are promulgating these amendments in final form and responding to questions and comments raised on these issues during the public comment period.

II. Failure To Qualify for Interim Status Because of an Incomplete Part A

An owner or operator of a hazardous waste management (HWM) facility may fail to qualify for interim status for any of the following reasons which are listed in RCRA as prerequisites to qualifying for interim status:

(a) The facility was not in existence on or before November 19, 1980;

(b) The owner or operator failed to comply with Section 3010 of RCRA (*i.e.*, failed to notify, if required); or

(c) The owner or operator failed to submit Part A of his permit application on time.[1]

In addition, an owner or operator may fail to qualify for interim status if he fails to submit a complete part A permit application. Section 270.70 of the regulations states that if, upon examination or reexamination of a Part A application, EPA determines that it failed to meet the standards of the regulations, EPA may notify the owner or operator that the application is deficient. Section 270.70 provides that the result of such a determination is that the owner or operator is not entitled to interim status, and is subject to EPA enforcement for operating without a permit.

On May 10, 1983, the Agency proposed amending 40 CFR 270.70 to provide that before EPA determines that Part A of a permit application is deficient, it will notify the owner or operator in writing of the apparent deficiency. The notice will specify the grounds for EPA's belief that the application is deficient and will give the owner or operator 30 days from the date of receipt to respond to the notification and to explain or cure the deficiency. If, after such notice and opportunity for response, EPA still finds that the application is deficient, it may then take appropriate enforcement action.

The proposed amendments were prompted by a settlement stipulation concerning this issue in the litigation on the Consolidated Permit Regulations, *NRDC v. EPA*, No. 80-1607, and Consolidated Cases (D.C. Cir., filed June 2, 1980).[2]

This proposal, however, merely put in regulatory form what the Agency believes is already standard operating procedure with respect to deficient Part A applications. EPA believes it is reasonable to give permit applicants an opportunity to cure deficient applications before interim status is denied; and, in practice, does allow an applicant to correct, explain or resubmit a Part A, if it is found deficient. This amendment merely includes these procedures in the regulations. All but two of the comments EPA received on this amendment strongly supported adopting it.

One commenter suggested that the time limit of 30 days to correct deficiencies in Part A applications be extended to 45 days. This, the commenter claimed, would allow complex facilities adequate opportunity for further contact with the Agency to resolve uncertainties and submit a complete application. We do not agree that the additional 15 days is necessary. Thirty days should be a more than adequate time period to contact the agency and correct or cure a Part A. Part

[1] Failure to file a Part A on time may not always result in a failure to qualify for interim status. The agency may, by compliance order issued under Section 3008 of RCRA, extend the date by which the owner or operator of an existing HWM facility may submit Part A of its permit application, as there is no statutory deadline for submitting the permit application (see 40 CFR 270.10(e)(3)).

[2] For further discussion of the *NRDC v. EPA* suit and the settlement agreement filed on the RCRA-related issues, see the preamble to the proposed amendments on owner signature and certification, 47 FR 32038 (July 23, 1982).

A's consist of straight-forward requests for information which the applicant should already have on hand, such as a description of the processes to be used for treating, storing, or disposing of waste at the facility; the design capacity of these processes; the location of the facility, etc. An extra fifteen days is not necessary for such information needs.

One commenter opposed any change to 40 CFR § 270.70(b). The commenter stated that such a change raises the question of whether there are still owners and/or operators who have not filled out a proper Part A application. The commenter was concerned that the Agency is still looking through delinquent Part A's to determine deficiencies, rather than calling in Part B's.

The Agency will always be receiving Part A applications when we change the regulations to regulate facilities that may have originally been exempted (e.g., small quantity generators, new wastes). Under these circumstances a facility may still submit a Part A application and may then qualify for interim status if it was in existence on November 19, 1980.

The promulgation of this amendment does not affect the Agency's current priority in permitting hazardous waste facilities. Our priorities are still focused on calling Part B's and issuing permits to facilities as quickly as possible rather than reviewing delinquent Part A applications. However, since we may always receive new or revised Part A's, we believe today's change to § 270.70 is reasonable both to put in regulatory form what is already standard procedure and to assuage the litigants' concerns in this area.

III. Opportunity for a Hearing Prior to Denial of an Initial Permit

On May 10, 1983, EPA also proposed amending 40 CFR 124.12 to provide that during the 45 day public comment period a permit applicant may request a panel hearing pursuant to § 124.114 for initial RCRA permits. The applicant must explain in his request why he believes that the issues for which he requests a hearing are genuine issues of material fact. He must also explain why these are determinative issues, *i.e.*, which are likely to influence the outcome of one or more contested permit conditions, and which would require extensive changes to the facility. If the regional Administrator denies the request, he would have to send a brief written statement to the applicant explaining his reasons for concluding that no determinative issues have been presented for resolution in a panel hearing. The basic reason for this amendment is to provide some assurance that a panel hearing will not be arbitrarily denied.

The petitioners in the NRDC lawsuit raised several issues concerning a hearing on the issuance or denial of an initial RCRA permit. They argued that due process requires the opportunity for a hearing in all cases before a permit is denied for a facility operating under interim status. In addition, they argued that the imposition of extensive, expensive conditions in a permit might be tantamount to denial of a permit, therefore, a hearing should be available in such situations as well. They believed that the existing regulations did not provide for a hearing in all instances.[3]

It is EPA's position that formal adjudicatory hearings are not required for the issuance or denial of RCRA permits; that an informal public hearing plus the notice requirements currently in the regulations are sufficient to satisfy due process requirements.[4] The current regulations provide for notice of what the Agency proposes to do, an opportunity to challenge that proposal both through written comments and informal public hearing, a response to comments, and a decision based on administrative record. Section 7004(b) of RCRA provides for an informal public hearing upon receipt by the Director of a written notice of opposition to the Agency's intent to issue a RCRA permit and of a request for such a hearing.

Petitioners also believed that the May 19, 1980 regulations only gave a right to a public hearing in situations where EPA proposed to issue a permit. This was not EPA's intent. As clarified in amendments promulgated on July 15, 1981 (46 FR 36704), the Agency intends that the requirement to hold an informal hearing (when one is requested) apply to cases where the Agency has tentatively decided to issue a permit. The term "draft permit" applies to both.

Finally, the petitioners were also concerned that in some instances, there would be complicated factual issues that could be addressed better through a formal, rather than an informal hearing. As the regulations are currently written, the Regional Administrator always has the discretion to hold a formal panel hearing. However, the petitioners objected to a lack of assurance in the regulations that they would receive a written response to a request for such a hearing, should the Regional Administrator deny the request. They were concerned that there would be situations where EPA and the permit applicant would disagree about changes necessary to bring the facility into compliance with the regulations. In situations where the Regional Administrator proposes to issue a permit, but the applicant disagrees as to major permit conditions, the petitioners want the opportunity for a panel hearing.

As a matter of policy, EPA has determined that permit applicants should have an opportunity for a panel hearing where there is a tentative decision to deny the initial permit for an existing facility, and where the applicant and EPA disagree on major conditions in the initial draft permit for an existing facility. Today's final amendment to § 124.12(e)(2) provides the assurance that a panel hearing will not be arbitrarily denied.

All of the comments the Agency received on this amendment urged that the amendment be adopted as proposed. One commenter requested clarification on an apparent contradiction as to whether a panel hearing is considered a formal or an informal hearing. The commenter claimed that footnote 5 of the preamble in the proposed rule (45 FR 21099) states that panel hearings are considered formal adjudicatory hearings as they conform to the formal hearing requirements of the Administrative Procedure Act, while the preamble seems to indicate that the panel hearing is considered an informal hearing. They quote the following passages of the preamble:

> * * * the Agency intends that the requirement to hold an *informal hearing* (when one is requested) apply to cases where the Agency has tentatively decided to deny a permit as well as when the Agency has tentatively decided to issue a permit (48 FR at 21099, emphasis added).

and later:

> As a matter of policy, EPA has determined that permit applicants should have the opportunity for a *panel hearing* when there is tentative decision to deny the initial permit * * * (48 FR 21099, emphasis added).

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[3] There are three types of hearings available under Part 124. These are: (1) *Public Hearings.* Public hearings must be held whenever the Director receives written notice of opposition to a RCRA draft permit and a request for a hearing within 45 days of public notice of the draft permit. The Director may also hold such a hearing at his discretion. [See 40 CFR 124.121]; (2) *Evidentiary hearings.* Evidentiary hearings under Subpart E of Part 124 are formal adversarial hearings conducted by a judicial officer pursuant to formal rules of practice; and (3) *Panel hearings.* Panel hearings under Subpart F of Part 124 are nonadversial hearings before a presiding officer and a panel consisting of three or more EPA employees having special expertise or responsibility in areas related to the issues being decided. Evidentiary hearings and panel hearings are both considered formal adjudicatory hearings, as they conform to the formal hearing requirements of the Administrative Procedure Act. Public hearings are considered informal hearings.

[4] See 45 FR 33409–33411 (May 19, 1980).

This is not a contradiction. In the first quote, we are simply explaining that an informal hearing, *i.e.*, a public hearing, is all that is required to satisfy due process requirements. In the second quote, we are stating that over and above due process requirements, EPA's policy will be to allow permit applicants an opportunity for a panel hearing when there are factual issues which may be addressed better through a formal, *i.e.*, a panel hearing.

Another commenter has requested that the Agency state clearly what the proper procedure would be if a hearing was requested and then denied. They suggest that there should be administrative recourse to the Regional Administrator's decision.

If a hearing has been properly requested under § 124.114, and the Regional Administrator denies the request, the applicant will receive a brief written statement of the Regional Administrator's reasons for concluding that no determinative issues have been presented for resolution in a panel hearing (see today's amendment to § 124.12). The Regional Administrator shall then prepare a recommended decision under § 124.124. Any person whose hearing request has been denied may then appeal that recommended decision to the Administrator as provided in § 124.91.

It should be noted, as it was in the proposal (see 48 FR 21200), that in circumstances where a permit has been appealed, and no formal hearing was held, the Administrator may remand the appeal to the Regional Administrator, and direct the Regional Administrator to hold a non-adversary panel hearing.

IV. Economic Impact

These amendments will not have any economical impact on the regulated community. As stated in the background information, it is standard operating procedure for the Agency to allow an applicant the opportunity to correct, explain or cure an imcomplete Part A of the RCRA permit. The amendment to § 270.70 therefore, does not change anything but the regulatory language.

The amendment to § 124.12(e) requires the Regional Administrator to provide a written reason for denying an applicant's request for a formal hearing. This change increases the paperwork of the Regional Administrator, but does not affect the regulated community.

V. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

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

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

Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or expert markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more. It merely provides some procedural safeguards upon the failure to qualify for interim status and the issuance or denial of a RCRA permit. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. These amendments are not major regulations. Therefore, no Regulatory Impact Analysis is being prepared.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA must prepare a regulatory flexibility analysis for all final rules to assess their impact on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will not have any economic impact on owners and operators of hazardous waste management facilities (including those which are small entities). Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Dated: April 18, 1984.

William D. Ruckelshaus,

Administrator.

List of Subjects

40 CFR Part 270

Administrative practice and procedure, Air-pollution control, Hazardous materials, Reporting and record-keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Indians-lands.

40 CFR Parts 270 and 124 are amended as follows:

PART 270—[AMENDED]

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002(a), 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901, 6912(a), 6925, 6927 and 6974).

2. In Part 270, § 270.70 is amended by revising paragraph (b) to read as follows:

§ 270.70 Qualifying for interim status.

* * * * *

(b) Failure to qualify for interim status. If EPA has reason to believe upon examination of a Part A application that it fails to meet the requirements of § 270.13, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for EPA's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, EPA determines that the application is deficient it may take appropriate enforcement action.

PART 124—[AMENDED]

3. The authority citation for part 124 reads as follows:

Authority: The Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 1857 et seq.

4. In Part 124, § 124.12 is amended by revising paragraph (e) to read as follows:

§ 124.12 Public hearings.

* * * * *

(e)(1) At his or her discretion, the Regional Administrator may specify that RCRA or UIC permits be processed under the procedures in Subpart F.

(2) For initial RCRA permits for existing HWM facilities, the Regional Administrator shall have the discretion to provide a hearing under the procedures in Subpart F. The permit applicant may request such a hearing pursuant to § 124.114 no one or more

issues, if the applicant explains in his request why he or she believes those issues: (1) Are genuine issues to material fact; and (2) determine the outcome of one or more contested permit conditions identified as such in the applicant's request, that would require extensive changes to the facility ("contested major permit conditions"). If the Regional Administrator decides to deny the request, he or she shall send to the applicant a brief written statement of his or her reasons for concluding that no such determinative issues have been presented for resolution in such a hearing.

[FR Doc. 84-10945 Filed 4-23-84; 8:45 am]
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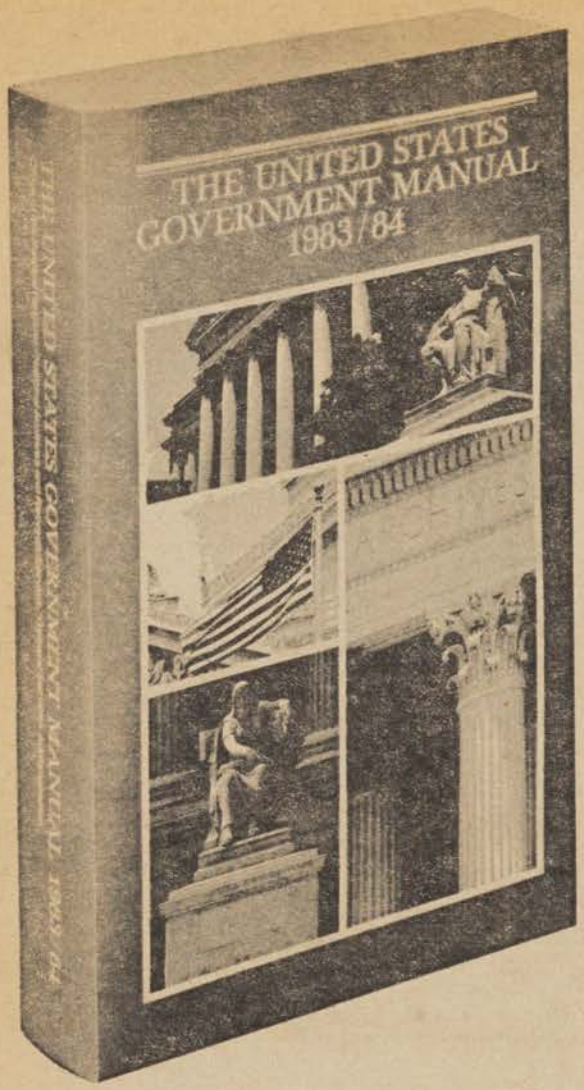

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