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Thursday
June 7, 1984

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 1]

CCC Grain Price Support Regulations Governing the Loan and Purchase Program for 1982 and Subsequent Crops Barley, Corn, Rye, Sorghum, and Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1421 to provide for changes with respect to the price support loan rates for barley, corn, rye, sorghum, and wheat to reflect allowances for certain handling and transportation costs. Freight rate schedules for some of these commodities are also amended by this interim rule. All of the amendments are made to provide a more equitable treatment of producers participating in loan and purchase programs.

DATE: This interim rule shall become effective on June 7, 1984. Comments must be received on or before August 6, 1984 to be assured of consideration.

ADDRESS: Interested persons may send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O Box 2415, Washington, D.C. 20013. Phone: (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

This interim rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1521-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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 U.S. -based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The current regulations which govern the price support loan and purchase programs for barley, rye, sorghum, and wheat provide that warehouse-stored loan rates shall reflect handling and transportation costs when such commodities which are pledged as collateral for a warehouse-stored loan are shipped from a receiving warehouse by truck or truck-barge to a storing warehouse when the distance exceeds 20 miles. Because limited storage space has increased the movement of such commodities between receiving warehouses and storing warehouses which are closer than 20 miles, it has been determined that the regulations at 7 CFR Part 1421 should be amended to provide that warehouse-stored loan rates reflect handling and transportation costs although such commodities are transported less than 20 miles from a receiving warehouse by truck or truck-barge to a storing warehouse.

Increasing the warehouse-stored loan rate to reflect transportation and handling costs with respect to these commodities which are pledged as collateral for such loans and which have been transported by truck or truck-barge from a receiving warehouse to an in-line storing warehouse, regardless of the distance these commodities are shipped, will provide equity to producers who must transport these commodities in order to utilize the respective price support loan programs.

This interim rule also amends allowances with respect to barley and wheat to reflect increased truck freight rates. In addition, this rule amends 7 CFR 1421.59 to provide that basic county support rates and the schedule of discounts for barley will be available at the applicable county ASCS office rather than being published in the **Federal Register.**

Historically, corn has been marketed or utilized in the area in which it is produced. Thus, current regulations governing the price support loan and purchase program for corn do not provide for increased loan rates to reflect handling and transportation costs with respect to corn which is pledged as collateral for a warehouse-stored loan. This interim rule provides that the warehouse-stored reserve loan rate shall reflect handling and transportation costs when corn which is pledged as collateral for such loans is transported from a receiving warehouse by truck or truck-barge to a storing warehouse. Transportation costs are limited to 25 cents per bushel. Increasing the warehouse-stored reserve loan rate to reflect handling costs with respect to corn which is pledged as collateral for such loans and which has been transported by truck or truck-barge from

a receiving warehouse to a storing warehouse will provide equity to producers who must transport such corn in order to utilize the Farmer-Held Grain Reserve Program.

In addition to the foregoing, certain technical amendments to the regulations contained in 7 CFR Part 1421 are made to include reference to the numbers assigned by the Office of Management and Budget in accordance with the recordkeeping requirements of the Paperwork Reduction Act.

Since producers must be made aware of these program provisions as soon as possible in order to effectively operate these loan and purchase programs, it has been determined that this interim rule shall become effective on June 7, 1984. However, comments from interested persons are requested and must be received on or before August 6, 1984 to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—Agriculture, Price support programs, Surety bonds, Warehouses.

PART 1421—[AMENDED]

Interim Rule

Accordingly, the regulations at 7 CFR Part 1421 are amended as follows:

1. The table of contents to Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Barley is amended by adding an entry for § 1421.60 to read as follows:

* * * * *

Sec.

* * * * *

1421.60 Paperwork Reduction Act assigned numbers.

* * * * *

2. Section 1421.59 is amended by removing the introductory paragraph and paragraph (a); adding new paragraphs (a), (b), and (c); redesignating current paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f); revising redesignated paragraph (e) and revising the paragraph heading for redesignated (d) to read as follows:

§ 1421.59 Support rates.

(a) *Basic county support rates.* Basic county support rates for barley and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored barley.* The support rate used for disbursing farm-stored barley loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for barley delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored barley loans and for barley acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for barley stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored barley received by rail or utilizing combination barge-rail rates.*

* * * * *

(e) *Basic county support rates for warehouse-stored barley received by truck or nontariff barge.* (1) The basic county support rate for barley delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the barley is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for barley delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge as computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$0
20–50	$0.13 per bushel.
51–100 add	$0.0014 per bushel per mile.
101–125 add	$0.0007 per bushel per mile.
126 and over add	$0.0003 per bushel per mile.

(3) The basic county support rate for barley delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for barley shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

* * * * *

3. A new Section 1421.60 is added to read as follows:

§ 1421.60 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560–0087 has been assigned.

4. The table of contents to Subpart—Loan and Purchase Program for 1982 and Subsequent Crop Corn is amended by adding an entry for § 1421.99 to read as follows:

Sec.

* * * * *

1421.100 Paperwork Reduction Act assigned numbers.

* * * * *

5. Section 1421.99 is revised as follows:

§ 1421.99 Support Rates.

(a) *Basic county support rates.* Basic county support rates for corn and the schedule of premiums and discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored corn.* The support rate used for disbursing farm-stored corn loans shall be the applicable basic county support rate for the county where stored, adjusted only for weed control discounts where applicable. The settlement rate for corn delivered in settlement of a farm-stored loan shall be the applicable basic county support rates adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored regular loans and purchases.* The support rate for warehouse-stored corn loans and for corn acquired by CCC through the purchase program shall be the applicable basic county support rate for the county where stored, adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for corn stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored reserve loans.* (1) The basic county support rate for corn delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the corn is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for corn delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point. In no case shall the truck freight charge added to the basic county support rate for corn delivered by truck by the producer to an in-line warehouse exceed 25 cents per bushel.

Map mileage	Allowance
0–19	$0.
20–50	$0.15 per bushel.
51 to 100 add	$0.0016 per bushel per mile.
101 to 125 add	$0.0008 per bushel per mile.
126 and over	$0.

(3) The basic county support rate for corn delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (d)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) the truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for corn shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (d)(2); and (iii) the origin truck receiving and load-out charges.

(5) baisc county support rate for corn which was received by rail and stored in an approved warehouse which is in-line of normal commercial channels of trade shall be determined by adding to the basic county support rate established for the county from which the corn was shipped, adjusted for the applicable premiums and discounts in the manner provided in paragraph (c) of this section, the following: (i) The amount of freight charges per bushel actually paid in; and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. The freight rate which is paid for delivery to the storage point shall not exceed the lowest rate which provides a storage in transit privilege; and the lowest single car freight rate, determined from point of origin through point of storage to a normal trade channel market that would be used in commercial channels of trade. If the corn is destined to a normal trade channel market that would be used in commercial channels of trade but such corn is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(6) The basic county support rate for corn which is stored in an approved warehouse and which is shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic county support rate established for the county from which the corn was shipped, adjusted for applicable premiums and discounts in the same manner as specified in paragraph (c) of this section, the following: (i) The amount of freight charges per bushel actually paid in; and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. The freight rate, which is paid to ship the corn to the storage point, shall not exceed the lowest rate which provides a storage in transit privilege; and the lowest single car or barge freight rate determined from point of origin through point of storage to a normal trade channel that would be used in commercial channels of trade. If the corn is destined to a normal trade channel market that would be used in commercial channels of trade but such corn is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

* * * * *

6. A new § 1421.100 is added to read as follows:

§ 1421.100. Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560–0087 has been assigned.

7. The table of contents to Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Rye is amended by

adding an entry for § 1421.345 to read as follows:

Sec.

* * * * *

1421.345 Paperwork Reduction Act assigned numbers.

* * * * *

8. Section 1421.344 is amended by removing the introductory paragraph and paragraph (a); adding new paragraph (a), (b), and (c); redesignating current paragraphs (b), (c), and (d) as paragraph (d), (e), and (f); revising redesignated paragraph (e), and revising the paragraph heading for redesignated (d) to read as follows:

§ 1421.344 Support rates.

(a) *Basic county support rates.* Basic county support rates for rye and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored rye.* The support rate used for disbursing farm-stored rye loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for rye delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragaph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored rye loans and for rye acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for rye stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored rye received by rail or utilizing combination barge-rail rates.*

* * * * *

(e) *Basic county support rates for warehouse-stored rye received by truck or nontariff barge.* (1) The basic county support rate for rye delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the rye is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for rye delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$0.
20–50	$0.15 per bushel.
51 to 100 add	$0.0016 per bushel per mile.
101 to 125 add	$0.0008 per bushel per mile.
126 and over add	$0.0004 per bushel per mile.

* * * * *

(3) The basic county support rate for rye delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for rye shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

* * * * *

9. A new § 1421.345 is added to read as follows:

§ 1421.345 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C Chapter 35 and OMB Number 0560–0087 has been assigned.

10. The table of contents to Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Sorghum is amended by adding an entry for § 1421.220 to read as follows:

Sec.

* * * * *

1421.220 Paperwork Reduction Act assigned numbers.

* * * * *

11. Section 1421.219 is amended by removing the introductory paragraph and paragraph (a); adding new paragraphs (a), (b), and (c); redesignating current paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f); revising redesignated paragraph (e), and revising the paragraph heading for redesignated (d) to read as follows:

§ 1421.219 Support rates.

(a) *Basic county support rates.* Basic county support rates for sorghum and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored sorghum.* The support rate used for disbursing farm-stored sorghum loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for sorghum delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored sorghum loans and for sorghum acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts

for sorghum stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored sorghum received by rail or utilizing combination barge-rail rates.*

* * * * *

(e) *Basic county support rates for warehouse-stored sorghum received by truck or nontariff barge.* (1) The basic county support rate for sorghum delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the sorghum is stored, adjusted for premiums and discounts as prescribed in subsection (c).

(2) The basic county support rate for sorghum delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$0.
20–50	$0.0268 per hundredweight.
51 to 100 add	$0.0029 per hundredweight per mile.
101 to 125 add	$0.0014 per hundredweight per mile.
126 and over add	$0.0007 per hundredweight per mile.

* * * * *

(3) The basic county support rate for sorghum delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for sorghum shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

* * * * *

12. A new § 1421.220 is added to read as follows:

§ 1421.220 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560–0087 has been assigned.

13. The table of contents to Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Wheat is amended by adding an entry for § 1421.471 to read as follows:

* * * * *

Sec.

* * * * *

1421.471 Paperwork Reduction Act assigned numbers

* * * * *

14. Section 1421.470 is amended by removing the introductory paragraph and paragraph (a); adding new paragraphs (a), (b), and (c); redesignating current paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f); amending redesignated paragraph (e) and revising the paragraph heading for redesignated (d) to read as follows:

§ 1421.470 Support rates.

(a) *Basic county support rates.* Basic county support rates for wheat and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored wheat.* The support rate used for disbursing farm-stored wheat loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for wheat delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored wheat loans and for wheat acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for wheat stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored wheat received by rail or utilizing combination barge-rail rates.*

* * * * *

(e) *Basic county support rates for warehouse-stored wheat received by truck or nontariff barge.* (1) The basic county support rate for wheat delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the wheat is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for wheat delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0 to 19	$.0.
20 to 50	$0.16 per bushel.
51 to 100 add	$0.0017 per bushel per mile.
101 to 125 add	$0.0009 per bushel per mile.
126 and over add	$0.0004 per bushel per mile.

(3) The basic county support rate for wheat delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) the support rate for the county in which the shipping warehouse is located: (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for wheat shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

* * * * *

15. A new § 1421.471 is added to read as follows:

§ 1421.471 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560–0087 has been assigned.

(7 U.S.C. 1441, 1444d, 1445b–1, 1446, 1447, 1421 and 1425)

Signed at Washington, D.C. on May 30, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–15121 Filed 6–6–84; 8:45 am]

BILLING CODE 3410–05–M

Food Safety and Inspection Service

9 CFR Parts 309, 310, and 318

[Docket No. 84–010I]

Sulfonamide and Antibiotic Residues in Young Veal Calves

AGENCY: Food and Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: As a result of increased levels of sulfonamide and antibiotic residues in young calves, the Food Safety and Inspection Service (FSIS) is undertaking emergency rulemaking to decrease the likelihood that adulterated meat will enter into human food channels. The interim rule intensifies inplant testing procedures for detecting violative levels of sulfonamides and antibiotics in young calves of up to 3 weeks in age or 150 pounds in weight. Additionally, the interim rule provides a voluntary certification program for producers of young calves which provides less intensified testing for such certified calves. Under the certification program, the producer of the calves certifies that the calves have not been treated with any animal drugs or, if so, that the prescribed withdrawal period for such drug has passed allowing the drug residues in the animals to be in compliance with tolerances approved by the Food and Drug Administration.

DATES: Interim rule effective June 4, 1984 except for section 309.16(d)(2)(i) and (3). In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements in section 309.16(d)(2)(i) and (3) will be submitted for approval to the Office of Management and Budget. They are not effective until OMB approval has been obtained. FSIS will publish a notice of the actual effective date for these reporting and recordkeeping requirements.

Comments must be received on or before August 6, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. W. S. Horne, Assistant Deputy Administrator, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3697.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Effect on Small Entities

The Administrator of the Food Safety and Inspection Service (FSIS) has determined that immediate implementation of this rule on an interim basis is necessary as an additional measure to protect the consuming public from veal product adulterated with sulfa and antibiotic residues.

Analysis of the procedures set forth in this rule under Executive Order 12291 and the Regulatory Flexibility Act is not practicable at this time since information reveals that the occurrence of the increased levels of sulfa and/or antibiotic residues in newborn calves presented for slaughter has increased substantially in the past year. Pursuant to the provisions for emergency rules in section 8 of the Executive Order and 5 U.S.C. 608, there is an urgent need to intensify sampling of calves up to 3 weeks old or up to 150 pounds suspected of containing violative levels of sulfa and/or antibiotic residues. The required analyses will be made prior to publication of the final rule.

Comments

Interested persons are invited to submit comments concerning this action. Written comments must be sent in duplicate to the Regulations Office and should bear reference to the docket number located in the heading of this document. All comments submitted pursuant to this action will be available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Meat Inspection Program

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary is responsible for assuring consumers that meat and meat food products distributed to them are wholesome and not adulterated. Section 1(m)(1) of the FMIA (21 U.S.C. 601(m)(1)) provides that any carcass, part thereof, meat, or meat food product is adulterated "* * * if it bears or contains any poisonous or deleterious substance which may render it injurious to health; * * *." Section 1(m)(2) of the FMIA (21 U.S.C. 601(m)(2)) provides that any carcass, part thereof, meat, or meat food product is adulterated "* * * if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food; * * *." Furthermore, section 1(m)(3) of the FMIA (21 U.S.C. 601(m)(3)) states that any carcass, part thereof, meat, or meat food product is adulterated "* * * if it consists in whole

or in part of any filthy, putrid, or decomposed substance or is for any reason unsound, unhealthful, unwholesome, or otherwise unfit for human food; * * *."

In order to prevent adulterated product from reaching consumers, section 3 of the FMIA (21 U.S.C. 603) directs the Secretary, through appointed inspectors, to provide (1) an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before being allowed to enter an official establishment (ante-mortem inspection) and (2) a post-mortem examination and inspection of the carcasses and parts from such animals. Ante-mortem inspection is necessary to detect diseases or abnormalities or possible biological residues in the livestock prior to slaughter. Post-mortem inspection, made at the time of slaughter, reveals any diseases, biological residues, or other conditions of the head, internal organs, and other parts of the carcass of each animal which cause the meat or meat food products to be adulterated within section 1(m) of the FMIA (21 U.S.C. 601(m)). If any such conditions are found, the inspector immediately condemns all or part of the carcass to assure it does not enter into human food channels.

Residue Program

An integral part of the meat inspection program, which is carried out by the Department's Food Safety and Inspection Service (FSIS), is the detection and control of residues in the meat supply to assure that the incidence and levels of chemical compounds and animal drugs present are held to the absolute minimum for public safety. Farm animals may be exposed to drugs and other chemical compounds from medications, pesticides, feed equipment, or building materials. Most of the compounds are essential to today's production of livestock. However, carelessness or misuse of these compounds can result in residues of drugs and other chemical compounds remaining in the meat which can, in turn, result in condemnation of the meat upon inspection.

The tolerance, or maximum allowable level, of animal drug residues in edible products of food producing animals is established by the Food and Drug Administration (FDA) which, under section 512 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 360b), is responsible for approving new animal drugs and enforcing their proper use. The presence of above-tolerance residues of an approved new animal drug, and the presence of residues resulting from use of an unapproved new animal drug, causes the drug to be deemed unsafe under section 512(a)(1) of the FFDCA (21 U.S.C. 360b(a)(1)). Food containing such residues is deemed adulterated under section 402(a)(2)(D) of the FFDCA (21 U.S.C. 342(a)(2)(D)).

FSIS has reviewed the available toxicology data [1] on sulfonamides and antibiotic residues in carcasses and parts of carcasses from veal calves up to 3 weeks old or up to 150 pounds. FSIS has determined that any residue of any such drug above tolerance levels approved by FDA or any residue from any such drug for which there are no tolerance levels is a poisonous or deleterious substance which may render any such carcass or part of a carcass containing the residue injurious to health. Further, in the judgment of the Administrator, such drug residues, which have not been approved as safe by FDA, in carcasses or parts of carcasses from such veal calves make the articles unfit for human food. Therefore, any carcass or part thereof from such veal calves bearing or containing such residue is adulterated under section 1(m) (1), (2), or (3) of the FMIA (21 U.S.C. 601(m) (1), (2), or (3)).

The FSIS residue program includes a monitoring phase and a surveillance phase. In the monitoring phase, inspectors take tissue samples from randomly selected, healthy appearing animals and send them to USDA laboratories for analyses. From the analyses, FSIS determines nationwide residue incidence and trends and identifies specific problems.

In the surveillance phase, inspectors take tissue samples of carcasses suspected of containing illegal levels of residues and submits them to USDA laboratories for analyses. Each carcass is held at the slaughter establishment until tests of its tissue can be completed. If the carcass is free of violative residues, it may be distributed in commerce. If residues above permissible levels are present, the carcass is condemned and notification and testing procedures are initiated.

In the notification procedure, FSIS notifies the producer, FDA, and State agriculture officials of the above-tolerance residue levels. In a letter to the farmer who marketed the violative animal, FSIS informs the farmer that drug residues found in the carcasses of calves the farmer marketed caused the carcasses to be adulterated within the meaning of section 1(m) of the FMIA (21 U.S.C. 601(m)). In addition, FSIS requests that the Department be informed the next time animals from that producer are marketed. When subsequent animals of this producer are slaughtered, FSIS holds the carcasses of these animals at the slaughter establishment until tests of five consecutive animals prove to be free of violative residues. If the farmer has the animals pretested by a USDA-accredited laboratory before they leave the farm, this special requirement is lifted.

Drug Residues in Young Calves

FSIS has been monitoring the levels of sulfas and antibiotics in young calves from 0–3 weeks of age or less than 150 pounds. Recent data indicate violative sulfa residues have occurred that did not display the abomasal discoloration typical of treatment with dyed sulfa boluses. Previously, a treated calf was evidenced by green discoloration on post-mortem inspection. The stomach of such carcass is green from the dyed boluse, and the inspector can thus visually detect such treatment. It is known that changes in industry practices are causing inspectors to miss treatment indicators because members of the industry are using undyed sulfa boluses or injected antibiotics.

FSIS has documented high levels of violative sulfa and antibiotic drug residues in young calf carcasses and the occurrence of chloramphenicol residues. For sulfa drugs, FDA allows residues up to 0.1 parts per million (ppm) in the edible tissue of the calves (21 CFR 556.620, 556.630, 556.650, and 556.670). For antibiotic drugs, the permissible residue levels vary with each drug; e.g., erythromycin—0 (21 CFR 556.230), neomycin—0.25 ppm (21 CFR 556.430), penicillin—0.05 ppm (21 CFR 556.510), and tetracycline—0.25 ppm (21 CFR 556.720). Chloramphenicol is the only antibiotic labeled as not to be used in food animals.

Dairy farmers generally plan to sell male calves shortly after their birth. Male calves are uneconomical on a dairy farm whereas many female calves are replacements for the dairy herds. Newborn dairy calves typically suffer a 20 percent mortality rate if not adequately cared for at birth. Thus, to reduce the occurrence of diseases, some dairy farmers administer sulfa drug or antibiotics to the unwanted newborn calves and market them within several days of birth. No approved medically indicated drug for use in calves has a withdrawal period short enough to fit this marketing cycle. These calves may

[1] A copy of these data may be obtained by contacting Dr. W. S. Horne, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

be bought for raising or for slaughter. The problem results when they are bought for slaughter, for the buyer has no way to tell if they are treated or not. Any animal that has received medication must be kept from slaughter for a prescribed withdrawal period, or a specified time period that allows the medication to dissipate in the meat to a level, approved by FDA, that does not result in adulteration under the FMIA and qualifies the meat from the animal to be distributed in commerce. Otherwise, the meat is condemned, and the producer of packer suffers the loss.

A small percentage of dairy farmers market the calves before the end of the prescribed withdrawal period. Most act unknowingly, while some may not read or understand the withdrawal periods noted in the labels of the drug containers, or others may ignore the withdrawal period. Additionally, as previously mentioned, the dairy farmers may not be aware that the calves are to be presented for slaughter shortly after being marketed.

FSIS and FDA work closely with State agriculture officials, farm organizations, meat trade associations, and other groups to control residues in the Nation's meat supply. In cooperation with such groups, FSIS funds a comprehensive program to educate farmers regarding residue contamination. This program, known as the Residue Avoidance Program, assists farmers in identifying the stages of their production where residue contamination could occur. In an effort to further educate farmers, FSIS developed and disseminated, through the Extension Service and other sources, material explaining withdrawal periods for drugs, the method of detection by FSIS of antibiotic and sulfa drug residues, and the possible adverse impacts, economical and social, imposed by such residue contamination.

However, as evidenced by recent findings, sulfa and antibiotic residue contamination has not only continued but has changed in nature, in that levels of 100 to 1,000 times the tolerance levels are occurring which are a threat to the health of consumers.

FSIS data indicates a continued, unacceptable number of calf carcasses with illegal residues of sulfa and antibiotic drugs. This is in spite of efforts by FSIS, FDA, industry, and Extension Service to reduce the incidence by informational and educational efforts. These high levels pose a serious threat to public health.

Need for Interim Rule

Although FSIS randomly samples livestock for biological residues under § 309.16 of the Federal meat inspection regulations (9 CFR 309.16), due to the substantial increase in violative levels of sulfa and antibiotic residues in young calves, FSIS has concluded that an emergency exists to amend the Federal meat inspection regulations to protect the public health from the meat of calves contaminated with sulfa and/or antibiotic residues. Usage of such drugs may introduce into human food channels meat contaminated with drug residues resulting in a public health hazard. To safeguard against this, FSIS must intensify its residue testing program for detecting violative levels of sulfa and antibiotic drugs approved by FDA as well as those not authorized by FDA for use in food animals.

The Interim Rule

The interim rule sets forth the frequency of sulfonamide and antibiotic residue sampling and testing of suspect calves less than 3 weeks old or less than 150 pounds. From the samples taken, the inspector will perform a swab bioassay test and will either condemn or release the carcasses and parts thereof based on the test results.

Under the interim rule, the inspector will rely upon the official slaughter establishment to identify the producer of the affected calves that are presented for slaughter.

Inplant Swab Bioassay Test

The inplant swab bioassay test to be used will be the Calf Antibiotic Sulfa Test (CAST).[2] In previous trial testing using CAST, FSIS has found CAST to be extremely reliable; e.g., during the development of CAST, out of 500 CAST positive samples submitted to USDA laboratories for confirmation, 499 samples or 99.8 percent were shown to have violative levels of sulfonamides and/or antibiotics.

FSIS, therefore, has determined that CAST is an official test and that inspectors will condemn or release carcasses and parts thereof based on CAST results. The establishment would not be required to retain carcasses pending laboratory confirmation which could range anywhere from 7 to 30 days. The inspector would know the CAST results within 18 to 24 hours, and accordingly would make proper carcass disposition.

[2]The procedures for performing the swab bioassay test are set forth in a self instructional guide titled "Performing the CAST." A copy is available for public inspection in the FSIS Hearing Clerk's office or a copy may be obtained by contacting Dr. W. S. Horne, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

If the establishment owner or operator disagrees with the inspector's condemnation based on a positive CAST result, the owner or operator of the establishment may appeal the decision as prescribed in section 306.5 of the Federal meat inspection regulations (9 CFR 306.5).

CAST will be performed by an inspector in the establishment using the kidney sample from the carcass. The inspector will be able to verify only whether there exists a residue above the approved level or residues of drugs not approved. CAST cannot identify the particular drug nor the exact amount of residues present.

Routinely throughout the day, some establishments receive various sizes of livestock shipments. Other establishments receive shipments only prior to their operations. Whenever the shipment arrives, the establishment segregates the animals for business purposes according to such elements as size, breed, sex, and age. Once the animals are segregated, the establishment offers them for ante-mortem inspection. Under this interim rule, the establishment will identify to the inspector, an ante-mortem inspection, groups of calves up to 3 weeks of age or up to 150 pounds and furnish the inspector with a certification for each calf, if available. The inspector will then segregate the young calves into one of the following groups: (1) Certified, (2) noncertified, or (3) those from producers with a record of past residue condemnation. This process may occur several times throughout the day.

Certified Calves

Under the voluntary certification program, the producer must certify that each calf has not been treated with sulfonamide or antibiotic drugs or, if so, that the prescribed withdrawal period has passed. The producer, as defined in this interim rule, is the owner of the calf at the time of its birth.

Under the certification program, calves must be identified individually by eartag, auction number, or other form of identity. In such certified groups, the inspector will perform CAST on tissues of up to three healthy calves randomly chosen by the inspector. This sampling will be done simply to verify the certification without retaining the carcasses. However, if CAST is positive on any sample, all subsequent calves from that producer will be retained and tested as discussed later in this document.

In addition, any carcass and parts thereof of a calf in the certified lot, which is determined by the inspector to

be sick on ante-mortem inspection will be tagged as "U.S. Suspect" and will be retained at post-mortem inspection and CAST will be performed. If the test result is negative, the carcass and parts thereof will be passed by the inspector for human consumption. If any of these test results are positive, the remainder of the group from which the calf was sampled, if any, will be statistically sampled as set forth in the following table and CAST will be performed.

Number of healthy carcasses	Number of carcasses sampled
1 to 11	All
12 to 16	12
17 to 40	15
41 to 250	25
251 and above	30

Any calf from the certified lot not identified individually will be segregated and subjected to CAST. All carcasses and parts thereof which have negative test results will be passed by the inspector for human consumption. Carcasses and parts thereof which have positive test results will be condemned by the inspector. With respect to carcasses and parts thereof that have left the establishment, the Department will take appropriate action in accordance with the Act and the regulations thereunder.

Noncertified Lots

In noncertified lots, the inspector will mark calves which he/she determines to be sick on ante-mortem inspection as "U.S. Suspect", and CAST will be performed at post-mortem. The remaining healthy calves in the lot will proceed to slaughter but all such carcasses and parts thereof will be retained and statistically sampled and tested as set forth in following table:

Number of healthy carcasses	Number of carcasses sampled
1 to 11	All
12 to 16	12
17 to 40	15
41 to 250	25
251 and above	30

All carcasses will be held pending results of CAST performed on the carcasses of the sick calves and statistical samples. If CAST on any of the carcasses is positive, all remaining carcasses will be tested as well. The inspector will release or condemn the carcasses and parts thereof based on CAST findings.

Calves From Producers With Past Residue Condemnation

Calves from producers who have a previous residue condemnation on their animals will be tested in yet another manner. All carcasses and parts thereof from such producers will be tested and retained at post-mortem inspection until all CAST test results are completed. The inspector will pass for human consumption the carcasses and parts thereof that have a negative test result and condemn the carcasses and parts thereof that have a positive test result. All subsequent calves from a producer who had a previous residue condemnation must be tested until five consecutive calves test negative.

The interim rule also adds a provision to Part 318 of the regulations permitting animal drug residues in meat and meat food products if such residues are from drugs which have been approved by FDA and such animal drug residues are within approved FDA tolerance levels.

List of Subjects

9 CFR Part 309

Ante-mortem inspection, Drug residues, Livestock, Meat inspection.

9 CFR Part 310

Carcasses and parts, Drug residues, Meat Inspection.

9 CFR Part 318

Animal drugs, Meat inspection.

PART 309—[AMENDED]

The Federal meat inspection regulations are amended as follows:

1. The authority citation for Part 310 continues to read as set forth below, and the authority citations for Parts 309 and 318 are revised to read as set forth below:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 309.16 (9 CFR 309.16) is amended by revising the first sentence of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

(a) Except as provided by paragraph (c) or (d) of this section, livestock suspected of having been treated with or exposed to any substance that may impart a biological residue which would make the edible tissues unfit for human food or otherwise adulterated shall be handled in compliance with the provisions of this paragraph. * * *

* * * * *

(d) Calves shall not be presented for ante-mortem inspection in an official establishment except under the provisions of this paragraph.

(1) *Definitions.* For purposes of this paragraph, the following definitions shall apply:

(i) *Calf.* A calf up to 3 weeks of age or up to 150 pounds.

(ii) *Certified calf.* A calf that has been certified by the producer that such calf had not been treated with any animal drug or, if so, that the withdrawal period as prescribed on the FDA approved label had passed.

(iii) *Healthy Calf.* A calf that an inspector determines shows no visual signs or disease of treatment of disease at ante-mortem inspection.

(iv) *Producer.* The owner of the calf at the time of its birth.

(v) *Sick calf.* A calf that an inspector on ante-mortem inspection determines has either signs of treatment or signs of disease.

(2) *General requirements.* (i) The identity of the producer of each calf presented for ante-mortem inspection shall be made available by the official establishment to the inspector prior to the animal being presented for ante-mortem inspection.

(ii) The inspector shall segregate the calves presented for ante-mortem inspection at the establishment and identify each calf as one of the following: (A) Certified, (B) noncertified, or (C) previous residue condemnation.

(3) *Certified group.* For a calf to be considered certified, the producer must certify that the calf has not been treated with animal drugs or, if so, that the withdrawal period as prescribed on the FDA approved label has passed. Each calf must be identified individually by use of tag, auction number, or other type of secure identification. The inspector shall segregate any certified calf which he or she determines to show any sign of disease or which is not identified individually. Such animal will be tagged as "U.S. Suspect" and its carcass will be retained on post-mortem and handled in accordance with § 310.21(d). The inspector shall handle the remaining carcasses from healthy animals in accordance with § 310.21(d).

(4) *Noncertified group.* On ante-mortem inspection, the inspector shall segregate any calf which he or she determines to show any sign of disease. Such animal will be tagged as "U.S. Suspect" and its carcass will be retained on post-mortem inspection and handled in accordance with § 310.21(c). The inspector shall handle the remaining carcasses of healthy animals in accordance with § 310.21(c).

(5) *Calves from producers with previous residue condemnation.* On ante-mortem inspection, the inspector shall segregate any calf which he or she determines to show any sign of disease. Such animal will be tagged as "U.S. Suspect" and its carcass will be retained

on post-mortem inspection and handled in accordance with § 310.21(e). The inspector shall handle the remaining carcasses of healthy animals in accordance with § 310.21(e).

PART 310—[AMENDED]

3. Part 310 is amended by adding a new § 310.21 to read as follows:

§ 310.21 Carcasses suspected of containing sulfa and antibiotic residues; sampling frequency; disposition of affected carcasses and parts.

(a) Calf carcasses from animals suspected of containing biological residues under § 309.16(d) of this subchapter shall, on post-mortem inspection, be handled in accordance with the provisions of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) *Calf.* A calf of up to 3 weeks of age or up to 150 pounds.

(2) *Certified calf.* A calf that has been certified by the producer that such calf has not been treated with animals drugs or, if so, that the withdrawal period as prescribed on the FDA approved label has passed.

(3) *Healthy carcass.* A carcass that an inspector determines shows no lesions of disease or signs of disease treatment at post-mortem inspection.

(4) *Producer.* The owner of the calf at the time of its birth.

(5) *Sick calf carcass.* A calf carcass that an inspector on post-mortem inspection determines has either signs of disease treatment or lesions of disease or was from an animal identified as sick on ante-mortem.

(6) *Sign of treatment.* Sign of treatment of a disease is indicated by leakage around jugular veins, subcutaneous, intramuscular or intraperitoneal injection lesions, or discoloration from particles or oral treatment in any part of the digestive tract.

(c) *Noncertified group.* The inspector shall perform a swab bioassay test [1] on all carcasses tagged as "U.S. Suspect" on ante-mortem inspection, on any carcass which he/she finds has lesions of disease or a sign of treatment of disease on post-mortem, and on a statistical sample of healthy carcasses, as outlined in the following table:

Number of healthy carcasses	Number of carcasses sampled
1 to 11	All
12 to 16	12
17 to 40	15
41 to 250	25
251 and above	30

All carcasses and parts thereof of the group shall be retained until all of the test results are complete. If CAST on any of the carcasses is positive, all remaining carcasses in the group will be tested as well. The inspector shall condemn any carcass and parts thereof for which there is positive test result and release for human consumption those carcasses and parts thereof of the group for which there are negative test results. If there is a positive test result for any calf, subsequent calves from the producer of the calf will be tested in accordance with paragraph (e) of this section.

(d) *Certified group.* The inspector shall sample and perform a swab bioassay test on all carcasses of animals tagged as "U.S. Suspect" on ante-mortem inspection and up to three healthy carcasses from the certified animals. Only the carcasses and parts thereof being sampled will be retained pending the results of the test. If the test result for a carcass is positive, the inspector shall condemn such carcass and parts thereof and statistically sample and test any remaining healthy carcasses in the group as outlined in the following table:

Number of healthy carcasses	Number of carcasses sampled
1 to 11	All
12 to 16	12
17 to 40	15
41 to 250	25
251 and above	30

The inspector shall condemn any carcass and parts thereof for which there is a positive test result and pass for human consumption those carcasses and parts thereof for which there are negative test results. If there is a positive test result for any calf, subsequent calves from the producer of the calf will be tested in accordance with paragraph (e) of this section.

(e) *Calves from producers with a previous residue condemnation.* The inspector shall perform a swab bioassay test on all carcasses of all calves in the group. The inspector shall condemn any carcass and parts thereof for which there is a positive test result and pass for human consumption any such carcass and parts thereof for which there is a negative test result. All subsequent calves from the same producer which has previously sold or delivered to official establishments any carcass that was condemned because of drug residues must be tested according to this paragraph until five consecutive animals test completely free of animal drug residues.

(f) If the owner or operator of an official establishment disagrees with the inspector's disposition of carcasses and parts thereof, the owner or operator may appeal as provided in § 306.5 of this chapter.

PART 318—[AMENDED]

4. Part 318 is amended by adding a new § 318.20 to read as follows:

§ 318.20 Use of animal drugs.

Animal drug residues are permitted in meat and meat food products if such residues are from drugs which have been approved by the Food and Drug Administration and any such drug residues are within tolerance levels approved by the Food and Drug Administration, unless otherwise determined by the Administrator and listed herein.

* * * * *

Pursuant to the authority in 5 U.S.C 553, it is found upon good cause that notice and other public procedures with respect to this amendment at this time are impracticable and contrary to public interest, and good cause is found for making this amendment effective less than 30 days after publication of this document. A final document discussing comments received and any amendment required will be published in the **Federal Register** as soon as possible.

Done at Washington, DC, on June 4, 1984.

L. L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 84-15344 Filed 6-6-84; 8:45 am]

BILLING CODE 3410-DM-M

[1] The procedures for performing the swab bioassay test are set forth in a self instructional guide titled "Performing the CAST." A copy of this guide is available for public inspection in the FSIS Hearing Clerk's office, or copies be obtained by contacting the Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of OTC Margin Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for

lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective June 20, 1983 and the Supplements to that List, effective October 17, 1983, and February 21, 1984 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202–452–2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of OTC Margin Stocks. A copy of the complete List incorporating these additions and deletions is also on file at the Office of the Federal Register.

This complete List supercedes the last complete List which was effective June 20, 1983 (48 FR 26587, June 9, 1983) and the amendments to that List, effective October 17, 1983 (48 FR 45533, October 6, 1983) and February 21, 1984 (49 FR 4932, February 9, 1984). The List includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224). Copies of the current List may be obtained from any Federal Reserve Bank. Such copies are also on file at the Office of the Federal Register.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this Lit as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments; Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements; Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w) and in accordance with § 207.2(k) and 6(c) of Regulation G, § 220.2(s) and 17(c) of Regulation T, and § 221.2(j) and 7(c) of Regulation U, there is set forth below a listing of additions to and deletions from the Board's List:

Additions to the List

A & M Food Services, Inc.
$.01 par common
ADI Electronics, Inc.
$.01 par common
AIA Industries, Inc.
$.01 par common
AMC Entertainment Inc.
$1.00 par common
Advance Genetic Sciences, Inc.
$.01 par common
Air One, Inc.
$.01 par common
Aircal Inc.
No par common
Alamo Savings Association of Texas
$1.50 par capital
Alfin Fragrances, Inc.
$.01 par common
America West Airlines, Inc.
$.25 par common
American Continental Corporation
$.01 par common
American Educational Computer, Inc.
$.01 par common
American Physicians Service Group, Inc.
$.10 par common
Amoskeag Bank Shares, Inc.
$1.00 par common
Ampad Corporation
$.83–⅓ par common
Applied Circuit Technology, Inc.
No par common
Applied Communications, Inc.
$.10 par common
Atcor, Inc.
$.10 par common
Atico Financial Corporation
$1.00 par common
Atlantic Federal Savings and Loan Association of Fort Lauderdale
$.01 par common
Atlantic Financial Federal
$1.00 par common
Avacare, Inc.
$.01 par common
BCS Systems, Inc.
$.10 par common
Ballard Medical Products, Inc.
$.10 par common
BankVermont Corporation
$1.00 par common
Baron Data Systems
$.01 par common
Big Bear, Inc.
$.01 par common
Bindley Western Industries Inc.
$1.00 par common
Biotechnica International, Inc.
$.01 par common
Brown, Robert C. & Co., Inc.
$.01 par common
Builders Transport Inc.
$.01 par common
Butterfield Equities Corporation
No par common
Byers Communications Systems, Inc
$1.00 par common
Calumet Industries, Inc.
$.25 par common
Cannon Group, Incorporated, The
$.01 par common
Canrad-Hanovia, Inc.
$.57 par common
Cardinal Distribution, Inc.
No par common
Carteret Savings and Loan Association, F.A.
$.01 par common
Chemical Fabrics Corporation
$.01 par common
Cintas Corporation
No par common
Circon Corporation
$.01 par common
Claire's Stores, Inc.
$.05 par common
Classic Corporation
$.01 par common
Coast Federal Savings and Loan Association
$.01 par common
Command Airways, Inc.
$.01 par common
Commonwealth Savings and Loan
$1.00 par common
Compucare, Inc.
$.025 par common
Computercraft, Inc.
No par common
Continental Healthcare Systems, Inc.
$.01 par common
Cooperbiomedical, Inc.
$.10 par common
Copytele, Inc.
$.01 par common
Cramer Inc.
No par common
Crown Books Corporation
$.01 par common
Dahlberg Electronics, Inc.
$.10 par common
Datacopy Corporation
$.10 par common
Datasouth Computer Corporation
$.01 par common

Detroit & Canada Tunnel Corporation
$5.00 par common
Devon Stores Corporation
$.01 par common
Drug Systems, Inc.
$1.00 par common
Edgcomb Steel of New England, Inc.
$2.50 par common
Elbit Computers Ltd
Ordinary Shares, IS .03 par value
Elco Industries, Inc.
$5.00 par common
Electro Scientific Industries, Inc.
No par common
Energy Conversion Devices, Inc.
Warrants (expire 03–31–86)
Enstar Corporation
Series A, no par convertible preferred
Equatorial Communications Company
No par common
Equitec Financial Group, Inc.
$.01 par common
Evergood Products Corp.
$.01 par common
FDP Corporation
$.01 par common
Fairmont Financial, Inc.
No par common
Family Health Systems, Inc.
$.01 par common
Fibronics International, Inc.
$.05 par common
Finalco Group, Inc.
$.01 par common
First Amarillo Bancorporation, Inc.
$1.00 par common
First Data Management Company, Inc.
$1.00 par common
First Federal Savings & Loan Association of Austin
$.01 par common
First Federal Savings & Loan Association of Charleston
$1.00 par common
First Federal Savings and Loan Association of Fort Myers
$.01 par common
First Matagorda Corporation
$1.00 par common
First Michigan Bank Corporation
$1.00 par common
First Southern Federal Savings & Loan Association (Alabama)
$.01 par common
First Vermont Financial Corporation
$3.00 par common
Fuddruckers, Inc.
$.01 par common
Gencorp Inc.
Warrants (expire 03–15–88)
Georgia Federal Bank, FSB
$1.00 par common
Giga-Tronics Inc.
No par common
Glendale Federal Savings and Loan Association
1.00 par common
Golden Cycle Gold Corporation
No par common
Gtech Corporation
$.01 par common
Guest Supply, Inc.
No par common
Hale Systems, Inc.
No par common
Healthamerica Corporation
$.01 par common
Herley Microwave Systems, Inc.
$.10 par common
ILC Technology, Inc.
No par common
Immunex Corporation
$.01 par common
Independence Health Plan, Inc.
$.01 par common
Info Designs, Inc.
$.001 par common
Information Resources, Inc.
$.01 par common
Innovative Software Inc.
$.01 par common
Interactive Radiation, Inc.
$.01 par common
Interface Systems, Inc.
$.10 par common
Iomega Corporation
$.03–⅓ par common
Itel Corporation
$1.00 par common Class A, $100 Par redeemable preferred
Jefferies Group, Inc.
$.01 par common
Juno Lighting Inc.
$.01 par common
KMW Systems Corporation
$.10 par common
Kaypro Corporation
No par common
Kevlin Microwave Corporation
$.10 par common
Key Image Systems, Inc.
Class A, no par common
Kincaid Furniture Company, Incorporated
$1.33–⅓ par common
Ladd Furniture, Inc.
$.10 par common
Lane Telecommunications, Inc.
$.10 par common
Lifeline Systems, Inc.
$.02 par common
Linear Corporation
$.01 par common
MacNeil-Schwendler Corporation, The
$.01 par common
Manufactured Homes, Inc.
$.50 par common
Mars Stores, Inc.
$.50 par common
Maverick Restaurant Corporation
$.01 par common
Max & Erma's Restaurants, Inc.
$.10 par common
Maxicare Health Plans, Inc.
No par common
Mediplex Group, Inc., The
$.10 par common
Mentor Graphics Corporation
No par common
Merchants Cooperative Bank
$1.00 par common
Micro D, Inc.
$.01 par common
Mid-State Bancorp, Inc.
$2.00 par common
Millicom Incorporated
$.01 par common
Miniscribe Corporation
No par common
Mr. Gasket Company
No par common
Modine Manufacturing Company
$5.00 par common
Napco Security Systems, Inc.
$.01 par common
National Health Corporation
No par common
National Lumber & Supply, Inc.
No par common
Nationwide Power Corporation
$.01 par common
Ni-Cal Development Ltd.
No par common
Northeast Savings, F.A. (Connecticut)
$.01 par common
Northern Air Freight, Inc.
$.01 par common
Offshore Logistics, Inc.
Series A, no par convertible preferred
Old Fashion Foods, Inc.
$.20 par common
Pacific First Federal Savings Bank (Tacoma, WA)
$1.00 par common
Par Technology Corporation
$.02 par common
Parisian, Inc.
$.01 par common
Paxton, Frank Company
Class A, non-voting $2.50 par common
Paychex, Inc.
$.01 par common
Peninsula Federal Savings & Loan Association (Florida)
$1.00 par common
Perfecdata Corporation
No par common
Personal Diagnostics Incorporated
$.01 par common
Pharmacy Corporation of America, Inc.
$.01 par common
Photronics Corporation
$.10 par common
Physio Technology Inc.
No par common
Po Folks, Inc.
$.10 par common
Protocol Computers, Inc.
$.001 par common
Provident Institution for Savings
$1.00 par common
Rax Restaurants, Inc.
$.10 par common
Renal Systems, Inc.
$.05 par common
Restaurant Systems, Inc.
$.05 par common
Ribi Immunochem Research, Inc.
$.001 par common
Richardson Electronics, Ltd.
$.05 par common
Rooney, Pace Group Inc.
$.01 par common
Rusty Pelican Restaurants, Inc.
No par common
S & K Famous Brands, Inc.
$1.00 par common
Sage-Allen & Co., Inc.
$.10 par common
Sahara Resorts, Inc.
$.20 par common
San Francisco Bancorp
No par common
Satelco, Incorporated
$.10 par common
Second National Corporation (Michigan)
$12.50 par common
Security American Financial Enterprises, Inc.

$.10 par common
Security Tag Systems, Inc.
$.001 par common
Seeq Technology, Incorporated
$.01 par common
Sirco International Corp.
$.10 par common
Society For Savings (Connecticut)
$1.00 par common
South Boston Savings Bank
$1.00 par common
Spectran Corporation
$.10 par common
Stifel Financial Corporation
$.15 par common
Storer Communications, Inc.
Warrants (expire 05–15–88)
Strata Corporation
Class A, $.10 par common
Summit Health Ltd.
No par common
Sunshine Mining Company
Warrants (expire 08–30–85)
Syntech International, Inc.
$1.00 par convertible preferred
Syracuse Supply Company
$4.00 par common
System Integrators, Inc.
No par common
TSC, Inc.
No par common
Telxon Corporation
$.01 par common
Thermedics Inc.
$.10 par common
Total System Services, Inc.
$1.00 par common
Trans Louisiana Gas Company, Inc.
No par common
Trilogy Limited
$.0125 par common
United Bank, F.S.B. (California)
No par common
United Oklahoma Bankshares, Inc.
$1.00 par common
U.S. Capital Corporation
$.10 par common
United Telecontrol Electronics, Inc.
$.10 par common
Vagabond Hotels, Inc.
No par common
Valid Logic Systems, Inc.
No par common
Virginia Beach Federal Savings and Loan Association
$.01 par common
Wedtech Corporation
$.01 par common
Welbilt Corporation
$1.00 par common
Western Microwave, Inc.
$.10 par common
Williams-Sonoma, Inc.
No par common
Ziyad, Inc.
No par common
Zymos Corporation
No par common
Zytrex Corporation
$.00025 par common

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

BancTexas Group, Inc.
Class A, $8.00 par convertible preferred
Beeline, Inc.
$.10 par common
Brady Energy Corporation
$.01 par common
Castle Entertainment, Inc.
No par common
Flame Industries, Inc.
$.10 par common
Heritage Bancorp (California)
No par common
Interprovincial Pipe Line Limited
No par common
Omnimedical, Inc.
No par common
Pentair, Inc.
$1.00 par cumulative convertible preferred
Quest Medical, Inc.
Warrants (expire 04–30–84)
Texas American Resources, Inc.
$.01 par common
Tomlinson Oil Company, Inc.
No par common
Universal Energy Corporation
$.01 par common
Victor Technologies, Inc.
$.10 par common
Waterman Marine Corporation
$1.00 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Aquisition

Advanced Systems, Inc.
$.10 par common
Angeles Corporation
No par common
Bayless, A. J. Markets, Inc.
$1.00 par common
Bonanza International, Inc.
No par common
Charles River Breeding Laboratories, Inc.
$1.00 par common
Chubb Corporation, the
$1.00 par common
Cindy's Inc.
$.10 par common
Ellis Banking Corporation
$1.00 par common
First Bank System, Inc.
$2.50 par common
First Lincoln Financial Corporation
No par common
Firstbancorp, Inc.
$5.00 par common
Flower Time, Inc.
$.10 par common
Global Natural Resources PLC
$.01 par common
Health Care Fund
$1.00 par shares of beneficial interest
Helionetics, Inc.
$.10 par common
Home Depot, The
$.05 par common
Homestead Financial Corporation
$.75 par common
Hubco, Inc.
$8.00 par capital
Hyster Company
$.50 par common
Interstate Financial Corporation
No par common
Logetronics, Inc.
$.16⅔ par common
Marine Bancorp, Inc. (Pennsylvania)
$5.00 par common
McCormick Oil & Gas Company
$.10 par common
Muse Air Corporation
Warrants (expire 04–30–86)
Northwest Pennsylvania Corp.
$5.00 par common
Purcell Company, Inc.
$1.00 par common
RSR Corporation
$.01 par common
Security New York State Corporation
$5.00 par common
Teleco Oilfield Services Inc.
$.001 par common
Unitog Company
$2.00 par common
University Patents, Inc.
No par common
Western Digital Corporation
$.10 par common
Wometco Cable TV Inc.
$1.00 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)), May 30, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–15222 Filed 6–4–84; 10:24 am]
BILLING CODE 8210–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 290

[Docket No. RM83–9–002; Order No. 353–B]

Exemption From, and Revisions to, Procedures Governing Collection and Reporting of Information Concerning Cost of Providing Retail Electric Service

Issued: June 4, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Clarification and Technical Correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Order No. 353 (issued December 7, 1983, 48 FR 55,438, Dec. 13, 1983) in which it exempted utilities that had shown that gathering the information required under 18 CFR Part 290 was not likely to carry out the purposes of Section 133 of the Public Utility Regulatory Policies Act (PURPA). Section 290.101 of the Commission's regulations exempts those utilities that are specifically listed in Appendix A of Part 290. In response to a request for clarification from the Texas Utilities

Electric Company (TUEC), the order amends Appendix A of Order No. 353 to add that petitioner. TUEC had qualified for the exemption but had been unintentionally omitted from the list.

EFFECTIVE DATE: June 4, 1984.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033

Daniel G. Lewis, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 376–9227

SUPPLEMENTARY INFORMATION:

Clarification and Technical Correction

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

In Order No. 353, the Commission exempted utilities that had shown that gathering the information required in 18 CFR Part 290 of the Commission's regulations was not likely to carry out the purposes of section 133 of the Public Utility Regulatory Policies Act (PURPA).[1]

On January 31, 1984, the Federal Energy Regulatory Commission received a request for clarification of Order No. 353 [2] from Texas Utilities Electric Company (TUEC). In response to the request, this order amends Appendix A to Part 290 by adding TUEC to the list exempting utilities and deleting its predecessors.

In Order No. 353, the Commission exempted all utilities and classes of utilities that showed, in accordance with the statute, that gathering the required information was not likely to carry out the purposes of section 133 of PURPA. In order to qualify for an exemption, a utility has to show that PURPA section 133 information was not needed for consideration of the rate standards and policies under Title I of PURPA and that the state regulatory authority or the governing authority of a nonregulated utility seldom or never used, and therefore did not need, the section 133 information in retail rate proceedings. Furthermore, an exemption must be based on a clear indication that the costs of gathering and reporting under PURPA section 133 exceeded the benefit that a state regulatory authority or the public would derive from the data. The list of utilities that made a sufficient showing is contained in Appendix A to Part 290.

On March 28, 1983, Dallas Power & Light Company, Texas Electric Service Company, and Texas Power and Light Company submitted joint comments in response to the Notice of Proposed Rulemaking in this docket. In their comments, the companies requested exemption and noted that, effective January 1, 1984, they would merge into, and become divisions of, a new corporation to be designated Texas Utilities Electric Company (TUEC), for which exemption was also requested. The comments were found to contain the required showings for exemption of the three companies and TUEC from the filings required under Part 290. Order No. 353 exempted the three predecessors of TUEC. However, TUEC should also have been listed as exempted in the appendix to Part 290. In its request for clarification, TUEC reiterated its request for an exemption. Since only TUEC would be subject to the filing requirements under Part 290, Appendix A is now being amended to include TUEC and to delete the three divisions which comprise TUEC.

The Commission believes that further notice and comment is not necessary under the Administrative Procedure Act, 5 U.S.C. 553 (1982), because this change is a technical change. For this reason, this order is effective immediately upon issuance.

List of Subjects in 18 CFR Part 290:

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform system of accounts.

In consideration of the foregoing, Part 290 of Chapter 1, Title 18 of the Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 290 reads as follows:

Authority: Public Utility Regulatory Policies Act, Pub. L. 95–617, 92 Stat. 3117 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978).

PART 290—[AMENDED]

2. The Appendix to Part 290 as published at 48 FR 55451, December 13, 1983, is amended by deleting, in the list entitled "Investor-Owned Utilities", "Dallas Power and Light Company", "Texas Electric Service Company" and "Texas Power and Light Company", and by adding in the list entitled "Investor-Owned Utilities", in appropriate alphabetical order, the name "Texas Utilities Electric Company".

[FR Doc. 84–15230 Filed 6–6–84; 8:45 am]

BILLING CODE 6717–01–M

[1] 16 U.S.C. 3601–3645 (1982).

[2] Final Rule, "Exemption From, and Revisions to Procedures Governing Collection and Reporting of Information Concerning Cost of Providing Retail Electric Service," issued Dec. 7, 1983, 48 FR 55438 (Dec. 13, 1983).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R–84–1164; FR–1965]

Environmental Review Procedures for Rental Rehabilitation and Housing Development Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: The Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act) established two new housing programs, the Rental Rehabilitation Program and the Housing Development Grant Program. The 1983 Act made the award and use of resources under these Programs subject to the statutory provisions governing environmental review that apply to the Department's Community Development Grant Programs. In addition, the 1983 Act created a special procedure for considering program effects on property that is included, or eligible to be included, on the National Register of Historic Places. This rule implements the 1983 Act by amending the Department's environmental regulations that apply to the Community Development Grant Programs to cover projects to be assisted under the Rental Rehabilitation Program and the Housing Development Grant Program.

Under the new procedures for properties on or eligible for the National Register, the Advisory Council on Historic Preservation must be given the opportunity to comment on a proposed activity under the new Programs, if (1) the activity involves a property on or eligible for the National Register and (2) the recipient determines that the activity does not meet the Secretary of Interior's Standards for Rehabilitation.

This interim rule also makes certain amendments to Part 58 that do not directly involve implementing the two new Programs. These include adding references to the Coastal Barrier Resources Act of 1982 and to the Farmland Protection Policy Act of 1981

as authorities subject to Part 58's coverage.

DATE: Effective date: July 31, 1984. Comments due by August 6, 1984. Comments regarding the collection of information requirements due August 6, 1984.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each set of comments submitted will be available for public inspection and copying during regular business hours at the above address.

Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C 10402, Attention: Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: Charles E. Thomsen, Office of Environment and Energy, Room 7150, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–6611. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 17 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437o), as added by section 301 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act), Pub. L. 98–181, approved November 30, 1983, established two new housing programs—the Rental Rehabilitation Program and the Housing Development Grant Program. The Department has implemented the Rental Rehabilitation Program by the interim rule published on April 20, 1984 at 49 FR 16936. The Department will shortly publish another interim rule implementing the Housing Development Grant Program.

Section 17(i)(2) of the 1937 Act provides that the Secretary's award and the grantee's use of resources made available under those Programs are subject to section 104(f) of the Housing and Community Development Act of 1974 (the 1974 Act). That section established special environmental requirements for the programs authorized under Title I of the 1974 Act. The Department has implemented section 104(f) through regulations codified at 24 CFR Part 58. This interim rule implements section 17(i)(2) of the 1937 Act by making Part 58 applicable to activities under the Rental Rehabilitation and Housing Development Grant Programs.

While the Department has endeavored under this amendment to Part 58 to follow the same policies with respect to the Section 17 programs as apply to the Title I programs, there are certain variations required by the statute. Under Subpart C of Part 58, a State administering the Small Cities Community Development Block Grant Program is authorized to approve requests for release of funds. Since section 301 of the 1983 Act does not amend section 104(f)(4) of the 1974 Act to provide a paralled authority to a State administering the Rental Rehabilitation Program, this interim rule does not permit States to approve releases of funds. Section 58.4(d)(2), however, authorizes a State that distributes grant amounts to a State Recipient under the Rental Rehabilitation Program to perform all other functions that would otherwise apply under Subpart C, including receiving requests for release of funds and receiving objections. Rather than approve or disapprove the request, the State must forward the request, the environmental certification and the objections to the responsible HUD field office together with its recommendation.

Under section 17(h) of the 1937 Act, a grantee's (a recipient's, under Part 58 terminology) administrative costs may not be reimbursed from grant amounts provided under these Programs. Thus, § 58.13(a) provides that litigation costs of the recipient are not eligible administrative costs under the Section 17 Programs, and § 58.23 indicates that costs of environmental reviews and studies may be eligible project costs to the extent authorized by 24 CFR Parts 511 (Rental Rehabilitation Program) and 850 (Housing Development Grant Program). Under these program regulations, such costs may be eligible as costs of a specific project incurred by the owner, but they are ineligible administrative costs if incurred by the recipient.

Section 17(i)(1) of the 1937 Act directs HUD to establish procedures that assure that assistance will not be provided under the Section 17 Programs if the rehabilitation or development involves a property on, or eligible for inclusion on, the National Register of Historic Places, unless one of two conditions exists. The proposed activity must either (1) reasonably meet the standards issued by the Secretary of Interior and the State historic preservation officer must be afforded the opportunity to comment on the specific rehabilitation or development program or (2) the Advisory Council on Historic Preservation must be afforded an opportunity to comment on cases for which the grantee of assistance, in consultation with the State historic preservation officer, determines that the proposed activity cannot reasonably meet such standards or would adversely affect historic property. The Department has implemented section 17(i)(1) of the 1937 Act by adding a new § 58.17. Section 58.17(a) provides that a recipient, at its option, may take additional actions consistent with the National Historic Preservation Act of 1966.

The Department has made several amendments that are not directly involved with implementing Section 17 Programs. Crossreferences to Part 570 have been revised to conform to the revision of Part 570, Community Development Block Grants, that was published as a final rule at 48 FR 43538 on September 23, 1983. Section 58.35(a)(4) has been revised to make it clearer that rehabilitation and improvement of commercial and industrial buildings may be a categorically excluded activity and to specify existing HUD policy regarding the application of this categorical exclusion. Section 58.5 has been revised to add the Coastal Barriers Resources Act of 1982 and the Farmland Protection Procedures Act of 1981 to the list of environmental laws and authorities for which recipients assume responsibility.

The Department has determined that prior notice and comment are contrary to public policy and good cause exists for publishing this rule as interim to become effective without prior public comment. This is an integral part of the implementation of the Rental Rehabilitation and Housing Development Grant Programs that are being implemented by interim rules for the reasons specified in the respective rules. It is essential that this rule be published as an interim rule in order to have environmental review and historic preservation procedures in place when the regulations for these Programs take effect. This rule does not alter HUD's policies and practices for implementing section 3504(f) of the 1974 Act, but rather simply extends, to the extent provided by statute, those existing policies and practices to the new Programs. However, public comments are invited and will be considered in the adoption of a final rule.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 5304(h) of the Paperwork Reduction Act of 1980 (44 U.S.C.

3504(h)). Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 10402, Attention: Desk Officer for HUD. Comment due date August 6, 1984.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

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

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule simply carries out the statutory mandate in section 17(i)(2) to apply the environmental requirements of section 104(f) of the HCD Act of 1974 to the Rental Rehabilitation and Housing Development Grant Programs and in section 17(i)(1) to implement historic preservation related procedures.

The rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902), under Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program numbers in the Catalog of Federal Domestic Assistance are as follows:

—CDBG Entitlement, 14.218;
—HUD-administered Nonentitlement Cities, 14.219;
—UDAG, 14.221;
—Indian Tribes, 14.223;
—Special Projects, 14.226;
—Technical Assistance, 14.227;
—State-administered program for Nonentitlement Cities, 14.228;
—Rental Rehabilitation, none; and
—Housing Development Grant, 14.174.

List of Subjects in 24 CFR Part 58

Community development block grants, Environmental impact statements, Grants—housing and community development.

Accordingly, Part 58 of Title 24 is revised as follows:

1. The heading to Part 58 is revised to read as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS

2. The authority citation for Part 58 is revised to read as follows:

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 104(f) of title I, Housing and Community Development Act of 1974 (42 U.S.C. 5304(f)) as amended; sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as amended; secs. 17(i) (1) and (2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2)); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

3. Section 58.1 is revised to read as follows:

§ 58.1 Purpose and applicability.

(a) *Purpose.* These regulations implement the requirements of section 104(f) of the Housing and Community Development Act of 1974, as amended, and sections 17(i) (1) and (2) of the United States Housing Act of 1937, as amended; supplement the National Environmental Policy Act Regulations (40 CFR Parts 1500–1508) of the Council on Environmental Quality; and provide for the compliance of Title I and Section 17 projects with related Federal laws and authorities.

(b) *Applicability.* This part applies to activities and projects funded by HUD assistance under (1) all Title I Community Development Block Grant Programs, (2) the Rental Rehabilitation Program, and (3) the Housing Development Grant Program.

4. In § 58.2, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) * * *

(1) *Activity.* The term "activity" means an action funded or authorized to be funded with Title I or Section 17 assistance or a related action that is not so funded or not authorized but which a recipient puts forth as part of its project. It is not the source of funds for an activity, but the nature of the activity and its relationship to other activities, that is relevant. Where the term "eligible activity" is used in this Part, it means an activity that is eligible for Title I assistance under 24 CFR Part 570 or 571 or for Section 17 assistance under 24 CFR Part 511 or 850.

(2) *Recipient or grant recipient.* (i) For Title I-funded programs, the term "recipient" or "grant recipient" means a State or unit of general local government that is an eligible entitlement or nonentitlement (including UDAG) recipient of, or an applicant for, a Title I grant, loan or loan guarantee. Where a unit of general local government receives a nonentitlement grant from a State under section 106(d) of Title I, the term "recipient" or "grant recipient" means the recipient unit of general local government. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State, unit of general local government or Indian tribe to undertake a community development program in whole or in part.

(ii) For the Rental Rehabilitation Program, the term "recipient" or "grant recipient" means a grantee as defined in § 511.2 of this title, except that in the case of a State distributing rental rehabilitation grant amounts to units of general local government, these terms mean a State recipient as defined in that section.

(iii) For the Housing Development Grant Program, the term "recipient" or "grant recipient" means a grantee or applicant as defined in § 850.2 of this title.

* * * * *

5. In § 58.4, paragraphs (a) and (b) are revised and a new paragraph (d) is added, to read as follows:

§ 58.4 HUD legal authority.

(a) *Statutory basis.* These regulations are issued under (1) section 104(f), Title I, of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*; hereinafter "the Act" or "Title I"); and (2) subsections (i) (1) and (2) of section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2); hereinafter "section 17").

(b) *Assumption authority for receipts: General.* Except as otherwise provided by paragraph (c) of this section, grant recipients are authorized to assume, for particular projects, the responsibilities for environmental review, decisionmaking, and other action that would otherwise apply to HUD under

NEPA and other provisions of law that further the purposes of NEPA, in accordance with section 104(f) of Title I. Grant recipients, other than units of general local government that receive grant amounts from any State under Title I or section 17, assume these responsibilities by execution of their grant agreement with HUD. Under the State-administered Small Cities Program and the Rental Rehabilitation Program when a State distributes grant amounts to recipients, the State shall provide for appropriate procedures by which these recipients will evidence their assumption of environmental responsibilities.

* * * * *

(d) *State-administered Rental Rehabilitation Program.* (1) Units of general local government that are State recipients under the Rental Rehabilitation Program are authorized to assume the environmental responsibilities set forth in paragraph (b) of this section.

(2) States that distribute grant amounts to State recipients under the Program shall assume the responsibilities set forth in Subpart C for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving requests for release of funds and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in Subpart J. The State shall forward to the responsible HUD field office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and ROF.

6. In § 58.5, the undesignated initial paragraph and paragraphs (a)(1) and (c) are revised, paragraph (h) is revised and redesignated as paragraph (i), and a new paragraph (h) is added, to read as follows:

§ 58.5 Federal laws and authorities.

Under section 104(f), a grant recipient's assumption of the responsibility for environmental review, decisionmaking and action includes these responsibilities under the provisions of law listed below. The responsibility that the recipient assumes is in addition to whatever other responsibilities the recipient may have to comply with local, State and Federal environmental laws or authorities. Before committing any Title I or section 17 funds (other than for activities exempt under § 58.34), the recipient must certify that it has complied with the requirements and obligations that would apply to HUD under the following laws and authorities; furthermore, in undertaking its environmental review, decisionmaking and action under NEPA, the recipient must take into account, where applicable, the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) as amended; particularly section 106 (16 U.S.C. 470f); except as provided in § 58.17 of this part for section 17 projects.

* * * * *

(c) *Coastal areas protection and management.* (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) as amended; particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

(2) The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 *et seq.*); particularly sections 5 and 6 (16 U.S.C. 3504 and 3505).

* * * * *

(h) *Farmlands protection.* Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*), particularly section 1540(b) and 1541 (7 U.S.C. 4201 and 4202).

(i) *HUD environmental standards.* Environmental Criteria and Standards (24 CFR Part 51).

7. Section 58.10 is revised to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with section 104(f) of Title I, the grant recipient must assume the responsibility for carrying out all its Title I and Section 17 projects in accordance with the procedural provisions of NEPA and the CEQ regulations (40 CFR Parts 1500–1508), as well as the procedures set forth in this part. In addition, the recipient must make sure that projects are in compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

8. In § 58.13, paragraphs (a) and (b) are revised to read as follows:

§ 58.13 Responsibilities of the certifying officer.

* * * * *

(a) Represent the recipient and be subject to the jurisdiction of the Federal courts under section 104(f) of Title I. The Certifying Officer will not be represented by the Department of Justice in court. Reasonable defense costs, including the fees of attorneys and experts incurred in litigation relative to the recipient's compliance with this part, may be eligible administrative costs under Title I, but not under Section 17.

(b) The Certifying Officer must make sure that the recipient reviews and comments on all EISs prepared for Federal projects thay may have an impact on the recipient's Title I or Section 17 program.

* * * * *

9. Section 58.14 is revised to read as follows.

§ 58.14 Interaction with States and non-Federal entities.

A grant recipient must involve environmental agencies, State and local government entities and the public in the preparation of environmental reviews (see 40 CFR 1501.4(b)). The recipient must also cooperate with State agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The recipient must prepare its EISs for Title I or Section 17 projects so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint environmental reviews (see 40 CFR 1501.5(b) and 1501.6).

10. In § 58.15, paragraph (a) is revised to read as follows:

§ 58.15 Responsibilities for environmental review for activities related to urban renewal closeouts.

* * * * *

(a) Activities within an active urban renewal project are to be funded by Title I or Section 17.

* * * * *

11. A new § 58.17 is added to read as follows:

§ 58.17 Historic preservation requirements for Section 17 grants.

(a) A recipient of a Section 17 grant shall comply with the historic preservation requirements of this section. The recipient may, at its option, take additional actions consistent with the National Historic Preservation Act of 1966.

(b) Before a recipient of a Section 17 grant undertakes any activity, it must do the following:

(1) Determine whether the proposed activity would affect property that is on or is eligible for the National Register of Historic Places. At a minimum, the recipient shall examine the current

Register and shall request the State Historic Preservation Officer to provide any information relevant to the proposed project area. A recipient shall also examine proposed project activities and affected structures against the criteria for evaluation at 36 CFR Part 63 as to their eligibility for the National Register.

(2) If the recipient determines that a property that is on or eligible for the National Register will be affected, it must (i) plan the activity in accordance with the Secretary of the Interior's *Standards for Rehabilitation* and (ii) provide the State Historic Preservation Officer 45 days to comment on the proposed activity. In applying these *Standards*, the recipient should give due consideration to the Secretary of the Interior's *Guidelines for Rehabilitating Historic Buildings* which provide advice for planning work under the *Standards*.

(3) If the recipient, in consultation with the State Historic Preservation Officer, determines that the proposed activity cannot reasonably meet the Secretary of the Interior's *Standards for Rehabilitation* or would adversely affect property on or eligible for the National Register, it must provide the Advisory Council on Historic Preservation an opportunity to comment on the proposed activity in accord with 36 CFR 800.6 (b) and (c) of the Advisory Council's regulations.

12. Section 58.22 is revised to read as follows:

§ 58.22 Limitations on activities pending clearance.

A grant recipient may not spend any Title I or Section 17 funds on an activity or project until HUD or, only in the case of the State-administered Small Cities Program, the State has approved the recipient's RROF and related certification. Nor may a recipient, except for activities reimbursable under 24 CFR 570.200(h), incur costs before the approval of the RROF. If an activity is exempt under § 58.34, no RROF is required and therefore the above two statements would not apply and a recipient may undertake the activity immediately. For UDAG projects, however, release of grant funds is conditioned upon the recipient meeting each condition set forth in the grant agreement, including submission of evidentiary materials acceptable to HUD. Relocation costs may be incurred before the approval of the RROF and related certification for the project provided that:

(a) The payment of relocation costs is required by 24 CFR Part 42; and

(b) The costs were incurred after a recipient submitted its final SOA, program description, or application and environmental certifications, but before it submitted the environmental certification and RROF for the specific project. The SOA, program description, or application must have included the relocation acitivities in the recipient's projected use of funds.

13. Section 58.23 is revised to read as follows:

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of authorities mentioned at § 58.5, are eligible Title I costs in accordance with 24 CFR Parts 570 and 571 and are eligible Section 17 project costs to the extent authorized by 24 CFR Parts 511 and 850.

14. Section 58.30 is revised to read as follows:

§ 58.30 Environmental review record.

A recipient must maintain a written record of the environmental review undertaken under this part for each project. This document shall be designated the "Environmental Review Record" (ERR), and shall be available for public review. A recipient may use the formats contained in HUD–399–CPD, *Environmental Reviews at the Community Level*, or develop equivalent formats. The ERR shall provide a description of the project and of the activities that the recipient has determined to be part of that project (see §§ 58.31 and 58.32). The ERR shall contain all the relevant documents, public notices, and written determinations required by this part and any other information or evidence of action pertaining to the environmental review of the recipient's project.

15. Section 58.31 is revised to read as follows:

§ 58.31 Initiation of environmental review.

The environmental review process should begin as soon as a recipient determines the projected use of the Title I or Section 17 funds and how the activities will be combined into projects for environmental review purposes.

16. In § 58.32, paragraph (a) is revised to read as follows:

§ 58.32 Project aggregation.

(a) A recipient must group together and evaluate as a single project all individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions. The environmental review of a multi-year project shall encompass the entire multi-year scope of activities. This applies even if some of the activities are to be funded by other than Title I or Section 17 funds or carried out by someone else.

* * * * *

17. In § 58.34, paragraphs (a)(1), (a)(3), (a)(6), (a)(7) and (b) are revised, to read as follows:

§ 58.34 Exempt activities.

(a) * * *

(1) Environmental studies excepted by section 104(f)(2) of Title I.

* * * * *

(3) Administrative costs for Title I activities as provided by 24 CFR 570.206 and 571.206 and administrative costs related to a Section 17 project that do not have a physical impact.

* * * * *

(6) The payment or reimbursement authorized under 24 CFR Part 570 of reasonable project engineering and design costs incurred for a proposed activity eligible under 24 CFR 570.201 through 570.204 and of similar project costs authorized by 24 CFR Part 511 or 850.

(7) Activities under technical assistance awards authorized by (i) section 107(b)(4) of Title I to prospective grant recipients under 24 CFR 570.402 or (ii) Section 17(a)(3)(A) of the United States Housing Act of 1937 under 24 CFR 511.3.

* * * * *

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient, for the drawdown of Title I or Section 17 funds to carry out exempt activities and projects. However, the recipient must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

18. In § 58.35, paragraph (a)(1)(iv) is removed, paragraphs (a)(2) and (a)(4) are revised and paragraph (b) is revised to read as follows:

§ 50.35 Categorically excluded activities.

(a) * * *

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons as authorized by section 105(a)(5) of Title I and 24 CFR 570.201(k).

* * * * *

(4) Rehabilitation of buildings and improvements under Section 17, or under Title I as set forth in 24 CFR 570.202 and 571.202, except renovation

of closed school buildings; however, these activities are categorically excluded only when the following conditions are met:

(i) In the case of residential buildings:

(A) Unit density is not increased more than 20 percent;

(B) The project does not involve changes in land use from residential to nonresidential or from nonresidential to residential, or from one class of residential to another (for example, from single family attached dwellings to high-rise multiple dwelling units); and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(ii) In the case of commercial and industrial rehabilitation activities:

(A) The facilities and improvements acquired for continued use are in place and will be retained in the same use that existed at the time of acquisition without change in size, capacity or character; or

(B)(*1*) The facilities, improvements, equipment replace, modernize or upgrade existing facilities with only a minimal change in the use, size, capacity or location (e.g., replacement of access, railroad spurs, water and sewer lines and other site improvements); and do not increase capacity or density by more than 20 percent; and (*2*) the facilities, improvements and equipment are consistent with the allowed use of that site and do not involve change in land use, such as from residential to nonresidential, commercial to industrial, or or from one industrial use to another.

* * * * *

(b) *Environmental requirements other than NEPA.* Even though a project is categorically excluded from NEPA requirements, a recipient must still comply with the environmental requirements of the other related laws and authorities cited at § 58.5. The recipient must document its compliance with these other requirements in the ERR. When a recipient determines that they apply, it shall submit for HUD (or State, if applicable) approval, the certification and the RROF after publication of the NOI/RROF required in § 58.70. When the recipient determines that the related authorities listed in § 58.5 do not apply to a categorically excluded project, then the project may be exempt from any ROF requirements under this part, in accordance with § 58.34 (a)(10) and (b).

* * * * *

19. In § 58.46, paragraph (b) is revised to read as follows:

§ 58.46 Time delays for exceptional circumstances.

* * * * *

(b) When the proposed project is similar to other Title I or Section 17 projects that normally require the preparation of an EIS; or

* * * * *

20. Section 58.52 is revised to read as follows:

§ 58.52 Adoption of other agencies' EIS's.

A recipient may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR Parts 1500–1508. If it adopts an EIS prepared by another Title I or Section 17 recipient or a Federal agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases a recipient must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.64 and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the recipient intends to amend and adopt the EIS. An agency may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The recipient is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt a prior EIS shall be made a part of the project ERR.

20. Section 58.66 is revised to read as follows:

§ 58.66 Coordination under Federal laws and authority.

The recipient must coordinate and integrate its EIS with other environmental review, analyses, surveys, and related actions undertaken under the related laws and authorities cited in § 58.5. Pursuant to 40 CFR 1502.25, the environmental review documents of a Title I or Section 17 project will be used to document the recipient's compliance with the requirements of the related laws and authorities that are applicable to the project. The recipient should use whatever formats are required or recommended by the agencies that have a formal review procedure. The actions taken and the documents prepared under these related laws and authorities can also be incorporated by reference into the recipient's EIS (see 40 CFR 1502.21).

22. Section 58.71 is revised to read as follows:

§ 58.71 Request for release of funds and certification.

The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable). This request shall be executed by the recipient's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required by section 104(f)(2) of Title I. The RROF and certification must be in a form specified by HUD.

§ 58.75 [Amended]

23. In § 58.75, paragraph (e) is revised and paragraph (f) is removed and reserved, to read as follows:

* * * * *

(e)(1) With respect to a Title I project, no opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on a property listed on the *National Register of Historic Places*, or found to be eligible for such listing by the Secretary of the Interior, in accordance with 36 CFR Part 800 (and 36 CFR Part 801 for UDAG projects).

(2) With respect to a UDAG project, the recipient has not performed environmental review actions in compliance with the historic preservation procedures and requirements prescribed in sections 119(c)(4) and 119(m) of Title I.

(3) With respect to a Section 17 project, the recipient has not complied with the provisions of § 58.17.

(f) [Reserved]

* * * * *

24. Section 58.77 is revised to read as follows:

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds under Title I of Section 17.

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the recipient and not with HUD. It shall be HUD's policy to refer all inquiries and complaints to the recipient and its Certifying Officer.

Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the recipient, and not the State, and may refer inquiries and complaints to the recipient and its Certifying Officer. Remedies for noncompliance are set forth at §§ 570.910 to 570.913, 571.706 and 571.707 of this title for Title I-funded programs; at § 511.82 of this title for the Rental Rehabilitation Program; and at Part 850, Subpart E, of this title for the Housing Development Grant Program.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

Dated: May 21, 1984.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 84-15231 Filed 6-6-84; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 64

[DoD Directive 1352.1]

Management and Mobilization of Regular and Reserve Retired Military Members

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule is being issued to implement the provisions of sections 672(a), 675, and 688 of Title 10, United States Code, regarding the authority to order retired military members to involuntary active duty. This rule prescribes specific DoD policy and procedures for the peacetime management of retired military personnel, both regular and reserve, in preparation for their use during a mobilization.

DATES: This rule was approved and signed by the Deputy Secretary of Defense on February 27, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Major Robert F. Norton, Office of the Assistant Secretary of Defense (Reserve Affairs), the Pentagon, Room 3C980, Washington, D.C. 20301, telephone 202-697-0624.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-10655 appearing in the **Federal Register** on April 21, 1983 (48 FR 17115) the Office of the Secretary of Defense (OSD) published a proposed rule under this part. Public comments were to be submitted by May 23, 1983. No comments were received from the public.

Executive Order 12291

The Department of Defense has determined that this proposed rule is not a major rule, because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements beyond internal DoD use.

Regulatory Flexibility Act of 1980

The Assistant Secretary of Defense (Reserve Affairs) certifies that this rule, if promulgated, shall be exempt from the requirements under 5 U.S.C. 601-612. In addition, this rule does not have a significant economic impact on small entities as defined in the Act.

List of Subjects in 32 CFR Part 64

Retired regular and reserve military personnel, Mobilization of retired military personnel.

Accordingly, 32 CFR is amended by adding Part 64 reading as follows:

PART 64—MANAGEMENT AND MOBILIZATION OF REGULAR AND RESERVE RETIRED MILITARY MEMBERS

Sec.
64.1 Purpose.
64.2 Applicability.
64.3 Definitions.
64.4 Policy.
64.5 Procedures.
64.6 Responsibilities.

Authority: 10 U.S.C. 672(a), 675, and 688.

§ 64.1 Purpose.

This part implements sections 672(a), 675, and 688 of 10 U.S.C. by prescribing uniform policy and procedures governing the peacetime management of retired military personnel, both regular and reserve, in preparation for their use during a mobilization.

§ 64.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including their National Guard and reserve components), the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard (by agreement with the Department of Transportation).

§ 64.3 Definitions.

(a) *Key Employee.* A civilian employee who is vital to the defense of the United States in his or her civilian capacity and cannot be mobilized with the Military Services in the event of an emergency (see Part 44 of this title).

(b) *Retired Military Members* (hereafter called "military retirees"). All regular and reserve officers and enlisted members who retire from the Military Services under 10 U.S.C., Chapters 61, 63, 65, 67, 367, 571, 573, or 867, and 14 U.S.C., Chapters 11 and 21; all reserve officers and enlisted members who are otherwise eligible for retirement under one of the above provisions of law but who have not reached age 60 and who have not elected discharge or are not members of the Ready Reserve or Standby Reserve (including members of the inactive Standby reserve who meet the above criteria); and all members of the Fleet Reserve and the Fleet Marine Corps Reserve under 10 U.S.C. 6330.

(c) *Military Retiree Categories*—(1) *Category I.* Nondisability military retires under age 60 who have been retired less than 5 years.

(2) *Category II.* Nondisability military retirees under age 60 who have been retired 5 years or more.

(3) *Category III.* Militaray retirees, including those retired for disability, other than category I or II retirees.

§ 64.4 Policy.

It is the policy of the Department of Defense to use military retirees to meet the demands of mobilization or other emergencies. The Secretaries of the Military Departments are authorized to order any retired military member who has completed at least 20 years of active service to active duty at any time to perform duties deemed necessary in the interests of national defense in accordance with 10 U.S.C. 688. Military retirees, both regular and reserve, may be ordered to active duty by the Secretaries of the Military Departments to satisfy mobilization requirements.

§ 64.5 Procedures.

(a) *Premobilization*—(1) *Preassignment of Categories I and II Military Retirees.* Generally, military retirees who are physically qualified should be preassigned in peacetime, either voluntarily or involuntarily, to installations or to mobilization positions

that must be filled within 30 days after mobilization and that are determined appropriate for retirees by the Secretary of the Military Department concerned. Key employees and category III retirees will not be preassigned. Severe hostilities may prevent the transmittal of mobilization orders to military retirees. Therefore, all military retirees preassigned to mobilization positions or installations, either voluntarily or involuntarily, shall be issued preassignment or contingent preassignment orders.

(2) *Category III Military Retirees.* The nature and extent of the mobilization of category III retirees shall be determined by each Military Service based on the retiree's military skill and the nature and degree of the retiree's disability. Age or disability alone may not be the basis for excluding a retiree from service during mobilization.

(3) *Military Retirees Living Overseas.* Military retirees who live overseas shall be preassigned in peacetime to the maximum extent possible, as determined by the Military Service concerned, to meet mobilization augmentation requirements at overseas U.S. or allied military installations or activities that are near their places of residence. Preassignment orders shall be sufficiently complete so that written confirmation after the start of a mobilization is not necessary. Those military retirees who do not reside within reasonable distances from U.S. military installations or activities shall have included in their preassignment orders a statement ordering them to report to the nearest U.S. military activity with follow-on reporting to their unit of assignment.

(4) *Military Retiree Information.* The development and maintenance of current information pertaining to the mobilization availability of military retirees shall be the responsibility of the Military Services. Such information shall include, but not be limited to, date of retirement, date of birth, current address, and military qualifications. In addition, the Military Services shall maintain information on categories I and II military retirees concerning availability for mobilization and physical condition. Indication of physical condition may be from certification by the individual military retiree. Moreover, each Military Service shall develop procedures for identifying categories I and II retirees and shall conduct screening of retirees using Part 44 of this title as guidance in formulating screening criteria.

(5) *Refresher Training.* Each Military Service shall determine the necessity for and the frequency or refresher training of military retirees, based on the needs of the Military Service and the specific military skill of the military retiree.

(b) *Mobilization*—(1) *General.* The Military Services shall establish plans and procedures to use, during a mobilization, those military retirees who meet specific skill and experience requirements.

(2) *Involuntary Order to Active Duty*—(i) *Twenty-Year Active Service Military Retirees.* The Secretary of a Military Department may order any retired regular member, retired reserve member who has completed at least 20 years of active service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve to active duty at any time to perform duties deemed necessary in the interests of national defense in accordance with 10 U.S.C. 675 and 688.

(ii) *Reserve.* The Secretary of a Military Department may order any other retired member of a reserve component of a Military Service to active duty for the duration of a war or emergency and for 6 months thereafter on the basis of required skills, provided:

(A) War or national emergency has been declared by the Congress; and

(B) The Secretary of the Military Department concerned, with the approval of the Secretary of Defense, determines there are not enough qualified reserves in an active status or in the inactive National Guard, pursuant to 10 U.S.C. 672(a).

(3) *Time-Phased Mobilization.* The Military Services shall develop plans and procedures for ordering military retirees to active duty in accordance with a schedule that includes pre- and post-M-day requirements. These procedures shall consider mobilization manpower requirements and the incremental mobilization of National Guard and reserve units.

(4) *Partial Mobilization.* The Military Services shall develop plans and procedures for ordering to active duty only the number of military retirees required during partial mobilizations.

§ 64.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Installations, and Logistics)* and the *Assistant Secretary of Defense (Reserve Affairs)* shall establish policy for the management and mobilization of military retirees.

(b) The *Secretaries of the Military Departments* shall ensure that plans for the management and mobilization of military retirees are consistent with this Directive.

(c) The *Heads of the Military Services* shall:

(1) Prepare plans and establish procedures for mobilization of military retirees in conformance with this Directive.

(2) Determine the extent of military retiree mobilization requirements based on existing inventories and inventory projections for mobilization of qualified reservists in an active status in the Ready Reserve, the Inactive National Guard, or the Standby Reserve.

(3) Develop procedures for identifying categories I and II retirees and conduct screening of retirees using Part 44 of this title for guidance.

(4) Maintain personnel records for military retirees and other necessary records, including date of birth, date of retirement, current address, documentation of military technical skills, and, for categories I and II military retirees and key employees, availability for mobilization, civilian employment, as necessary, and physical condition. Data shall be maintained on retired reserve members in accordance with Part 114 of this title.

(5) Advise military retirees of their duty to provide the Military Services with accurate mailing addresses and any changes in civilian employment, military qualifications, availability for service, and physical condition.

(6) Preassign retired members, as necessary.

(7) Determine refresher training requirements.

Dated: June 1, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-15286 Filed 6-6-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD3-84-04]

Safety Zone; New York, Arthur Kill

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is terminating a safety zone in the Arthur Kill, New York around the site of a proposed salvage effort. Establishment of the zone was consistent with an order of the Federal District Court, Southern District of New York to protect the salvors and commercial traffic in the area. The salvors have now terminated their efforts and the court has ordered the case closed.

EFFECTIVE DATE: July 9, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter C. Blaisdell, Assistant Port Safety Officer, Captain of the Port, New York, Building 109, Governors Island, NY 10004, telephone (212) 668–7834.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation (49 FR 6924). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant Gary W. Chappell, project officer, Captain of the Port, New York, and, Ms. M. A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments

No comments were received regarding the proposed rule and no changes have been made in the final rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The salvage operations have ceased, and the safety zone that precluded the salvage operations in the Arthur Kill is no longer needed. Since the impact of this regulation is expected to be minimal the Coast Guard certifies that will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Final Regulation

§ 165.305 [Removed]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by removing § 165.305.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.3)

Dated: May 24, 1984.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 84-15313 Filed 6-6-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CCGD 7-84-09]

Regulated Navigation Area; Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a Regulated Navigation Area in Tampa Bay, FL. The U.S. Army Corps of Engineers will conduct extensive blasting with explosives in the main shipping channel as part of their 43 foot Channel Dredging Project. Because this project will present a significant hazard to nearby vessels, the Coast Guard deems the establishment of this regulated navigation area necessary to provide for safe navigation through vessel movement control coordinated with blasting operations.

DATES: This regulation becomes effective on June 15, 1984. Comments on this regulation must be received on or before June 30, 1984.

ADDRESS: Comments should be mailed to Commander (mps), Seventh Coast Guard District, 51 SW. First Avenue, Miami, FL 33130. The comments will be available for inspection and copying at this office, in Room 1231. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LT Robert Buford, telephone (305) 350–5651.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would be contrary to the Public Interest. Immediate action is needed to insure vessels can safely navigate Tampa Bay when blasting begins. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulation may be changed. A public meeting was held in Tampa, FL, on 26 January 1984 to solicit public comment on the restrictions being proposed. Notices were published in local newspapers. They were also sent to all known commercial users of Tampa Bay. Two comments were received during a 30 day comment period following the meeting. One commenter questioned the need for blasting and also questioned the safety issues related to blasting. The decision to require blasting as opposed to other methods is not within the purview of the Coast Guard. A copy of this comment was, therefore, forwarded to the U.S. Army Corps of Engineers for consideration. The other comment suggested that one-way traffic should be required east of the Sunshine Skyway Bridge to the intersection of "F" and "G" and "Gadsden Point" Cuts vice as proposed only in the area where dredging is scheduled. We believe this is unnecessary from a safety standpoint and would only serve to create congestion and actually reduce the channel areas where vessels could wait to stay clear of the dredging area should the need arise. The regulations established herein are, therefore, essentially those discussed at the public meeting.

Drafting Information

The drafters of this regulation are LT H. W. Darling, Coast Guard Marine Safety Office Tampa project officer and LCDR K. E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

Portions of four cuts in the main shipping channels of Tampa Bay will be reduced in width as a result of the dredging project. This will necessitate putting constraints on traffic in these areas for an extended time. Two regulated navigation areas, one of which is 1.8 nautical miles long and the other 2.8 nautical miles in length, will be established by this regulation. Within these areas, vessels will be permitted to transit in only one direction at a time. In addition to this and other operating constraints, the requirement for a 24-hour advance notice of arrival will be extended to all vessels carrying cargoes of particular hazard and those carrying petroleum products in bulk for the duration of the regulation. All vessels must file a notice of intent to transmit the regulated area two (2) hours in advance of the desired time of transit to a person designated by the Captain of the Port. This person, who will be at the site of blasting operations, will be designated via a Local Notice to Mariners, along with the radio

frequency to be used. This regulation, including these reporting requirements, will be removed at the conclusion of the project.

Regulatory Analysis

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This regulation imposes only minimal operating constraints upon vessels approaching and departing Tampa, Florida. The basic requirement is for advance notice prior to passage of the areas so that blasting operations may be halted to allow vessels to proceed without delay. Twenty-four hour notice is required for vessels carrying dangerous cargo so that all charges in the channel may be detonated before the vessel reaches the area to insure against catastrophic loss of life and property. This regulation is designed to avoid delays (and the costs associated therewith) to vessel traffic approaching or departing Tampa while still providing for the safety of life and property in the blasting area. Any inconvenience resulting from occasional slight delays or reporting requirements is justified by the need for safety in the blasting area. Moreover, the benefits of a deeper channel facilitating safer vessel navigation far outweigh the temporary inconveniences associated with the project.

Regulatory Flexibility Act

Since, as discussed above, the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

A notice of proposed rulemaking was not published for this regulation. Blasting in the vicinity of the regulated navigation area is scheduled to commence on or about May 10, 1984. Because of the extreme dangers to vessels and persons soon to be present in the regulated area, notice and public procedure hereon are impracticable and contrary to the public's interest. It has been determined that good cause exists to exempt this rule from the notice requirements of the Administrative Procedures Act (5 U.S.C. 551 et seq.) in accord with 5 U.S.C. 553(b)(B). It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 33 CFR Part 165

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

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.702 to read as follows:

§ 165.702 Tampa Bay, Florida Regulated Navigation Area.

(a) The following are Regulated Navigation Areas: The waters of Tampa Bay within the boundary lines beginning at: 27°37'43" N, 82°38'54" W then to 27°38'18" N, 82°37'42" W then to 27°38'40" N, 82°37'20" W then to 27°38'21" N, 82°36'50" W then to 27°37'48" N, 82°37'18" W then to 27°37'11" N, 82°38'35" W then to the starting point, and the waters of Tampa Bay within the boundary lines beginning at: 27°42'21" N, 82°33'16" W then to 27°43'33" N, 82°32'25" W then to 27°44'51" N, 82°31'57" W then to 27°44'40" N, 82°31'19" W then to 27°43'18" N, 82°31'47" W then to 27°42'02" N, 82°32'43" W then to the starting point.

(b) Only those vessels that are constrained by draft to the main shipping channel may enter the regulated navigation areas. Transit of the regulated navigation areas may only be made under the following conditions:

(1) Meeting or passing situations between vessels in each regulated navigation area will not be permitted. Conflicts between vessels desiring to transit in opposite directions at the same time will be resolved by the Captain of the Port. The areas may be transited only when visibility is 3 miles or greater.

(2) During daylight hours, vessels with beams greater than 106 feet will not be permitted to transit the areas unless authorized to do so by the Captain of the Port.

(3) During darkness vessels with beams greater than 96 feet will not be permitted to transit the areas unless authorized to do so by the Captain of the Port.

(4) Tugboats with tows on the hawser must transit the areas with the tow on as short a hawser as is safe. When winds in excess of 18 knots are predicted, these units must be accompanied by a trailing tug.

(5) Light vessels with high freeboards shall have an attending tug when winds are predicted to be in excess of 18 knots.

(6) All vessels carrying cargos of particular hazards, as designated in 33 CFR 126.10, and all vessels carrying petroleum in bulk must provide 24 hour notice of arrival to the Captain of the Port. This requirement includes vessels that are not presently required to give notification by existing regulations. The Captain of the Port may be contacted by telephone at (813) 228-2189, 24 hours a day.

(7) All vessels carrying cargos of particular hazards, as designated in 33 CFR 126.10, may transit the areas in daylight only.

(8) All vessels, including those required by § 165.702(b)(6) to give 24-hour advance notice, which intend to transit the regulated areas between sunrise and sunset shall give, by radio-telephone, notice of intent to transit two hours before the desired time of transit to a person designated by the Captain of the Port. Designation of the person to receive the report, and the radio frequency to use, will be accomplished via a Local Notice to Mariners.

(9) Any drill barge with explosives on board operating in the areas shall detonate any explosive charges on the bottom of the channel and move out of the main shipping channel before vessels carrying cargos of particular hazard, as designated in 33 CFR 126.10, vessels carrying petroleum in bulk, large passenger vessels, and other high risk vessels as designated by the Captain of the Port, pass in the main channel within 1,000 yards of the drill site.

(10) Any vessel intending to transit the area shall be required to take whatever steps are feasible to stay out of the area should they be advised by the drilling barge that a misfire/hangfire has occurred.

(11) All vessels will be required to transit the area around the drill barges at as slow a speed as is possible.

(12) Emergencies. In an emergency, any person may deviate from any regulation in this section to the extent necessary to avoid endangering persons, property, or the environment. The master of the vessel shall contact the Captain of the Port at his earliest opportunity relating the nature of the emergency and the actions taken.

(13) Waiver. The Captain of the Port, may upon request, waive any regulation in this paragraph if it is found that the proposed operations can be done safely. An application for waiver must be submitted not less than 24 hours before the intended operation, and must state the need for the waiver and describe the proposal.

(14) Compliance with this paragraph is not required to the extent necessary to carry out the following operations:

(i) Law Enforcement;

(ii) The servicing of aids to navigation or surveying, maintenance or

improvement of waters in the regulated area.

(Sec. 12, Pub. L. 95-474, 92 Stat. 1475, 1477 (33 U.S.C. 1223 and 1231); 49 CFR 1.46(n)(4); and 33 CFR 1.05-1(g)(4))

Dated: April 6, 1984.

A. D. Breed,

Acting Commander, 7th Coast Guard District.

[FR Doc. 84-15308 Filed 6-6-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Regulation 83-04]

Safety Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary moving safety zone in San Francisco Bay from 24 June 1984 until approximately 02 July 1984. This zone is needed to provide for safety of life on navigable waters during the transit of the Shell Oil Corporation platform Jacket "EUREKA" from Vallejo, CA to sea. These dates are tentative due to production schedules and weather conditions. Entry into this zone is prohibited unless authorized by the Captain of the Port. This regulation becomes effective on 24 June 1984 at 00:01 a.m. It terminates on 02 July 1984 or when the platform departs San Francisco Bay at the Golden Gate Bridge, whichever is later.

EFFECTIVE DATE: July 9, 1984.

FOR FURTHER INFORMATION CONTACT: LTJG W. W. Whitson, Marine Safety Office, San Francisco Bay, (415) 437-3073.

SUPPLEMENTARY INFORMATION: On 19 March 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 10127). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LTJG W. W. Whitson, project officer for the Captain of the Port, and LCDR W. K. Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 00:01 a.m. PDT 24 June 1984 with the departure of the Jacket EUREKA, loaded on the Heerema Barge H-109, from the Kaiser Steel plant at Vallejo, CA. The vessel will proceed down the Mare Island Straits, through San Pablo Bay, under the San Rafael Bridge to general anchorage #4. In order for this structure to clear the San Rafael Bridge it will be necessary to ballast the Heerema barge. Due to the draft of the barge the channel just south of the San Rafael Bridge will be blocked to large vessel traffic for approximately six hours from 0500 local 25 June 1984, while the barge is deballasted and then brought to general anchorage #4. The barge will anchor for approximately six days while the Jacket "EUREKA" is secured for sea on the barge. The barge will get underway again at approximately 01:00 a.m. on 02 July 1984 headed for sea.

The Safety Zone established by this regulation is necessary to ensure that vessel traffic will not interfere with the transit or operations of a very large structure (700' L × 300' W × 200' H) loaded on a relatively unmaneuverable vessel which requires unrestricted waters for safe navigation. The Heerema Barge H-109 will be controlled by 6-7 tugs and escorted by one Coast Guard vessel during the times of transit. The Safety Zone will remain in effect while the barge is in general anchorage #4.

Economic Assessment and Certification

This regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new § 165.T1205 to read as follows:

§ 165.T1205 Safety Zone: San Francisco Bay; Shell Jacket "EUREKA".

(a) *Location.* The following area is a Safety Zone:

(1) The waters surrounding the Heerema Barge H-109 proceeding outbound from the Kaiser Steel plant in Vallejo, down the Mare Island Straits, through San Pablo Bay, under the San Rafael Bridge to general anchorage #4. Then from general anchorage #4 outbound to sea. This moving Safety Zone extends out 100 yards on all sides of the Heerema Barge H-109. This Safety Zone will remain in effect while the vessel is in general anchorage #4.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) This Safety Zone will terminate upon the departure of the vessel from the Golden Gate Bridge to sea.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: May 24, 1984.

K. F. Bishop, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 84-15311 Filed 6-6-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Coverage of Optometrists' Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final regulations.

SUMMARY: These regulations conform existing Medicare regulations to a statutory change that expanded Medicare coverage of services furnished by optometrists to include examination services related to the condition of aphakia (absence of the natural crystalline lens of the eye). Existing regulations limit coverage of optometrists' services to dispensing services in connection with the actual fitting and provision of prosthetic lenses.

The regulations are based on section 937 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499).

EFFECTIVE DATE: These regulations are effective on July 9, 1984, and apply to services furnished on or after July 1, 1981, the effective date of the statutory amendment.

FOR FURTHER INFORMATION CONTACT: James Hannon, (301) 959-7235.

SUPPLEMENTARY INFORMATION:

Background

Under section 1832 of the Social Security Act, payment may be made under Medicare Part B (Supplementary

Medical Insurance Program) for physicians' services, including certain services furnished by optometrists, to Medicare beneficiaries. The law, in sections 1861(r)(4) and 1862(a)(7), limits the kinds of optometric services covered under Medicare.

Before July 1, 1981, section 1861(r)(4) of the Act defined a doctor of optometry as one who was legally authorized to practice optometry by the State in which he performed such functions, but only with respect to establishing the necessity for prosthetic lenses. Therefore, Medicare coverage of services furnished by optometrists was limited to payment for the actual fitting and provision of lenses to replace the natural lens of the eye. (Lenses may be needed temporarily during convalescence from cataract surgery or as a permanent replacement when the natural lenses are lost through congenital disease or surgical removal.)

Section 1862(a)(7) prohibits payment for eyeglasses, eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, and procedures to determine the refractive state of the eye, whether performed by an optometrist or other practitioner.

Statutory Change

Section 937 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499, enacted on December 5, 1980), effective on July 1, 1981, expanded Medicare coverage of optometrists' services beyond the fitting and provision of lenses. Section 937 amended the definition of an optometrist as a physician in section 1861(r)(4) by changing the limitation on optometric services from those for "establishing the necessity for prosthetic lenses" to "services related to the condition of aphakia". (Aphakia is a medical condition in which the natural crystalline lens of the eye is missing, whether or not an intraocular lens has been implanted.) Reports of the House Budget Committee and the Committee on Ways and Means which accompanied Pub. L. 96–499 explained the congressional intent for revising the coverage of other optometric services by specifying that "payment [be made] under Medicare for examination services performed by optometrists in connection with the condition of aphakia". (See report of the Committee on the Budget to Accompany H.R. 7765, H.R. Rept. No. 96–1167, 96th Cong., 2nd Sess., pp. 375–376 (1980), and Report of the Committee on Ways and Means on H.R. 7652, H.R. Rept. No. 96–1150, 96th Cong., 2nd Sess., pp. 29–30 (1980).) This revision permits reimbursement to be made to optometrists for examination services furnished to beneficiaries who have aphakia if the optometrists are licensed to perform the services by the State in which they practice. Before the amendment, only physicians who were doctors of medicine or osteopathy could be reimbursed for these examination services. This new provision does not change the Medicare carrier's responsibility for assuring that all services are reasonable and necessary. Claims for services that are shown to be duplicative of services already furnished under an ophthalmologist's global fee would be denied payment.

Eyeglasses, eye examinations for the purpose of prescribing, fitting, or changing of eyeglasses, and examinations to determine the refractive state of the eye continue to be excluded from coverage under section 1862(a)(7), regardless of which practitioner furnishes these services.

Provisions of Regulations

On June 23, 1982, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** to incorporate the statutory change of section 937 in regulations (47 FR 27084). We received over 1,500 public comments on the NPRM. The concerns of the commentors and our responses are discussed in the succeeding section on "Public Comments".

These final regulations amend the Medicare regulations to conform them to the statutory change by revising the definition of a doctor of optometry under 42 CFR 405.232a and by adding a provision for coverage of examination services performed by optometrists if the services relate to aphakia. On the basis of the congressional committees' use of the phrase "examination services" to explain "services", we have specified the following examples of examination services within the scope of the optometrist's practice that are covered:

- Case history (the determination of changing visual performance as it relates to the condition of aphakia);
- External examination (the inspection with illumination and magnification of eyelids and surrounding areas of the eye);
- Ophthalmoscopy (the inspection with illumination and magnification of the internal structure of the eye);
- Biomicroscopy (the inspection of frontal tissues of the eye, using illumination and magnification);
- Tonometry (the measurement of the internal pressure of the eye);
- Evaluation of visual fields (central and peripheral fields of vision);
- Evaluation of ocular motility (the determination of the ability of the eyes to move efficiently); and
- Evaluation of binocular function (the ability of the eye to obtain single, clear, two-eyed vision).

The provision of extraocular ophthalmic prosthesis and services, which was a covered service under the existing regulations and before enactment of Pub. L. 96–499, continues to be recognized as a reimbursable service.

The optometric examination services selected as examples are based on conclusions included in a 1976 report to the Congress in which the Department recommended that services related to aphakia be reimbursable under Medicare Part B when provided by optometrists. These services are those that are generally authorized under State law to be performed by optometrists.

Public Comments

A number of commentors supported the provisions of the June 23 NPRM. Other objected to the overall issuance of the regulations or made specific comments on the provisions. A summary of specific comments and our responses follow:

1. Definition of Physician

Comment: About two-thirds of the commentors stated that it was incorrect to expand the definition of a physician to permit Medicare coverage of examination services performed by optometrists since optometrists are not considered physicians. The commentors believed that optometrists are not sufficiently trained, experienced, or otherwise qualified to provide post-operative services related to aphakia.

In addition, a number of commentors recommended withdrawing or revising the regulations because they believed the regulations would require hospitals to extend hospital privileges to optometrists.

Response: Section 1861(r)(4), as amended by Pub. L. 96–499, recognizes optometrists as physicians for Medicare reimbursement purposes in connection with services related to aphakia if the optometrists are licensed to provide these services by the State in which they are practicing. Qualifications and training requirements and scope of practice for optometrists are established under State licensure laws. Therefore, if a State recognizes the enumerated services related to aphakia as those that may be performed by optometrists, we are precluded by law from excluding them from coverage under Medicare. It

should be noted that this amendment did not authorize coverage of any other services performed by optometrists for which Medicare may pay doctors of medicine or osteopathy.

With regard to the comment concerning the granting of hospital privileges, we believe that this is a matter totally within the purview of the hospital. This regulation would neither limit nor extend current hospital practices in this area.

2. Examination Services

Comment: Several commentors recommended deleting the reference in the regulations to "examination services" and referring only to "services".

Response: While we believe the statute itself is clear on the face and resorting to legislative history to establish intent is unnecessary, the Congressional reports of the Budget Committee and Ways and Means Committee on Pub. L. 96–499 clearly specify "examination services" in explaining the intent of the amendment. We believe use of this term is clearly consistent with the intent of the statute.

The law clearly limits coverage under Medicare to examination services of optometrists with respect to the condition of aphakia, *and* then only within the scope of authorized optometric practice as defined by State law. Our regulations, therefore, provide examples of the types of examination services that can be covered under Medicare when provided by optometrists, if they are within the scope of optometric practice as defined by State law.

Comment: Ten commentors stated that the Medicare law specifically excludes payment for examinations unless necessary for the diagnosis or treatment of illness or injury and that examination services related to aphakia would fall under this exclusion. Furthermore, an association suggested that the legislative history of section 937 reveals that Congress did not extend coverage to include examination services provided by optometrists.

Response: Unless otherwise specified in the law, Medicare continues to exclude payment for examinations that are not reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member (section 1862(a)(1)). The law also continues to exclude payment for eye examinations for the purpose of prescribing, fitting, or changing eyeglasses and for procedures performed to determine the refractive state of the eye (section 1862(a)(7)). These exclusions apply regardless of the type of practitioner furnishing the service. Before section 937 of Pub. L. 96–499 was enacted, examination services relating to the condition of aphakia could be considered a reasonable and necessary physician service when furnished by a doctor of medicine or osteopathy and were covered under Medicare. Services of an optometrist could be considered reasonable and necessary and reimbursable under Medicare only if they were related to establishing the need for prosthetic lenses. Section 937 now recognizes optometrists as physicians for Medicare reimbursement purposes in connection with services related to the condition of aphakia if the optometrists are legally authorized to provide these services in the State in which they are practicing.

HCFA interprets section 937 of Pub. L. 96–499 as revising the prior statutory limitation by expanding coverage of services furnished by optometrists to include examination services related to the condition of aphakia. We believe that the Congressional intent of section 937 is clearly stated in the Congressional committees' reports cited above that accompanied the law. In explaining the expanded coverage of optometric services performed by optometrists, the reports specifically state that provision is made for payment under Medicare for examination services performed by optometrists in connection with the condition of aphakia.

A further review of the legislative history shows that several proposed amendments that would have specifically authorized payments to optometrists for the "treatment" of aphakia were defeated in committee. Congress did approve language that provides for payments to optometrists for "services related to the condition of aphakia". The only services related to the condition of aphakia that optometrists are permitted to perform by State license and under State law are examination services. We conclude that Congress did distiguish between general treatment services and other services (that is, examination services) and intended for these services to be covered by Medicare consistent with State law and the licensing of optometrists.

The association argued that since the term "treatment" includes by definition examination services, Congress' exclusion of optometric treatment for aphakia (as expressed in the legislative history of the Act) means that Congress intended to exclude optometrists' services. We do not agree with this interpretation. If this argument were accepted, then effectively the situation before the passage of section 937 would be restored. Congress' actions in adopting this section would be deemed a mere nullity. Such a conclusion is contrary to all rules of statutory construction, and is contrary to the clear language of the statute.

Comment: One commentor stated that there was no language in the statute that authorizes the statement made in the preamble of the NPRM that, "The expansion of coverage will allow optometrists to be reimbursed for examination services furnished to aphakic patients to the same extent that previous policy allowed doctors of medicine or osteopathy to be reimbursed for these services."

Response: Before Pub. L. 96–499 was enacted, all that was covered was an optometrist's determination of the need for prosthetic lenses. The change made by the law also allows reimbursement for examination services performed by optometrists acting within the scope of their State license when the services are directly related to the condition of aphakia. We believe that this expansion of coverage is compelled by the statute.

Comment: One organization suggested that the listing of examination services be considered examples and not specific limitations.

Response: We agree. The examination services listed in the regulations have been identified as examples of those that are generally within the scope of an optometrist's practice under State law. Other examination services that are not excluded by section 1862(a)(7) of the Act, which are directly related to the condition of aphakia and fall within the scope of the optometric practice as authorized by State licensure, may also be covered.

Comment: A number of commentors recommended changes in the listing of covered examination services as follows:

1. Delete the reference to "visual fields" in the description of tonometry services.

2. Correct "ocular mobility" to read "ocular motility".

3. Add related optometric services, for example, visual perception, color vision, stereopsis, and evaluation for vision therapy.

4. Accurately state the description of visual fields (evaluation of central and peripheral fields of vision) as an examination service.

5. Add keratometry (the measurement of anterior surface of the cornea) and visual acuity.

Response: We have incorporated items 1, 2, and 4 in the final regulations as technical corrections.

In relation to the suggestions made under items 3 and 5 , other examination services will be covered if they are directly related to the condition of aphakia and are not excluded under section 1862(a)(7) of the Act. The Medicare law and regulations (section 1862(a)(7) of the Social Security Act; 42 CFR 405.301(c)) exclude coverage of eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, and procedures performed in the course of any eye examination to determine the refractive state of the eyes (including all refractive procedures performed in connection with the diagnosis or treatment of an eye disease or injury, and prescribing or providing prosthetic lenses). The exclusion applies, regardless of whether the services are performed by an ophthalmologist, optometrist, or other practitioner, and without regard to the reason for the performance of the refractive procedure.

Comment: One organization believed the coverage of "treatment" services by optometrists in the regulations is precluded by the law.

Response: We did not include any discussion of treatment services in either the NPRM or this final rule. The Congressional committee reports specify coverage of examination, not treatment, services by optometrists that are within the scope of practice under State licensure law. State licensure laws determine what examination services an optometrist is authorized to perform under a license to practice.

Comment: Several commentors believed that Congress did not intend to provide coverage of services furnished by optometrists to beneficiaries with pseudophakia.

Response: We consulted the Public Health Service (PHS) to obtain accurate up-to-date definitions of aphakia and pseudophakia. PHS defines aphakia as absence of the cyrstalline lens of the eye. PHS also advised us that the most commonly used definition of pseudophakia is "an eye in which a natural lens is replaced with an intraocular lens." We believe it is clear that those beneficiaries who can be defined as pseudophakic also meet the definition of being aphakic. Further, since the statutory language makes no definitional distinction between aphakia and pseudophakia, we believe the Congress intended to provide coverage for all services related to the condition of aphakia that an optometrist is legally authorized to perform. Therefore, the final regulations specify that the term aphakia includes the situation where an intraocular lens has been implanted.

Comment: Some commentors suggested that services furnished by optometrists should be directly related to aphakia and not coincidental.

Response: All covered services must be directly related to the condition of aphakia and not be merely services provided to a patient who happens to be aphakic. Carriers are being instructed to review all claims to determine that the services are, in fact, related to the condition of aphakia and are reasonable and necessary medical services.

3. Provision of Covered Services

Comment: Numerous commentors recommended that the regulations prohibit optometrists from performing post-operative examinations and implanting intraocular lenses. They suggested that the regulations require patients to obtain 3 months of post-operative care following cataract surgery only from ophthalmologists.

Response: It is not the role of medicare to exercise any supervision or control over the practice of medicine, in accordance with section 1801 of the Social Security Act. The scope of practice for optometrists is set by State law. We believe it would not be possible to generally prohibit examination services by optometrists during a 3-month post-operative period for several reasons:

- The length of the post-operative period varies widely, depending on the type of procedure used to extract the natural lens.
- The period varies depending on local medical practice patterns.
- Ignoring coverage for examination services furnished by optometrists would be inconsistent with the statute, which makes coverage available without restriction of time periods.
- It is customary medical practice for ophthalmologists to follow a patient through the post-operative period.

Regarding the suggestion that optometrists be precluded from implanting intraocular lenses, the comment is beyond the scope of these regulations. Services of optometrists are covered under medicare only with respect to aphakic patients, and only within the scope of authorized optometric practice as defined by State law. Examination services furnished by optometrists to aphakia patients that are within the scope of the optometric practice act and that are now covered by medicare will be reimbursed. Implanting an intraocular lens is not an examination service, whether performed by an optometrist or other practitioner.

Comment: Numerous commentors suggested that the regulations require optometrists to refer patients to ophthalmologists if patients seek treatment from them for post-operative care or complications.

Response: Under the law, beneficiaries are free to select the health care practitioner of their choice. In caring for patients following surgery, we expect that ophthalmologists will not only continue to provide post-operative care but will also establish professional working relationships with optometrists based on their best medical judgment. Referrals among health care practitioners is most properly a matter for State law and professional practice, and we would expect that referrals would occur on a voluntary basis as the commentor suggests.

Comment: Twenty-nine commentors suggested that the regulations require that contact lenses or continuous wear contact lenses be prescribed only by an ophthalmologist.

Response: We do not believe it is the function of the Medicare program to regulate what services must be performed by specific professional disciplines unless specified in the law. Section 1861(r)(4) limits reimbursement to those services related to the condition of aphakia that are funished by optometrists, acting within the scope of their license.

Comment: One organization recommended that "extraocular" be used to describe "prosthetic lenses" in the listing of examples of examination services or that prosthetic lenses be categorized as contact lenses or spectacle lenses in determining covered optometric services.

Response: We agree with the use of the descriptive term "extraocular". However, we have not included the provision of extraocular ophthalmic prosthesis and services in the examples of examination services in the final regulations because this type of service has been, and continues to be, recognized as a covered service under existing regulations that govern reimbursable services furnished by optometrists.

Comment: One commenter stated that optometrists usually do not practice in settings that are proper for providing post-operative care (e.g. department or jewelry stores).

Response: There are no requirements in the law concerning site of a practice. The services are covered if the optometrist is authorized to perform them under State licensure laws.

Comment: Some commenters believed that unscrupulous optometrists will refer patients to distant cities for surgery so that an ophthalmogolgist can refer the patient back for post-operative care.

Response: We do not anticipate that such referrals will be made on a large scale basis as stated. At the same time, Medicare beneficiaries do have freedom of choice of the practitioner who will furnish services. Medicare will pay for services within the purview of requirements of the law that specify what providers or suppliers may furnish a covered service.

Comment: Numerous commentors stated that most beneficiaries would prefer to go to ophthalmologists for services.

Response: The revised rgulations in no way restrict the choice of practitioners by a beneficiary. The identified services are covered if performed by ophthalmologists or optometrists.

Comment: Some opticians who commented believed the regulations would adversely affect the services they perform. They interpreted the regulation to mean that only optometrists would be reimbursed for cataract lenses.

Response: Neither the regulations nor the statute on which they are based change the coverage of optical services previously covered or excluded under Medicare. There was no intent to change the manner of practice for services provided by opticians.

Comment: Several commentors expressed concern that ophthalmologists may be involved in malpractice suits if they do to provide post-operative care and the post-operative care is provided by optometrists.

Response: We have no authority to address State law concerning malpractice. Beneficiaries have the option of obtaining medical care from the physician of their choice. Malpractice litigation is a civil matter between patient and practitioner.

Comment. Several commentors stated that the integrity and validity of clinical studies to obtain information on the safety and efficacy of intraocular lenses that are being monitored by the Food and Drug Administration (FDA) would be affected. They believe the studies would be jeopardized if optometrists, rather than the surgeon-investigators (ophthalmologists), are encouraged to provide post-surgical examinations of patients who have had intraocular lenses implanted.

Response: In granting pre-marketing approvals on intraocular lenses, FDA does not require that followup care be provided by an ophthalmologist. The scope of practice of health professionals is controlled by State law. However, in the case of investigational intraocular lenses that are implanted by the investigator (an ophthalmogist who is authorized to perform the surgical procedure), to preserve the validity and integrity of clinical studies, FDA regulations apply. In addition, the scope of practice of health professionals is controlled by State law.

5. Reimbursement

Comment: Over one-half of the commentors believed that the expanded coverage would encourage duplication of services and reimbursement for the same service furnished by more than one practitioner.

Response: We recognize that there is a potential for duplication of services as a consequence of the expanded coverage, and we are taking a number of steps to prevent inappropriate payments. However, we also recognize that there may be medically justifiable reasons for patients to be treated by more than one practitioner. Carriers have been instructed to determine for all Medicare beneficiaries whether concurrent services are reasonable and necessary, i.e., whether the patient's condition warrants services customarily furnished by more than one practitioner, whether it is the normal practice in the carrier's locality for practitioners to require concurrent services, and whether, on the basis of the circumstances of the specific case, concurrent services are medically necessary. Only if it is determined that both practitioners' services are reasonable and necessary will payment be made for both.

Second, we are providing reimbursement guidelines to carriers for examination services related to the condition of aphakia. Ophthalmologists have historically charged a single fee that, on a global basis, is for services that precede and follow surgery to remove cataracts. These regulations provide Medicare coverage of some of these post-surgery services when they are furnished by optometrists. We expect that the carriers' case-by-case determinations outlined above will identify inappropriate or duplicate services. For example, in cases where the ophthalmologist continues to use the global fee but does not furnish all post-surgery services because an optometrist furnished some of them, the Medicare carrier will disallow that portion of the global fee that represents services that were not furnished by the ophthalmologist. Where an ophthalmologist provides all the services generally recognized by the medical community in the carrier's service area, the ophthalmologist would receive the global fee, and the carrier would deny any claims for the services included in that global fee that may be performed duplicatively by an optometrist. Of course, as in the case in all situations where concurrent care is furnished by more than one practitioner, services furnished to a beneficiary by both an ophthalmologist and an optometrist can be recognized for reimbursement if the carrier determines that each practitioner's services are reasonable and necessary.

Another case in which duplicate billing should be avoided is for followup services after the implantation of an intraocular lens being tested in FDA-monitored study of its safety and efficacy. In this situation, both the ophthalmologist and the patient have agreed to a one-year followup period. Carriers should be aware that this followup care is likely to be included in the ophthalmologist's global fee and should avoid duplicate payments if services during this followup period are also obtained from an optometrist.

Comment: Thirty physicians stated that the regulations would allow unscrupulous ophthalmologists to bill for post-operative services in the global fee that they may not provide. They believed some ophthalmologists will not furnish post-operative care billed in the fee but rather refer the patients to optometrists.

Response: Medicare will pay only for those services that are reasonable and necessary. Carriers have administrative procedures to alert them to bills for the same service by more than one physician. As stated earlier, if the ophthalmologist bills on a global fee basis for post-operative care but does not furnish all of the services included in the fee, the amount of reimbursement will be reduced. In addition, where there is evidence of program fraud or abuse, we will deny reimbursement and/or refer the case to the Inspector General for suspension, sanction, and/or criminal investigation.

Comment: One organization recommended using different billing codes for services furnished by ophthalmolgists and for those furnished by optometrists so that practitioners furnishing similar services could be identified and services reimbursed properly.

Response: Present coding practices will enable carriers to identify cases in which practitioners have furnished similar services and take appropriate action. Medicare carriers use procedure codes to identify services accurately so that consistent coverage and reimbursement policies can be applied. Use of multiple codes for the same service merely to identify the type of practitioner would complicate use of

electronic billing and other efficient claims review practices. In addition, use of multiple codes would hinder exchange of data with other insurers and Medicaid, and collection of meaningful statistics for use in program management and policy formulation.

The commentor may have assumed that use of identical codes will automatically result in identical fees for all practitioners. This is not the case. Carrier claims processing systems already identify each practitioner (or group) by means of a unique billing number and provide for identification of physician specialty. Reasonable charge allowances thus take into account billed charges, the practitioner's customary charges and the prevailing fees of similar practitioners in the area.

Comment: One association believed the regulations contain administrative gaps concerning when an optometrist may be reimbursed for services related to the condition of aphakia and what the quality of care should be.

Response: The regulations contain the requirements of the law. Optometrists will be reimbursed for covered Part B physician services if—

(1) The services are directly related to the condition of aphakia;

(2) The services are within the scope of optometric practice authorized by the State in which the optometrist furnishes the services; and

(3) The services are not excluded from coverage by section 1862(a)(7) of the Act.

Our medical consultants advise us that examination procedures, now covered when furnished by optometrists, can be appropriately performed during an office visit. Accordingly, we will recognize, for Medicare reimbursement purposes, only an amount that does not exceed the reasonable single charge for an initial or followup office visit. If optometrists bill for these examination services separately carriers will, nevertheless, base payment on the reasonable charge screens for an initial or followup office visit.

6. Implementation of Requirements

Comment: Numerous commentors expressed concern that the recommendations and advice of medical organizations concerned with eye care and physician advisory groups were not considered in development of the regulations.

Response: We weighed carefully all the comments, as well as the language of the legislation and the recommendations of the 1976 Departmental Report to Congress, in developing the regulations. However, the legislation is clear and leaves little administrative discretion. Much of the medical objection raised was to the inclusion of optometrists' services. The law clearly authorized payment for services furnished by optometrists that are related to the condition of aphakia if the optometrists are licensed to perform the services by the State in which they practice. The licensing and scope of practice for the various medical professions is properly the responsibility of the several States. Disputes between medical doctors and other health care providers regarding services they are authorized to perform are not properly within the purview of the Medicare program. The regulations provide, in accordance with the law, that in cases where both an optometrist and a medical doctor are qualified and legally permitted to provide covered Medicare services related to the condition of aphakia, Medicare will not distinguish between the two types of practitioners, except as otherwise provided for by law and regulations.

Comment: One organization objected to HCFA's issuance of operating instructions to carriers before the public had an opportunity to comment on the notice of proposed rulemaking. They considered the NPRM carelessly and loosely written, and that it places the burden on carriers to decide what is legal, appropriate, necessary, and duplicative.

Response: Whenever a law is passed that can be appropriately implemented as soon as possible by the issuance of instructions to carriers and intermediaries, we have issued such instructions. The instructions we issued on this provision were consistent with the wording of the statute. We believed that, in enacting section 937 of Pub. L. 96–499, Congress made it clear that Medicare Part B would pay for certain optometric services provided by optometrists. The instructions will be modified on the basis of public comments and the final regulation.

It is the role of a Medicare carrier to make determinations of the reasonableness and medical necessity of services with the advice of its medical consultants, using accepted standards of medical practice and the medical circumstances of the individual case. We include, among our instructions issued to carriers, guidelines to insure that their claims processing method is adequate to determine proper reimbursement and to monitor their performance.

7. Cost Impact

Comment: Commentors believed the cost estimates we made for the expanded coverage are not accurate. One suggested that a conservative cost estimate to Medicare for fiscal years 1982–1985 is $36.5 million.

Response: We believe that our cost estimates of $2 million for each fiscal year 1982 and 1983 and $3 million for each fiscal year 1984 and 1985 are accurate based on the available utilization data from processed claims.

These estimates were developed by our Office of Financial and Actuarial Analysis on the basis of past experience in covering optometric services that were permitted to be furnished by physicians other than optometrists.

Impact Analyses

Regulatory Impact Analysis

Executive Order 12291 requires us to prepare to publish a regulatory impact analysis on any regulation that is likely to have an annual impact of $100 million or more on the economy, cause a major increase in costs or prices for consumers in general, or for particular industries, governmental agencies, or geographic regions, or meet other thresholds specified in section 1(b) of the Order.

We estimate that the changes in the coverage of optometrists' services will result in an increase in Medicare cost of $3 million each year for fiscal years 1984 and 1985. We have little discretion in implementing the provisions of the law. In developing these regulations, we have followed the language of the statute and the congressional intent specified in the Congressional committee reports.

We have determined that a regulatory impact analysis is not required because the impact is less than $100 million.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis (RFA) for any regulations that will have a significant economic impact on a substantial number of small businesses, small organizations, and small governmental jurisdictions. The purpose of the analysis would be to anticipate the impact and to seek alternatives that would have a less negative effect.

An RFA is not required for these regulations because we have determined, and the Secretary certifies, that they will not have a significant economic impact on a substantial number of small entities. The regulations conform our Medicare regulations to requirements under the law that are already in effect.

Paperwork Reduction Act

These regulations do not contain any reporting and recordkeeping

requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedures, Health care, Health professions, Health suppliers, Medicare.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as follows:

1. The authority statement for Subpart B reads as follows:

Authority: Secs. 1102, 1831–1843, 1861, 1862, 1866, and 1877; 42 U.S.C. 1302, 1395j–1395v, 1395x, 1395y, 1395cc, and 1395nn, unless otherwise noted.

2. Section 405.232a is amended by revising paragraph (a)(4) to read as follows. The introductory text of paragraph (a) is shown for user convenience.

§ 405.232a Physician defined.

(a) The term "physician," when used in connection with the performance of any function or action means:

* * * * *

(4) A doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia (absence of the natural crystalline lens of the eye, whether or not an intraocular lens has been implanted) as set forth in 42 CFR 405.232c; or

* * * * *

3. Section 405.232c is revised to read as follows:

§ 405.232c Optometrists.

The prescription on order of a doctor of optometry is accepted as evidence of the medical need for prosthetic lenses. The following are examples of examination services that, if related to the condition of aphakia, are covered when furnished by optometrists:

(a) Case history (the determination of changing visual performance as it relates to the condition of aphakia);

(b) External examination (the inspection with illumination and magnification of eyelids and surrounding areas of the eye);

(c) Ophthalmoscopy (the inspection with illumination and magnification of the internal structure of the eye);

(d) Biomicroscopy (the inspection of frontal tissues of the eye, using illumination and magnification);

(e) Tonometry (the measurement of the internal pressure of the eye);

(f) Evaluation of visual fields (central and peripheral fields of vision);

(g) Evaluation of ocular motility (the determination of the ability of the eye to move efficiently); and

(h) Evaluation of bionocular function (the ability of the eye to obtain single, clear, two-eyed vision).

(Catalog of Federal Domestic Assistance Program No. 13.764, Medicare—Supplementary Medical Insurance)

Dated: January 5, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: February 8, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-15277 Filed 6-6-84; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6542

[W-72592]

Wyoming; Public Land Order No. 6401; Correction; Modification and Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This document will correct an error in the legal citation contained in paragraph 5 of Public Land Order No. 6401 of June 16, 1983.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307–772–2089.

SUPPLEMENTARY INFORMATION: Public Land Order No. 6401 of June 16, 1983, as published in FR Doc. 83–17285 appearing at page 29697 in the issue of Tuesday, June 28, 1983, in paragraph 5, cited 43 Stat. 134 (43 U.S.C. 154). That citation is hereby corrected to 47 Stat. 136 (43 U.S.C. 154).

Dated: May 31, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-15256 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6543

[U-50514]

Utah, Withdrawal for the Henry Mountain Resource Area Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 41.21 acres of public land in Wayne County, for use by the Bureau of Land Management as an administrative site and housing complex that was constructed in 1981. This action will close the land to surface entry and mining, but not mineral leasing, for a period of 20 years.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Deen Bowden, Utah State Office, 801–524–4431.

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. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, 30 U.S.C. chapter 2, but not the mineral leasing laws, as a Bureau of Land Management administrative site.

Salt Lake Meridian, Utah

T. 28 S. R. 11 E.,
Sec. 21, NW¼NE¼, also the following two parcels:

Parcel No. 1—Beginning at the NE corner of SW¼NE¼ of said section 21; thence south 1°18'39" west 45.14 feet along the ⅛ section line to fenceline; thence south 89°55'48" west 335.47 feet along said fenceline; thence north 1°16'36" east 49.99 feet to the northwest corner of the E½NE¼SW¼NE¼ of section 21; thence south 89°14'35" east 335.42 feet to the point of beginning. Containing 0.37 acres.

Parcel No. 2—Beginning at the NE corner of the W½NE¼SW¼NE¼ of said section 21; thence south 1°16'39" west 49.99 feet to a fenceline; thence south 89°55'48" west 670.92 feet along said fenceline and its extension; thence north 1°12'29" east 59.67 feet to the NW corner of the E½NW¼SW¼NE¼ of said section 21; thence south 89°14'35" east 670.83 feet to the point of beginning. Containing 0.84 acres.

The area described contains 41.21 acres in Wayne County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of

the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

All of the lands described in paragraph 1 have been and will 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, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: May 31, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-15257 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-84-M

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

Correction

In FR Doc. 84-14509, beginning on page 22651, in the issue of Thursday, May 31, 1984, on page 22655, in the second column, in the **"Authority"**, in the fifth line "Pub. L. 94-431" should read "Pub. L. 95-431".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 84-020]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the definition of "United States" in the vessel documentation regulations to include American Samoa. This change will bring the definition in the regulations into agreement with the applicable statutory definition. The Coast Guard is also deleting from the regulations two paragraphs which include American Samoa in the definition of "United States" for certain purposes. The paragraphs are unnecessary in light of the changed definition of "United States." These changes are necessary to clarify the regulations.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety, (202) 426-1492, or (202) 426-1493. Normal office hours are between 7 a.m. and 5 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The definition of "United States" in 46 U.S.C. 2101(44), added by Pub. L. 98-89, August 26, 1983, which includes the recodified Vessel Documentation Act, is different from the definition of "United States" in 46 CFR 67.01-1. The definition in the regulations is being changed to agree with the statute. This will make it clear that American Samoa and other territories and possessions are part of the geographic "United States" for purposes of vessel documentation. Since the new definition of "United States" specifically includes American Samoa, the Coast Guard is deleting as unnecessary 46 CFR 67.09-3(c) which now reads: "For purposes of this section, "United States" includes American Samoa" and the portion of 46 CFR 67.27-3 which reads: "For the purpose of this section, the term United States includes American Samoa."

The changes made by this rule are not substantive. They are made for the sole purpose of clarifying the regulations by bringing them into agreement with existing law. For that reason, under 5 U.S.C. 553 the Coast Guard finds that notice and public comment on the rule are unnecessary and that good cause exists to make the rule effective in less than 30 days after publication.

Regulatory Evaluation

This regulation has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. It is considered non-significant within the guidelines of the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). A determination has been made that the expected impact of the regulation is so minimal that a full evaluation is unnecessary. This determination is based on the fact that the regulation makes no substantive changes. It is certified in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety; and Lieutenant Commander William B. Short (Project Attorney), Office of the Chief Counsel.

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

PART 67—[AMENDED]

In consideration of the foregoing, 46 CFR Part 67 is amended as follows:

1. The authority citation for Part 67 reads as follows:

Authority: 46 U.S.C. 12103, 12113, 12115, 12120, 12121; 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 App. U.S.C. 927); 41 Stat. 1006 (46 App. U.S.C. 983); 94 Stat. 978 (42 U.S.C. 9101).

§ 67.01-1 [Amended]

2. In Section 67.01-1, the definition of "United States" is revised to read as follows:

* * * * *

"United States", when used in a geographic sense in this Part, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

* * * * *

§ 67.09-3 [Amended]

3. In Section 67.09-3, paragraph (c), is removed.

§ 67.27-3 [Amended]

4. In Section 67.27-3, remove the portion of paragraph (b)(2) which reads: "For the purpose of this section, the term United States includes American Samoa."

Dated: June 4, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84-15307 Filed 6-5-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No.83-1096; FCC 84-150]

Allowing Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is establishing rules to implement a lottery system for cellular service in markets below that top-30, and modifying several cellular rules and procedures for markets beyond the top-90 as a result of the decision to adopt lottery for cellular service. A lottery will speed up cellular awards, mitigate any potential adverse impact from a competitor's headstart in a market, and facilitate nationwide implementation of cellular service. The Commission also decided to retain the wireline set-aside embodied in 47 CFR 22.902(b). Retention of the set-aside assures that telephone companies will have an opportunity to participate in cellular service. Without the set-aside, the odds in a unified lottery would statistically preclude wireline carriers from any significant participation in cellular service, a result which would be contrary to the public interest. With the adoption of a lottery, the Commission adopted several changes to its lottery rules. First, to promote effective and efficient use of resources, petitions to deny may be filed after the lottery and only aganist the tentative selectee. Second, the Commission limited the total size of the cellular service area in non-metropolitan areas to 2,000 square miles to serve as an outer boundary for application purposes. Third, applicants for remaining metropolitan areas must draw their cellular service area to include 75% of the population or local area of the market. Fourth, the Commission adopted relaxed anti-trafficking rules in order to encourage efficient use of spectrum through free transferability of licenses, which still deterring speculation. Finally, applications for cellular markets beyond the top-90 will be accepted in 30-market groups, using date-certain filing procedures for each group.

DATES: *Effective date:* July 9, 1984.

The Commission will accept applications for markets, 91–120, including San Juan, P.R., during the two week period of July 2–16, 1984.

FOR FURTHER INFORMATION CONTACT: Steven A. Weiss; Lawrence R. Krevor (202) 632-6450.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 22

Cellular radio service.

Report and Order

In the Matter of 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).

Adopted: April 11, 1984.

Released: May 24, 1984.

By the Commission: Commissioner Quello dissenting in part and issuing a statement; Commissioner Dawson concurring in part and dissenting in part and issuing a statement at a later date; Commissioner Rivera issuing a separate statement.

I. Introduction

1. In this proceeding, we are amending our rules to implement a system of lotteries to select cellular licensees from among competing applicants for markets other than the 30 largest, and modifying several cellular rules and procedures for applications for markets beyond the top-90 as a result of our decision to adopt a lottery for cellular service.

2. In the *Notice of Proposed Rulemaking* ("Notice") for this proceeding, [1] the Commission proposed a lottery procedure to select cellular licensees for markets other than the 30 largest. We had previously considered adopting a cellular lottery on several occasions but declined to do so because we were concerned that there may be significant differences among competing applicants and, therefore, a lottery for cellular service would not be in the public interest. [2] However, because of the large number of cellular applications, and the administrative burden, expense, and delay in implementing service associated with processing these applications by traditional methods, we reevaluated our prior determination and proposed to utilize a lottery. We indicated that a lottery would bring service to the public, in the quickest way possible, with the least cost to the public, the applicants, and the government and with no significant reduction in the qualifications of licensees. *Notice*, at para. 3. Accordingly, we solicited comments on the general proposal to use lotteries, for cellular service, any modifications to the basic qualification standards, the geographical boundaries to determine mutually exclusive applications for markets not categorized according to Metropolitan Statistical Areas (MSAs) or New England County Metropolitan Areas (NECMAs), the applicability of minority or other preferences, and restrictions on transferability of cellular licenses. In addition, we proposed to retain the separate allocation for wireline and non-wireline carriers. Finally, we postponed the December 1, 1983 opening filing date for applications for markets beyond the top-90 until March 1, 1984. [3]

3. Over 136 comments, 45 reply comments, and hundreds of letters were filed, predominantly by entities involved in the cellular industry (*e.g.*, applicants, equipment manufacturers, investors, engineering consultants and law firms). [4] The vast majority of the commenters recommend that the Commission not adopt a lottery procedure for cellular services. [5] Comments that were representative of those opposing lotteries were filed by GTE Mobilnet Incorporated, Telephone and Data Systems, Inc. (TDS), the Regional Cellular Companies, [6] American Teleservices, and Millicom, Inc. There was also a notable segment of the commenters in favor of the use of lotteries, including the Department of Justice, MCI Cellular Telephone Company, Western Union Telegraph Company, Metropolitan Radio Telephone Systems, Inc. (MRTS) and Cellnet Partners. In particular, the Justice Department suggests that we extend lotteries to any licenses not

[1] Cellular Lottery Notice, CC Docket No. 83–1096, 48 FR 51493, released October 28, 1983.

[2] *See, e.g.*, Cellular Communications Systems, 86 FCC 2d 469, 499 (1981), *modified*, 89 FCC 2d 58 (1982) (Reconsideration Order), *further modified*, 90 FCC 2d 571 (1982) (Further Reconsideration Order), *appeal dismissed sub nom.* U.S. v. FCC, No. 82–1526 (D.C. Cir. March 3, 1983); Second Lottery Report and Order, 93 FCC 2d 952 (1983), *recon. pending.*

[3] This filing date was temporarily postponed until the completion of this rulemaking by Order, 49 FR 7383, released February 24, 1984.

[4] A list of the parties that filed comments and reply comments is contained in Appendix A. While we do not recite in detail here all the arguments of all the parties, we have considered them in reaching our decision. A few arguments are not mentioned because they are not of decisional significance.

[5] Since the close of the formal comment period, a major group of nonwireline applicants have notified the Commission that partial settlements have been reached in 51 of the markets in Rounds Two and Three. As a result of these settlements, many parties who filed comments opposing lotteries now have changed their position, acknowledging the advantages of using a lottery for cellular applications. *See e.g.*, Comments of American Cellular Network Corp., and Metro Mobile CTS.

[6] The cellular subsidiaries of the Regional Bell Operating Companies (formerly of AT&T) filed a joint comment (hereinafter referred to as "Regional Cellular Companies").

awarded in the top-30 and eliminate the set-aside for wireline carriers. There were also many comments which suggested that a lottery should be utilized only for applications for markets below the top-90. The comments completely diverge on the remaining issues for which we solicited comment, particularly on whether to retain the wireline set-aside.

II. Lottery Issue

A. Comments

4. The parties in favor of lotteries suggest various public interest considerations which militate toward a lottery. They argue that a lottery will speed up cellular awards and help to minimize headstart problems. Cellnet Partners advocates a lotter because of the substantial cost savings. It estimates that a lottery will save approximately $2 million for the Commission and between $160,000 and $414,000 *per applicant per market* ($129.6 to $336 million for the applicants in markets 31–90 alone).[7] This additional cost, they argue, would ultimately be borne by the subscribers. MCI suggests that these estimates are conservative since expenses for a hearing rise dramatically as the number of applications increase.

5. Many parties advocate a lottery because of problems inherent in comparative hearings. They point out that an inordinate amount of time is being spent by all parties searching for minor flaws; as a result, they contend, judges have been granting cellular applications based on only slight or moderate preferences. A few commenters suggest that several manufacturers have put together cellular packages ("turn-key" services) that provide all the requisite components and technology for providing cellular service to the public so that in many cases the manufacturers, rather than the applicant, actually determine the technical parameters of the system. Thus, they argue, despite the complexity of cellular technology, random selection will not produce an inferior cellular technical system or design. Finally, Cellnet Partners contend that comparative hearings disserve the Commission's goals of promoting innovation and technical diversity and minimizing unnecessary regulatory restraints.

6. The major argument raised by those parties opposing lottery is that it would be fundamentally unfair to parties who have applications on file for markets in Rounds Two (markets 31–60) and Three (markets 61–90), to change the rules in "midstream." They argue that these applicants have expended a substantial amount of time and money in reliance on comparative hearings in order to make their applications the "best" and that they now have "vested" *Ashbacker*[8] rights to have their applications considered comparatively on the merits. They assert that retroactive application of lottery procedures for applications already on file violates principles of due process. Many commenters argue that the proposals differ substantially in Round Two and Three filings, and will differ more substantially in markets below the top-90. As a result, they conclude, an inferior cellular application might be granted by lottery although it would not have survived a comparative hearing.

7. American Mobilphone of Alabama and others speculate that administrative convenience is the real reason that the Commission is proposing a lottery and maintains that this reason is insufficient. They also claim that there is no critical need for further expedition of cellular service. Many commenters dispute the Commission's estimates of the time savings of the lottery. Several commenters, including the Regional Cellular Companies, suggest that a lottery for Round Four will increase the number of applications and petitions filed and will decrease settlements. They further allege that a lottery will decrease the quality of the applications and create the potential for boilerplate or "copy-cat" applications. American Teleservices suggests that cellular service is not the type of service for which the lottery mechanism was designed because it is a complex service, requiring a high capital investment and technical expertise. Many parties object to a lottery insofar as it might require elimination of the wireline set-aside.

8. Several commenters present alternatives to lotteries. Metro Mobile CTS and others suggest that the comparative process can be fine-tuned to expedite cellular processing further. GTE Mobilnet and Centel Incorporated recommend that the lottery procedure be deferred for 90 days in order to encourage settlements. Tri-Cities Cellular Communications proposes that a lottery be used to reduce the number of eligible applications in each market to five and then a comparative hearing be held to select the ultimate cellular licensee. A recent letter from Senator Barry Goldwater, which was placed in the docket file for this proceeding, contains a suggestion that all applications be designated for hearing without any prescreening and after a highly streamlined hearing a lottery be held among the highest-ranked applicants. Several commenters propose markets which, they argue, should be exempt from a lottery because of allegedly unique factors.[9] Henry Geller suggests employing auctions for cellular. Millicom recommends a "non-exclusive" cellular licensing scheme whereby a "lead" application would be selected by lottery or comparative hearing and all other qualified applications which conform to the "lead" structure would be granted on a non-interfering basis. Western Union suggests a "grant and go" proposal so that the winner of the lottery would be able to begin construction immediately without awaiting the outcome of any appeal of the selection process.

B. Discussion

9. We have carefully analyzed the lottery statute,[10] the accompanying *Conference Report*,[11] the *Cellular Lottery Notice*, and the comments. We find that the public interest will be significantly benefited by using a lottery instead of a comparative hearing to select licensees in the Domestic Public Cellular Radio Telecommunications Service for markets beyond the top-30.[12]

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[7] Cellnet Partners' estimate is based on an experienced average rate per hour for professional services of $80 to $120, applied to an average of 2,000 to 3,450 hours per applicant per market for preparation of (1) the direct case, (2) motions and petitions, (3) rebuttal case, and (4) proposed findings of fact, and for attendance at the evidentiary session. The estimate does *not* include the cost of preparing the application or the cost of any proceedings following issuance of the Initial Decision.

[8] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[9] Alaska, Puerto Rico and the Gulf of Mexico are examples of markets suggested as unique because they are high cost rural areas. In addition, Telecom Plus Transmission Services, Inc. asserts that the San Juan license should be chosen by comparative hearing because it was erroneously omitted from the top-30 market list.

[10] The Communications Amendments Act of 1982, Pub. L. 97-259, Section 115, 96 Stat. 1087, 1094–95, enacted September 13, 1982, amended Section 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 309(i). This section originally was added to the Communications Act in Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 736–37. Because the Commission was unable to implement the statute, 89 FCC 2d 257 (1982), Congress revised the legislation in Pub. L. 97-259.

[11] H.R. Rep. No. 765, 97th Cong., 2d Sess. (1982).

[12] We have decided to adopt our tentative conclusion not to use lotteries as a *substitute* for comparative hearings for applications for the top-30 markets. Direct cases for these applications have already been prepared and filed. All applications for these markets have been designated for hearing and, in many instances, Initial Decisions have been issued. Notwithstanding this conclusion, it is our view that we have the authority under the public interest standards of Section 309 of the Act and the Administrative Procedure Act to hold a tie-breaker lottery as a *supplement* to a comparative hearing

Continued

A lottery procedure for cellular services can be expected to speed licensing of cellular radio service with no identifiable reduction in the quality of service to be provided. To the extent that there is some "unfairness" to applicants in markets 31–90, we find that it is far outweighed by the public benefits of using lotteries.

10. *Legal Authority.* Section 309(i) of the Communications Act affords the Commission discretionary authority to grant licenses or permits through the use of a system of random selection when there is more than one application for an initial license for any use of the electromagnetic spectrum. 47 U.S.C. 309(i)(1).[13] The legislation also requires the Commission to implement rules for a lottery system within 180 days of the enactment date of the statute. 47 U.S.C. 309(i)(4)(A).[14] As a result, we adopted the *Second Lottery Report and Order*, in which we established generic rules to implement a lottery procedure, but declined at that time to extend the lottery procedure to cellular service.[15] The lottery legislation also authorizes the Commission to adopt a lottery procedure for a particular service *after* the initial rulemaking upon evaluation in a subsequent rulemaking proceeding. 47 U.S.C. 309(i)(4)(B). The instant rulemaking was instituted pursuant to this subsection of the lottery statute. Consequently, it is beyond question that we have the authority to enact rules to implement a lottery for cellular service.[16]

11. *Public Interest Considerations.* The *Conference Report* accompanying the legislation enumerates several factors that the Commission should consider in determining whether a lottery will serve the public interest.[17] Such factors include: whether there are a large number of licenses available; whether a new service is being initiated resulting in a large number of mutually exclusive applications for each license; whether there is a significant backlog of applications; whether employing a lottery would significantly speed up the process of getting service to the public; and whether diversity of information sources would be enhanced.[18] Based on an analysis of these factors, we conclude that a lottery for cellular applications comports with the criteria for lotteries established in the *Conference Report.*[19]

12. First, a large number of cellular licenses are available; licenses are available in over 250 MSAs and NECMAs, as well as in countless non-MSA areas.[20] Second, cellular is a new service, for which there are a large number of mutually exclusive applications for each license. In markets 31–60, we have an average of 11 mutually exclusive nonwireline application per market. Only three markets have five or fewer nonwireline applications; most markets have 12 or more mutually exclusive applications. The statistics for markets 61–90 are even more persuasive. The average number of nonwireline applications in each Round Three market was 16. The least number of applications in a market was 11, and the most number of applications in a market was 23. In a practical sense, comparative hearings involving this large number of mutually exclusive applications would be extremely complicated and burdensome, and almost impossible to conduct on an expedited basis.[21] Third, there is a significant backlog of cellular applications. In Round Two, there are 334 applications (274 nonwireline, 60 wireline) still pending.[22] In Round Three, we received 567 applications (484 nonwireline, 83 wireline); all of these applications are still pending. We anticipate, based on statements in some of the comments, that at least 2,000 and perhaps as many as 5,000 applications will be filed for markets below the top-90; most of these applications will be mutually exclusive with at least one other application for the same geographic area. Fourth, a lottery would significantly speed up the process of getting cellular service to the public.[23] In the *Cellular Lottery Notice, supra* note 1, at para. 5, we estimated that a lottery would enable 90 percent of Round Two construction permits to be awarded by Spring 1984 rather than late-1985 under the existing expedited comparative procedures. Extending this analysis further, Round Three construction permits could be awarded by mid-1984, rather than late-1986.[24] In summary, an analysis of the factors contained in the *Conference Report* clearly indicates that the use of a lottery for cellular service will significantly benefit the public interest.[25]

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when two or more applicants are "tied" and the ultimate choice should be made randomly. *See* MCI Cellular Telephone Company, FCC 84–61, released March 6, 1984, at para. 57, *recon. pending* and *appeals pending sub nom.* Cellular Mobile Systems of Pennsylvania, Inc. v. FCC, Case No. 84–1131 (D.C. Cir. filed April 5, 1984).

[13] The Lottery Statute empowers the Commission to use lottery procedures in any proceeding in which the first application was tendered for filing on or after August 14, 1981. Round Two applications (markets 31–60) were filed on November 8, 1982; Round Three applications (markets 61–90) were filed on March 8, 1983.

[14] One commenter argues that we have no authority to implement a lottery because the Second Lottery Report and Order was adopted on March 31, 1983, twenty days after the expiration of the 180-day requirement imposed by Congress in section 309(i)(4)(A) of the Act. This argument is specious. Pursuant to the Second Lottery Report and Order, we have been utilizing a lottery procedure for several services for almost a year. Although it is unclear what remedy Congress intended for our failure to meet its deadline, it appears that Congress did not intend for our authority to lapse.

[15] We did, however, include other common carrier mobile services. Second Lottery Report and Order, *supra* note 2, 93 FCC 2d at 992.

[16] Cell-Page of Allentown argues that a lottery would violate our responsibilities under Section 307 of the Act to make a fair, efficient and equitable distribution of radio frequencies among various communities. However, the Commission has long held that section 307(b) does not govern the licensing of facilities in the common carrier land mobile radio services. *See* Orange County Radiotelephone Service, 5 FCC 2d 848, 850 (1966); Answerite Professional Answering Service 41 RR 2d 552, 556 (1977).

[17] Conference Report, *supra* note 11, at 37.

[18] The Commission, however, may consider other salient factors in making this public interest determination. *Id.*, at 38.

[19] American Teleservices argues that Congress did not intend the lottery procedures to be used for cellular service because of its high capital investment and required technical expertise. There is nothing in the statute or the Conference Report to support such a proposition. Furthermore, these factors are not relevant in deciding whether to use a lottery because they represent qualifying, rather than comparative, criteria. Before a cellular authorization is granted, by lottery or otherwise, we evaluate, *inter alia*, the financial and technical qualifications of the selectee.

[20] Some commenters argue that a lottery procedure is inappropriate for cellular service because there are only two licenses available per market. We reject this argument. Congress did not limit our discretion but rather left it to the Commission to define the "market" in which lotteries would be used. While it is true that only two licenses are available in each market, the more relevant factor is that there will be at least 500 cellular authorizations awarded nationwide. In this respect, low power television is no different: there are many local markets in which only one or two licenses may be awarded.

[21] With respect to the wireline allocation, in markets 31–90, the average number of wireline applicants in each market is three. On February 3, 1984, the Regional Cellular Companies reported that they have achieved a comprehensive settlement for most of these markets. *See* para. 31, *infra*. Similar notifications have been filed by other applicants involved in these settlements.

[22] Since the adoption of the *Cellular Lottery Notice*, we have granted nine wireline authorizations and one nonwireline market. These were markets in which there was only one applicant or the applicants fully settled.

[23] Some commenters claim that the certainty of litigation over the legality of using a lottery will negate any time savings resulting from a lottery procedure. We reject this argument. Any appeal from this proceeding will examine very narrow legal questions (*e.g.*, the reasonableness of instituting a lottery), rather than a multi-faceted comparative hearing record. Once the court upholds the legality of the lottery procedure, there will be few, if any, meaningful issues to be raised on appeal of a Commission decision granting a selectee's license. Thus, while it will take time now to adjudicate the lottery question, it will save time in the long run by simplifying appeals of individual authorizations.

[24] Because this proceeding has taken longer than anticipated, these estimates should be increased by several months.

[25] The fifth factor, diversity of information sources, does not apply to common carrier services, because common carriers provide channels for the carriage of information of the subscriber's choice.

13. Some commenters argue that the use of a lottery for Rounds Two and Three is an improper retroactive application of a Commission rule, under the doctrines of *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947) (*Chenery*) and *Retail, Wholesale and Department Store Union, AFL–CIO* v. *NLRB*, 466 F. 2d 380 (D.C. Cir. 1972) (*Retail Union*). We are not persuaded by this argument. The Court in *Retail Union* enumerates several factors to be considered in the balancing of the hardship from retroactive application against any public interest considerations: (1) Whether the issue presented is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive rule imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. 466 F. 2d at 390.

14. With respect to the first factor, this is not a case of first impression. The Commission has considered the use of lotteries for cellular licensing on several previous occasions. *See* note 2, *supra*. Second, while a decision to adopt lotteries at this time is a departure from our previous determinations, this change of policy is justified due to changed ciucumstances. The history of the Commission's treatment of cellular issues reflects an attempt to find the best regulatory approach for expediting the provision of this new technology. To achieve this goal, we have found it necessary at times to reassess our evaluation of various policy matters and fine-tune the procedural structure. It is well established that the Commission has the authority to modufy its policies and procedures as long as it supplies a reasoned analysis explaining why its prior policies are being changed. *See Greater Boston Television Corporation* v. *FCC*, 444 F. 2d 841, 852 (D.C. Cir. 1970). As the court explained in *General Telephone Co. of Southwest* v. *U.S.*, 449 F. 2d 846, 863 (5th Cir. 1971): "Where the on-rushing course of events have outpaced the regulatory process, the Commission should be enabled to remedy the problems . . . by retroactive adjustments, provided they are reasonable." In *Geller* v. *FCC*, 610 F. 2d 973, 979 (D.C. Cir. 1979), the court went one step further and found that we have not only permissive authority but an obligation to reexamine our procedures when abnormal circumstances warrant. We are changing our policy on lotteries for cellular service at this time because of our additional experience with the hearing process for the top-30 markets, our growing backlog, and our reevaluation that competition will ensure that any qualified applicant will provide high quality service to the public.

15. The third factor in the *Retail Union* analysis examines the extent that a party relies on the old rule. Since we are not modifying any substantive requirements for Rounds Two and Three, the basic content of these applications need not be substantially different if they are placed into a lottery from their present content. Other claims of harm as a result of relying on the Commission using comparative hearings are speculative and unsupported.[26] The fourth factor is the degree of burden on a party as the result of retroactive application of a rule. In this instance, there is no additional burden; in fact, a lottery substantially relieves a burden, resulting in dramatic savings of time and money. *See* para. 23, *infra*.

16. Finally, we must examine the statutory interest in applying the new rule. The legislative history of the lottery statute indicates that Congress clearly intended the use of a lottery for applications already on file.[27] The public interest factors contained in the *Conference Report* focus, *inter alia*, on the number of mutually exclusive applications, the backlog of pending applications, and the speed of service. *See* para. 11, *supra*. These factors, which can only be evaluated once applications have been filed, exhibit Congressional interest in applying the lottery statute for applications on file. In summary, an analysis of the factors contained in *Retail Union* demonstrates that it is legally proper to use a lottery for Rounds Two and Three applications as well as those yet to be filed.

17. Having determined that we can legally implement a lottery for cellular service, we now turn to the issue of whether it is in the public interest to invoke our authority. First, since a lottery will speed up cellular awards, any potential long-term adverse impact on competition resulting from one competitor's headstart in a market will be mitigated.[28] Our headstart policy balances the potential (but yet unproven) impact on competition against the need for rapid implementation of cellular service. As a result, we consider requests for a moratorium on wireline cellular service only when a nonwireline applicant can demonstrate that permitting early entry into a particular market would not be in the public interest. *Report and Order*, 86 FCC 2d at 491 n. 57. *See also Chicago SMSA Limited Partnership*, FCC 83–458, released October 7, 1983. While this policy represents a reasonable balance between these competing objectives, it has been difficult to administer.[29] This dilemma is resolved by the rapid implementation of a lottery system because it enables both wireline and nonwireline carriers to initiate cellular service and compete for customers at about the same time.[30] This result is in the public interest because it expedites service to the public, provides consumers with a choice of service providers, and fosters healthy marketplace competition from the outset.

18. Second, there is no evidence that a lottery, properly implemented, will result in an "unqualified" applicant being licensed or in diminution of the quality of service to the public. Many commenters argue that, contrary to the Commission's assertion in the *Notice*, substantial differences exist among applicants such that the public would receive significantly inferior service without a comparative hearing. The commenters point to several areas of differences that they found in their analysis of various markets: geographic

[26] Several applicants claim that they have undergone unnecessary expenses because they would have filed less comprehensive applications under a lottery. However, since direct cases have not been filed for these rounds, it is uncertain what parts of the applications would have been different. Other applicants contend they would have filed more applications had they known that there would be a lottery. While a concern about potentially high litigation expenses may affect a company's decision on the number of markets to apply for, the ability to fund multiple system operations and to construct these systems within the prescribed time limits is likely to be a more important consideration in this decision. Ultimately, the number of markets for which an applicant applies is a private business decision. See the discussion at para. 23, *infra*. The fact that our action may, to some extent, frustrate the expectation of *cellular* applicants in Rounds Two and Three does not render it invalid in light of the mandate of the Lottery Statute, *supra* note 10. *See* Multistate Communications, Inc. v. FCC, No. 89–1296 (D.C. Cir. March 6, 1984).

[27] For example, the *Conference Report* emphasized the Conferees' intention that the Commission use lotteries for licensing low power television stations, for which there was a "substantial backlog of applications on file with the Commission". H.R. Rep. No. 765, *supra* note 11, at 38.

[28] Early entry by one of two competitors is thought by some to be inimical to effective competition because it raises barriers to entry for the later entrant and prematurely establishes the structure and marketing practices of the industry.

[29] The headstart policy has presented several difficult issues which have consumed a considerable amount of staff hours.

[30] In view of the announced wireline settlement in most markets in Rounds Two and Three, we foresee headstart controversies proliferating. *See* para. 31, *infra*.

coverage and population, the number of frequencies proposed, the number of cells, system costs, subscriber projections, and the extent of ownership participation in management. Their information illustrates that there may be differences among applicants; but they are differences in degree and not in kind.[31] Ultimately, competitive market forces and public demand will have more of an impact on the quality and scope of cellular service than the strength of an applicant's paper proposal. Thus, while there may be differences among applicants, the record does not show that the differences will be of sufficient magnitude and impact on public service to warrant the intense scrutiny and corresponding delay and burden of a comparative hearing. Moreover, we emphasize that, in order for an application to be included in the lottery, it will have to be acceptable for filing under our cellular rules. The staff will carefully pre-screen the cellular applications to ensure that deficient applications are not considered in the lottery.[32] We have in the past returned cellular applications that were unacceptable and we intend in the future to continue this practice.[33] In addition, once the lottery is completed, pleadings filed against the tentative selectee will be reviewed by the Commission (or the staff, acting under delegated authority). Only after this review of the selectee's application and the related pleadings and a finding that the selectee is qualified, will we grant the application.[34]

19. Third, as demonstrated in *MCI Cellular Telephone Company* and *Rogers Radiocall, Inc., supra*, note 28, the comparative process sometimes results in less than ideal analyses because there are divergent approaches to cellular system design, and the expedited comparative hearing process is ill-suited for comparing these alternatives.[35] Cellular design involves a complex set of trade-offs among engineering, marketing and financial decisions. These factors are essentially business judgments that a cellular company must make in response to the demands of its customers, and a comparison of these business plans bears little relation to public interest objectives. For example, the designated issues do not include a comparative inquiry into the associated costs and benefits of a "gold-plated", high cost system as opposed to a "no-frills", lower cost system. Similarly, comparisons of technical proposals may be inconsistent with the Commission's goal of promoting diverse technical approaches to cellular service. In adopting its cellular rules and policies, the Commission has sought to avoid imposing any rigid system design concepts in order to permit applicants the flexibility (within certain parameters) to design their systems in different ways. 86 FCC 2d at 507. Once it is determined that a proposal meets the basic technical criteria so that the system is considered a *bona fide* cellular design, it might not be in the public interest to prefer one particular system design over another.

20. In addition, there are several weaknesses inherent in the comparative process which limit its utility in predicting who will be the best cellular system operator.[36] Many commenters criticize the expedited hearing process that we established because of its lack of comprehensiveness, inadequacy of information, absence of an agreed-upon evaluation system, reliance on assumption and simplification,[37] and problems of promise versus performance.[38] Because of these infirmities in the hearing process, the commenters contend, and we agree, that a standard of reasoned decision-making is difficult to maintain. In addition, many of the applicants in the smaller markets propose to rely on "turn-key" operations offered by leading equipment manufacturers. The success of an applicant in the smaller markets, therefore, will depend more on its marketing and service skill than on its technical expertise. We also expect that any cellular system may require a degree of adjustment in response to unexpected propagation effects or usage patterns. Therefore, comparisons of the theoretical "paper" system design contained in the applications will not necessarily be predictive of the ultimate technical operational characteristics of these systems. *See Rogers Radiocall, Inc., supra* note 28.[39]

21. Fourth, the expense of comparative hearings thus far has been enormous and is likely to grow exponentially for markets below the top-30. The product of these enormous expenditures is, as described here, a licensee whose service to the public may not be a predictable consequence of its being selected in the comparative process. Many commenters argue nevertheless that they have expended considerable resources to prepare superior applications in reliance on the Commission's decision that cellular proposals would be evaluated in the comparative hearing process, and

[31] *See* MCI Cellular Telephone Company, *supra* note 12, and Rogers Radiocall, Inc., FCC 84-62, released March 6, 1984, *recon. pending*. As more Initial Decisions and Decisions on exceptions are issued, there will be a great pressure to conform the applications and direct cases to the rules of decision that are emerging, resulting in fewer differences among applicants.

[32] In order to be considered comparatively, a common carrier mobile services application must be "acceptable for filing". Industrial Communications, 53 RR 2d 38 (1983), *aff'd mem. sub nom.* Williams v. FCC, No. 83-1233 (D.C. Cir. Nov. 30, 1983). Moore's Service, 86 FCC 2d 787, 795, (Com. Car. Bur. 1981). In the top-30 cellular markets, the Commission has been lenient and has accepted applications which have contained a few minor deficiencies, Advanced Mobile Phone Service, Inc., 91 FCC 2d 512, 519 (1982), but no blatant deficiencies. For example, applications have been accepted even though they have lacked environmental statements or complete antenna structure sketches, or have included unauthorized extensions of the Cellular Geographic Service Area. Under the lottery procedures, the staff will continue to screen incoming applications to assure that they are "acceptable for filing" and will apply the screening criteria adopted in the top-30 markets. A key point here is that "substantially complete" applications will *not* be entitled to comparative consideration if they do not meet the "acceptable for filing" standard. *See* Industrial and Moore's Service, *supra*.

[33] *See* Public Notices, Common Carrier Public Mobile Services Information, Mimeo No. 1972, dated January 24, 1983, and Mimeo No. 2442, dated February 17, 1983.

[34] We intend to take very seriously Congress' admonition in the Conference Report, *supra* note 11, at 39: "By permitting the FCC to make the findings [that the applicant is fully qualified] after an applicant is selected, it is intended that the Commission will be able to conduct *a more thorough and in-depth inquiry* than it could if it had to make a finding as to the qualifications of all applicants" (emphasis added).

[35] We emphasize, however, that our dissatisfaction with the expedited hearing process does not reflect a corresponding dissatisfaction with the performance of the participants in this process—particularly the Administrative Law Judges, the Separated Trial Staffs and the Mobile Services Division. To the contrary, they have worked admirably under difficult circumstances in uncharted areas and still have managed to meet our expedited schedule for processing cellular applications.

[36] On occasion the courts also have expressed their dissatisfaction with the comparative hearing process. *See, e.g.*, Central Florida Enterprises Inc. v. FCC, 683 F.2d 503, 506 note 27 (D.C. Cir. 1982); Star Television, Inc. v. FCC, 418 F. 2d 1086, 1094-95 (D.C. Cir. 1969) (Leventhal, J., dissenting).

[37] For example, system coverage, a key aspect of the comparative process, is determined by using the Carey Report (FCC Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service"). However, the Carey method is a theoretical model for predicting coverage which does not take into account small-scale topographical considerations that are particularly relevant in systems using small transmitter coverage areas such as cellular systems. Thus, the Carey Report may not be most accurate predictor of actual propagation characteristics under some circumstances. Rogers Radiocall, Inc., *supra* note 31, at para. 40 and n. 37. *See also* "Call Processing Protocol Part II," *Telocator Magazine*, April 1984, at 48C-51C.

[38] While a review of promise versus performance can occur in a renewal or revocation proceeding, it is difficult to enforce proposals contained in the initial applications for a technologically new, rapidly changing service, such as cellular radio service.

[39] For example, we have granted several authorized cellular systems the authority to make significant post-grant changes to facilitate future expansion plans, compensate for actual propagation characteristics, and substitute new antenna sites.

that a change in the rules at this time would be fundamentally unfair. For example, American Teleservices states that its average cost per application in Rounds Two and Three was $150,000, whereas it could have produced an "acceptable" application for one-fifth the cost. Similarly, Continental Cellular Corp. claims to have spent "well over $100,000 per market" in Rounds Two and Three. We are not persuaded however that our implementation of lotteries is unfair or violates due process,[40] that any money spent to this point was spent in vain, or that past expenditure justifies far greater expenditures in the comparative process.

22. The argument that changing licensing procedures at this time is "unfair" is not persuasive. For one thing, every prospective applicant was (and still is) charged by the Commission with designing a cellular system to meet the needs of the public in the market in which it intended to apply. Beyond some minimum costs (about $25,000 to $30,000), the applicant could have spent as much or as little as it chose. The simple fact, not to be obscured by boasts about the quality of their proposals, is that applicants are likely to have spent a good deal of their investment primarily to prevail in the comparative process, not to design the best possible system (large or small, with frills or without) for the particular market.

23. Furthermore, the expenditures thus far incurred are small when compared to the high cost of preparing direct and rebuttal testimony, procedural motions, proposed findings of fact and appellate documents, as well as the cost of professional representation at evidentiary admissions and hearing sessions. Cellnet Partners estimates that the cost of prosecution from hearing designation to Initial Decision ranges from $160,000 to $414,000 *per application per market*, an estimate unrefuted on the record and considered conservative by another commenter. If we accept American Teleservices' assertion that the cost of an application in Round Two or Round Three ranged between $30,000 and $150,000 and if we assume that the applicant who spent the least for the application would also spend the least to prosecute in comparative hearing, then the cost of filing an application represents between 16 and 27 percent of the total expenditure through the issuance of the Initial Decision.[41] Whether the expenditure of $30,000 to $150,000 commits an applicant to spend another $160,000 to $414,000 is a matter of business judgment and strategy. The claims of unfairness serve only to obscure the underlying point: those who spent great sums in the hope that they would win the comparative hearing have no vested right in the process itself, but rather only an expectation.[42]

24. More important, however, our decision must ultimately weigh not simply the amounts already invested in the hearing process, but rather whether continuation of the process would, all things considered, significantly advance the public interest. There has been no showing by parties opposing lotteries how any additional expenses would contribute to higher quality applications or would significantly advance the public interest. After carefully balancing the individual private expenditures by existing and prospective applicants against the overall savings to all applicants and the government resulting from a lottery, we find that any harm to individual applicants which may result from our adoption of a lottery at this time is outweighed by the public benefits enumerated here.

25. A fifth public interest consideration concerns the expeditious development of cellular service. We reject claims that there is no critical need for further expedition of the cellular process for markets beyond the top-30. In the *Report and Order*, 86 FCC 2d at 489–90, we found that there was a substantial unserved need for mobile telephone service throughout the country. This conclusion was based on the lengthy waiting lists for conventional mobile service in most cities and letters from members of the public confirming the unsatisfied demand. And there is potentially a much greater unsatisfied demand that is suggested by the waiting lists.[43] Indeed, the large number of applications already filed is indicative of a service for which there is a high demand.[44] Furthermore, nationwide implementation of cellular service is in the public interest because it is likely to result in lower prices for cellular equipment and services [45] and create additional incentives for accelerated research and development of cellular technology. Nationwide implementation of cellular service will also promote the institution of a national roamer service, because of the nearly simultaneous entry of many cellular carriers.[46] Finally, the nationwide availability of cellular service will benefit the public interest because this service is an efficient utilization of the spectrum which can result in greater productivity and energy savings.

26. Finally, we have considered the alternatives to lottery suggested by the commenters, and find that the lottery is the best approach to achieve our goals for cellular service. Several commenters suggest the following ways to fine-tune the comparative process: using "form" designation orders like those used in the mass media services, imposing page limitations for all submissions of the parties, eliminating cross-examination and oral admission sessions, limiting the number of objections, refining the issues in the designation orders, clarifying

[40] American Mobilphone and others argue that a lottery for markets 31–90 violates their vested rights to a hearing under Ashbacker v. FCC, *supra* note 8. We conclude, however, that our use of a lottery for mutually exclusive applications is in accord with, rather than violative of, *Ashbacker*. That decision, a seminal one in administrative law, was decided at a time when the Commission had no rules whatsoever in handling mutually exclusive applications. The Court held that fundamental fairness requires that competing applications be considered at the same time so as not to prejudice the evaluation of these applications. 326 U.S. at 333. The use of a lottery will comport with this aspect of *Ashbacker*. Subsequent case law building on *Ashbacker* has held that the Communications Act's hearing requirement mandates that mutually exclusive applications be compared to determine which would best serve the public interest. *E.g.*, Johnston Broadcasting Cp. v. FCC, 175 F. 2d 351 (D.C. Cir. 1949). Congress has amended the Act, however, to permit random selection of licensees instead of comparative hearings. Thus, to the extent that *Ashbacker* has been interpreted to require a comparative evidentiary "hearing" as opposed to comparative (i.e., simultaneous) "consideration", we conclude that such an interpretation has been overruled by the lottery statute. The D.C. Circuit recently made it clear beyond question that Congress may enact legislation that overrides applicants' vested Ashbacker rights and provides for a different method of awarding licenses. Multi-State Communications, Inc. v. FCC, *supra* note 26.

[41] Methodology: $30,000 divided by ($30,000 plus $160,000) equals 0.16; $150,000 divided by ($150,000 plus $414,000) equals 0.27.

[42] Expenditures of applicants in reliance on existing policy raise a private, rather than public, interest concern. *See* Mobile Telecommunications Corporation, 49 RR 2d 1506, 1511 (1981).

[43] In the Report and Order, supra note 2, we acknowledged that many potential users have been discouraged from using existing mobile services because of its poor quality and congestion on the limited number of available channels. Presumably, many of these people will subscribe to cellular service when it becomes known that cellular is a higher quality service than existing mobile services.

[44] A few commenters argue that the need for cellular is limited to the top-30 cities because there are unassigned conventional mobile frequencies in some areas. Our finding of need in the Report and Order was not limited to the largest cities, although the need is obviously more acute there. Consumers should not be denied expeditious availability of new technology simply because lower quality substitutes are currently available. *See generally* Property Depreciation, 83 FCC 2d 267, 281 (1980).

[45] Prices for cellular equipment and service will be lower when more people subscribe to cellular service because indirect expenses are distributed among more customers and because of economies of scale both in the production of equipment and in the provision of the radio service.

[46] Roamer service is the provision of service to subscribers (usually of another carrier) who wish communications service when traveling outside their "home" area.

standards with respect to acceptability of amendments, and utilizing application analysts in addition to engineers in the processing of cellular applications. Other forms of streamlining include eliminating pre-screening and, not addressing petitions to deny in designation orders.

27. While these suggestions have surface appeal, we do not believe that streamlining the comparative process serves the public interest as well as the lottery does. Further streamlining does not promise the dramatic savings in cost and time to be derived from a lottery. It promises no relief from the blizzard of paper (direct and rebuttal cases, motions, petitions, proposed findings, exceptions) that has inundated our staff and the administrative law judges since June 7, 1982. A more streamlined comparative process does not promise a better qualified licensee than one chosen by lottery from a group of basically qualified applicants. On the other hand, streamlining the comparative process even further may exacerbate several inherent weaknesses of comparative hearings. For example, imposing strict page limitations and eliminating cross-examination altogether could result in a deficient record, thereby undermining the validity of the selection made.[47] The elimination of pre-screening would mean that applicants who filed defective applications would nevertheless be included in hearings. This would needlessly complicate an already difficult process. The suggestion that petitions to deny not be addressed at the time of designation but instead be considered as issues in hearing is also unlikely to speed the licensing process. While this would permit the staff to issue designation orders more rapidly, it would result in a far more extensive inquiry in hearing, thus delaying the grant of an application. It is also predictable that modified procedures will elicit claims of denial of due process from losing applicants. Consequently, the modest cost and time savings during the hearing process will be vitiated by later appeals here and in the courts.

28. For similar reasons, we reject the alternative of utilizing a lottery in some, but not all, markets. Several commenters propose utilizing a comparative hearing for the "unique" markets. While we believe we have residual authority under the lottery statute to refrain from using the lottery in particular circumstances, we find no basis for making exceptions at this time.[48] A policy of utilizing a lottery in only some cases, or as some commenters have suggested, after a pre-lottery comparative process of some type, would be difficult to administer and would undoubtedly generate extensive litigation on each decision to proceed by lottery or comparative hearing. It is questionable, in fact, whether such procedures would save any time or resources. In the final analysis, streamlined comparative hearings, pre-lottery hearing processes and selective use of lotteries represent the worst of all possible worlds.[49]

29. Overall, any slight benefit that the public might realize through any type of comparative proceeding in identifying marginally better qualified candidates is significantly outweighed by the expense, burden and loss of time that the consumer and the government will suffer.[50] Vigorous competition between the two carriers in the market, regardless of the method by which each obtained its license, is far more likely to produce high-quality, low-cost service than any proposal designed to win a comparative hearing. Competition will be achieved far sooner and at far less cost if we award licenses by lottery.

III. Wireline Set-Aside Issue

A. Comments

30. In the *Notice* at paras. 13–19, we proposed to maintain the separate allocation for wireline and nonwireline carriers in markets 31–90, for which applications are currently on file, and for all markets below the top-90 during the remaining months of the set-aside.[51] The original rationale for adopting the set-aside was three-fold: to take advantage of the unique technical expertise of AT&T and the other wireline carriers; to expedite the introduction of cellular service to the public; and to maintain the traditional competitive market structure of the mobile service industry. 86 FCC 2d at 487–491; 89 FCC 2d at 69–74. In the *Notice*, we recognized that lottery procedures undercut the foregoing rationale to some degree and, thus, there may be some justification for eliminating the set-aside. However, we proposed to retain this structure for several reasons. First, we found, wireline carriers had relied on the decision to reserve a license in each community for the telephone company. Second, we were concerned that, if we eliminated the separate allocation for markets 31–90, considerations of due process would require us to reopen these markets to additional wireline applications. We pointed out that, under a policy set forth in the *Report and Order, supra* note 2, 86 FCC 2d 490 n. 56, wireline carriers, unlike nonwireline carriers, are eligible to apply for cellular licenses only in the general areas in which they have a wireline presence; consequently, we reasoned, the elimination of the set-aside would require the elimination of this restriction on wireline eligibility so that it would be necessary to reopen the application process for these carriers in markets 31–90. We found this solution to be unacceptable because it would cause prolonged delay with no discernible public interest benefits. Finally, we stated our tentative belief that the set-aside should be retained because it assures that telephone companies will have an opportunity to participate in cellular service.[52] Our major concern here was the potentially adverse financial impact on the general financial health of wireline carriers and on local telephone exchange rates. *Notice, supra* note 1, at para. 18.

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[47] For example, no oral cross-examination was permitted in MCI Cellular Telephone Company, supra note 31, precipitating a Motion to Reopen the Record and a Commission decision discounting certain conclusion as unsupported by the evidence. *Id.* at paras. 40–41.

[48] See our discussion of San Juan, P.R., at note 83, *infra*.

[49] One commenter suggests that we institute auctions rather than lotteries. Auctions are not in issue in this proceeding, nor do we have clear statutory authority to use auctions, as we do lotteries. Millicom's sharing approach is also beyond the scope of this proceeding and, in any event, appears to be another attempt to resurrect the licensing scheme we rejected in the Report and Order, 86 FCC 2d at 477–78. Finally, near the end of our deliberations we received a letter from Governor Scott M. Matheson of Utah in which he suggests that the FCC delegate to the state commissions the authority to conduct comparative hearings to choose cellular licensees. Assuming that the states had the resources and expertise to conduct and decide comparative economic licensing hearings, there would be a fundamental legal impediment to this proposal. Under section 5(c) of the Communications Act and section 557 of the Administrative Procedure Act, the Commission may delegate its comparative hearing functions only to its own employees.

[50] *C.f.* Advanced Mobile Phone Service, Inc. 53 RR 2d 1127 (1983) (Los Angeles wireline settlement approved notwithstanding claim that comparative hearing might have identified marginally better qualified candidate).

[51] The separate cellular allocation for wireline and nonwireline carriers was scheduled to expire on April 8, 1984. However, we temporarily suspended the expiration of the set-aside pending a comprehensive resolution of this issue in the instant proceeding. *See* note 3, *supra*. A petition for reconsideration of this action was filed by Lincoln Telephone and Telegraph Company, *et al.*, arguing that set-aside should remain in effect. See note 67, *infra*, for our resolution of this matter.

[52] This conclusion was based, in part, on the premise that the separate allocation assures a competitive market structure in which two carriers with different histories and different approaches to service vie with one another in the marketplace. Notice, *supra* note 1, at para. 14.

31. All of the wireline commenters, of course, encourged the Commission to retain the set-aside for markets 31–90, as well as to maintain the set-aside for the remaining markets. The Regional Cellular Companies support the set-aside primarily because it has facilitated settlements and expedited the nationwide introduction of cellular service. They explain that settlements were reached in each of the 18 of the top-30 markets in which mutually exclusive applications were filed, resulting in wireline authorizations in all top-30 markets; they also report that they have reached a settlement agreement for the wireline licenses in most of the markets in Rounds Two and Three in which there are mutually exclusive applications. United Telespectrum, Inc. and other independent telephone companies argue that without a set-aside, a single common lottery including both wireline and non-wireline applicants would statistically preclude them from any significant participation in cellular because of the large number of nonwireline applicants they they would be competing against. They also claim that wireline carriers remain uniquely qualified because of their experience with high capacity, digital switching networks and local exchange interconnection, and contend that it would be unfair to eliminate the set-aside because they have invested time, money, and effort in reliance on the set-aside. Many small independent telephone companies advocate retaining the set-aside, because their participation in cellular service is essential to the future viability of small telephone companies. They claim that cellular will eventually supplant landline local exchange service in low density, rural areas and that it would be unfair to deprive them from offering this substitute for local exchange service.

32. The nonwireline carriers diverge on whether to retain the set-aside for markets 31–90. Nonwireline carriers in favor of retaining the set-aside rely primarily on the potential disruptive effect of eliminating this policy for applications already on file. However, most nonwireline carriers recommend that the set-aside be eliminated for markets beyond the top 90. They explain that utilizing a lottery procedure provides a substitute for the speed of service rationale on which the set-aside was based in part, and they argue that the justifications contained in the *Cellular Lottery Notice* are insufficient to warrant the continuation of the set-aside. The nonwireline carriers also arque that the Commission's wireline financial health rationale is unfair because existing mobile carriers will also be harmed by the advent of cellular service just as much as existing telephone companies, but will not receive the protection of the set-aside.[53] Cellular Communications, Inc. objects to the Commission's reliance on the adverse impact on local exchange rates because no subsidy from cellular service to landline telephone service has been shown to exist.

33. The Justice Department recommends that the Commission eliminate the set-aside for wireline carriers. Justice asserts that wireline carriers do not deserve any sepcial regulatory treatment; they are no more "qualified" than any other communications providers to deliver cellular service. Justice also disagrees with the Commission's analysis concerning the adverse effect on local telephone rates or the wirelines' general financial health, arguing that there is no basis for this conclusion.

B. Discussion

34. We have reexamined our tentative conclusion to retain the set-aside in view of the arguments raised in the comments. As an initial matter, there is no doubt that we have the authority to adopt separate wireline and nonwireline allocations. Under the Communications Act, the Commission has express statutory authority to "classify" radio carriers and to "[a]ssign bands of frequencies" to the different classes of carriers. 47 U.S.C. 303 (a), (c). The crucial issue then raised is whether, as a policy matter, it is in the public interest to have separate wireline and nonwireline allocations. While the commenters raise some persuasive arguments advocating the elimination of the set-aside in view of our lottery proposal, there are several reasons, on balance, which militate toward retaining the set-aside both for markets below 90 and for markets already on file. We first address markets for which applications are not yet on file.

35. Retention of the separate allocation assures that telephone companies, both large and small, will have an opportunity to participate in cellular service. We are concerned that if we eliminated the set-aside, the large number of nonwireline applications would statistically preclude wireline carriers from any significant participation in the provision of cellular service. Such a result would not be in the public interest. Cellular service is a local exchange radio service under sections 2(b) and 221(b) of the Communications Act of 1934, which is a natural extension of local exchange landline service. *See Notice, supra* note 1, at para. 17; *Cellular Reconsideration Order*, 89 FCC 2d at 71; *MTS–WATS Market Structure (Access Charge Further Reconsideration Order)* 49 FR 7810, released February 15, 1984, at para. 149.[54] Cellular service may, over time, supplant landline local exchange service in some areas. Indeed, many of the small independent telephone companies project that cellular service will prove to be a cost effective means of providing basic telephone exchange service in remote areas where the cost of providing landline service is high.[55] These rural telephone companies should not be precluded from using cellular technology to provide basic telephone service.[56] While the Commission has long pursued the policy of encouraging competition in mobile services, it has never sought to displace the telephone companies themselves from providing such services. *Notice, supra* note 1, at para 11.[57] In addition, if rural telephone companies are precluded from providing cellular service, they may lose their landline subscribers to the cellular carriers. Ultimately, this diversion may cause rural companies to lose revenues, and inhibit their ability to provide local exchange landline service at affordable rates so that many individuals may be forced to forego telephone service. In recent proceedings, we have expressed our concern that the continued financial viability of small telephone companies is necessary to ensure our goal of universal service. *See, e.g., Further Notice of Proposed Rulemaking*, CC Docket Nos. 78–72 and 80–286, FCC 84–133, released April 11, 1984.[58] Although it

[53] In the alternative, many existing carriers request that a preference be established for existing mobile carriers who would be harmed by cellular service. *See* note 70. *infra.*

[54] Cellular is also considered "exchange telecommunications" under the terms of the Modification of Final Judgment (MFJ) in U.S. v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1982), and will be offered by subsidiaries of the divested Bell Operating Companies. (BOCs).

[55] *See, e.g.*, Comments and letters of Moultrie Independent Co., Organizaiton for the Protection and Advancement of Small Telephone Companies, Huxley Cooperative Telephone Co., Michigan Independent Cellular Telephone Corporation, Big Sandy Telecom and Ollig Utilities Company.

[56] In addition, one commenter suggests that the digital switch used in local exchange service can be converted to accommodate both *cellular* and landline telephone service. Of course, if this were to occur, the wireline company would have to allocate costs accordingly to reflect the different uses of the switch, and are reminded of their equal interconnection obligations in this regard.

[57] The Commission once considered whether to prohibit the entry of telephone companies into the cellular market; however, this proposal was rejected because of compelling public interest reasons to support wireline ownership of cellular systems. 86 FCC 2d 483–486; 89 FCC 2d at 66–69.

[58] This Commisison is committed to the perservation of universal service. See MTS and WATS Market Structure (Access Charge Order), 93 FCC 2d 241, 567 (1983), *modified on other grounds*, 48 FR 42987 (September 21, 1983), *further modified*, 49 FR 7610 (March 2, 1984), *appeal pending sub nom.* NARUC v. FCC, No. 83–1225 (D.C. Cir. filed March 1, 1983). Joint Board Decision and Order, CC Docket No. 80–286, 49 FR 7934 (March 2, 1984), at paras. 29–

has not been demonstrated with certainty that cellular service will supplant landline local exchange service, we are concerned about the potential long-term detrimental effects on universal service that could result from a premature elimination of the set-aside. While such long-term effects are not quantifiable at this time, the potential for adverse disruptive effects on universal telephone service persuades us that retention of the set-aside is in the public interest.

36. The wireline/non-wireline dichotomy also is consistent with the Commission's historical separate treatment of these two classes of carriers for most common carrier mobile frequencies. The Commission originally adopted the separate allocation policy in 1949 in order to protect the fledgling radio common carrier industry from telephone companies being licensed on all or most of the new mobile frequencies. *General Mobile Radio Service,* 13 FCC 1190, 1218 (1949). This policy, which was one of the Commission's first pro-competitive policies, has resulted in a highly competitive market structure in which two carriers with different histories and different approaches vie with one another in the marketplace. *Notice, supra* note 1, at para. 14. Retention of the separate allocation policy through the period for initial application filing will ensure continued wireline participation in the provision of cellular services and will be a stimulant to extending the healthy competition in existing mobile services to this new age of cellular communications. Through parallel but separate lotteries, both types of communications carriers would be assured adequate representation in their respective markets, would be given an opportunity to continue offering the public their products based on their own traditions of service, and would compete for customers on the basis of price, quality and service features.[59] This underlying policy thrust has been pursued consistently since the 1949 initial allocation of common carrier mobile spectrum to both telephone companies and nonwireline carriers and has been a major component in our cellular policies to date.[60] We believe that the public interest will be ill-served by denying the public the benefits resulting from this industry structure.

37. Third, the separate allocation coupled with the wireline market presence requirement has been effective in expediting the provision of cellular service to the public.[61] As a result of these policies, we have granted a wireline authorization in every top-30 market, and have received major settlements for both the wireline and nonwireline authorizations in markets 31–90. Although a lottery procedure somewhat diminishes the need for settlements, there are several reasons for which resolution of mutually exclusive applications by settlement agreement remains in the public interest. *See Notice, supra* note 1, at para. 21. First, settlements allow many different parties with a variety of financial, technical and operational resources to participate in cellular service. This heterogenity is particularly important when there can be only two licensees per market.[62] Second, settlements minimize the administrative burden, delay and expense in granting a cellular license. Even with a lottery, we expect numerous petitions to be filed against the tentative selectee, and thus significant resources will be spent resolving these petitions, and administrative and judicial appeals are inevitable.[63] Consequently, the public interest is served by continuing these policies which have been so effective thus far in providing an atmosphere that is conducive to producing settlement agreements, and thereby expediting service to the public.

38. Fourth, eliminating the set-aside for markets 91 and beyond would be particularly unfair to small telephone companies who, thus far, have been excluded from applying for cellular licenses in the larger markets because of the wireline presence requirement. To eliminate the set-aside for the markets where these companies have a presence [64] would open up these markets to competing applications in a unified lottery and would be likely to preclude them from participating in cellular service in the smaller markets also. As a result, these telephone companies would be totally precluded from participating in the provision of cellular service.

39. Several parties argue that it would be in the public interest to remove the set-aside and conduct a unified lottery for both the wireline and nonwireline applications for markets 31–90. In the *Cellular Lottery Notice,* we expressed our concern that, if we eliminated the set-aside, considerations of due process would necessitate reopening these markets to additional wireline applications. Most commenters share this concern, conceding that it would be unfair to foreclose wireline carriers from applying outside their franchise area, while simultaneously allowing nonwireline carriers to apply for cellular service without eligibility restrictions. Consequently, if we were to eliminate the set-aside retroactively, we would have to give serious consideration to eliminating the wireline eligibility restriction retroactively. This change of policy could necessitate our reopening of these markets, resulting in delay that would be contrary to our objective of expediting the provision of cellular service, especially in view of the wireline settlements in Rounds Two and Three.

40. Overall, the public interest reasons for retaining the set-aside outweigh the arguments for eliminating it. We emphasize that this is a close case. The commenters, both those who advocate retaining the set-aside and those arguing for its elimination, have provided persuasive arguments to support their views. We recognize that there are equities weighing in favor of both positions. However, our decision to retain the separate allocation rests on a careful balancing of the public interest considerations presented by commenters, the equities raised and our determination that it would be counterproductive to modify this allocation structure at this juncture in our cellular processing. *See FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775, 793–797 (1978).

41. We will retain the wireline set-aside through the conclusion of the

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[59] Wireline carriers are major providers of two-way mobile communications (as compared to paging service which is dominated by the RCCs). Every Bell operating company provides mobile service; for the year 1981, the BOCs had 59,746 units in service. The independent telephone companies had an additional 20,828 units in operation at the end of 1980. Notice, *supra* note 1, at para. 17.

[60] Recently the Commission proposed to eliminate the separate frequency allocation structure for the conventional two-way mobile services. Elimination of the Separate Frequency Allocation, CC Docket No. 83–1146, 48 FR 57571, released December 12, 1983. Although the Commission found that this allocation policy served its purposes well, this change was proposed to enable nonwireline carriers to apply for wireline frequencies which up until now have not been utilized. Similarly in this proceeding, we are limiting the duration of the set-aside to the initial application filing periods to prevent these frequencies from going unused. *See* para. 41, *infra.*

[61] *See* para. 30, *supra.*

[62] Nevertheless, we will grant cellular applications only to applicants who are fully qualified to establish high-quality cellular systems. Advanced Mobile Phone Service, Inc., *supra* note 50, at para. 18.

[63] For example, if a wireline lottery is necessary in a market between 31 and 90, we estimate that it is likely to be August 1985 before petitions for reconsideration and appeals are finally resolved. On the other hand, an authorization as a result of a full market settlement is likely to be issued as early as August 1984, given that the settlement agreements for many of these markets are already on file.

[64] In markets where only one telephone company has a presence, that carrier could expect to receive a license (absent qualifying issues) if a separate allocation is used; without a separate allocation, the local telephone company would be only one of many applicants.

initial filing periods for the remaining MSA/NECMA areas and the non-MSA/non-NECMA filings.[65] After the initial filing periods have passed, we will reopen all remaining frequency blocks in areas which have not been applied for, without regard to a set-aside. The separate allocation policy was originally scheduled to expire after five years;[66] in the *Reconsideration Order*, 89 FCC 2d at 70, this was reduced to two years.[67] These sunset provisions were adopted so that all initial filings would be covered by the set-aside, while also ensuring that these frequency blocks would not go unused or lie fallow for any appreciable amount of time. *See* 86 FCC 2d at 488, 491; 89 FCC 2d at 70–71. *See also Elimination of the Separate Allocation Policy, supra* note 60. Those same considerations apply here. However, we have decided against setting a date certain for the expiration of the set-aside because it is difficult to predict when we will complete the initial licensing of cellular systems. Rather than setting an expiration date which inevitably would be extended, we are retaining the set-aside through the initial filing periods for all markets.

IV. Preference Issue

A. Comments

42. We invited comment on whether we can and should use any preferences in the cellular lottery. *Notice, supra* note 1, at para. 12.[68] Some two dozen commenters expressed opinions on the issue of minority preferences, with most parties agreeing that no minority preferences should be granted. They rely on the mass media/common carrier distinction, and state that the justification for minority preferences in mass media-editorial control, and resulting content diversity—is not present for common carrier services. Several commenters note that the inclusion in the lottery of a new criterion which was specifically not included as either a qualifying or a comparative issue in the rules would work an injustice upon those who have already filed applications. Shooshan and Jackson, Inc. advocates that there should be no minority preferences because the fulfillment of EEO requirements is a basic qualifying factor, not a comparative factor or preference basis. According to Triad Citizen Cellular Radio, Inc., it is clear from the filings in the top 90 markets that minorities are actively participating in the cellular proceedings, and are ready and able to be involved in cellular operations; therefore, no extra incentive in the form of a preference is needed.

43. There were only a few commenters who support the use of minority preferences.[69] They argue that the time is ripe to form a new policy on the issue of minority participating in telecommunications and that the initiation of a new service offers a unique opportunity to do so. They further argue that, quite apart from concerns with diversity of program content, the Commission has historically stressed minority ownership of, and participation in, telecommunications enterprises as a valid policy goal.

44. There were also a great number of preferences suggested by the commenters other than for minority ownership. Several parties suggest preferences for local ownership; still others recommend that existing radio common carriers be given a preference to compensate for the financial harm expected to occur in conventional mobile services, much like the "de facto preference" of the wireline set-aside. TDS and others propose a population and coverage preference. Cellular Telephone advocates a diversity preference for applicants who receive fewer cellular licenses. But the most frequent preference proposed by the parties was for settlement agreements. Most commenters agree with the Commission's suggestion that settling parties be given the cumulative number of chances to which their applications would have been entitled without settlement. Several commenters suggest giving an extra chance or doubling the cumulative chance. Many commenters request that a cumulative chance preference be awarded for settlements or joint ventures which were entered into prior to the application's filing. They argue that it would be unfair to penalize parties who achieved a partial cellular settlement before filing their applications.

45. There were many parties that were opposed to awarding any preferences. Coastal Utilities, Inc. contends that the Commission should not depart from its earlier conclusion that there will be no preferences in the common carrier services. Other commenters oppose preferences in general because such a system needlessly complicates the lottery procedures. The Justice Department and others oppose settlement preferences because of the potential for abuse of process. They explain that abuse is possible as a result of applicants filing applications while at the same time agreeing to settle in order to increase the chances of winning. Still another commenter was concerned about the anticompetitive effect of encouraging joint venture groups which can freeze out certain applicants.

B. Discussion

46. We conclude that no preferences should be awarded for cellular service. There were a host of preferences suggested by commenters. While appealing arguments can be raised regarding a number of these potential preference bases, none of these suggestions reflects sufficient public interest considerations to warrant inclusion in the cellular procedures. For example, we do not believe the public interest would be served by adopting a preference for local carriers.[70] Overall, we find that preferences needlessly complicate the lottery procedures and create enormous potential for application abuse and unproductive litigation on the validity of a preference.

47. With respect to minority preferences,[71] the commenters did not

[65] Concurrently with the set-aside, we will extend the wireline presence requirement through the conclusion of the initial filing periods for all markets. This requirement has served to limit the number of mutually exclusive applications and emphasize the link between local exchange service and cellular service.

[66] *Report and Order*, 86 FCC 2d at 488.

[67] As explained in note 51, *supra*, Lincoln Telephone and Telegraph Company has requested reconsideration of our Order suspending the expiration of the set-aside, arguing that the set-aside issue should not be reexamined, but rather should remain in force through the initial filing periods. In view of our action here, this petition is moot.

[68] While not technically a "preference," we proposed to give parties who enter into settlement agreements the cumulative number of chances in a lottery that they would have had if no settlement agreement had been reached. *Notice, supra* note 1, at para. 21

[69] Cell-Tell Network, Cell-Fone of Canton and the National Urban League. In addition, the law firm of Lovett, Hennessey, Stambler anbd Sibert argues that the use of a lottery will result in the exclusion of minorities from participation in cellular service notwithstanding the inclusion of a preference system. They suggest instead that each minority applicant be reviewed individually to determine whether a particular application will tend to perpetuate or alleviate the exclusion of minorities from cellular radio ownership patterns. We reject this suggestion for the same reasons that we reject minority preferences for this service in general. *See* para. 47, *infra*.

[70] A few carriers suggest that we award a preference for existing mobile carriers who may be harmed by the advent of cellular service, similar to the "preference" of the set-aside. We decline to adopt their suggestion. The set-aside is being retained because of a variety of interrelated public interest factors, not the harm to individual carriers. In addition, a preference in this regard would be extremely difficult to administer.

[71] The lottery statute mandates that significant preferences be granted to minorities for licenses in the mass media services, but does not address the applicability of preferences to common carrier service. The Conference Report, *supra* note 11, at 41, however, states that no preferences need be applied for common carrier services. Although it is unclear

Continued

present any reason to depart from our earlier determination in the *Second Lottery Report and Order* that no minority preferences should be awarded in common carrier services. We believe we have the authority to award minority preferences here, given a sufficient record upon which to act. On that basis, therefore, as noted above, we solicited comments on this issue. Unfortunately, none of the rationales for minority preferences advanced relate to public interest objectives for this service.[72] In the absence of some public interest goal that is relevant to these objectives, we must decline to award preferences here.

48. While we are not adopting any preferences for cellular service, we affirm our tentative decision to allow settling parties in markets 31–90 a cumulative chance to reflect any partial settlement. We will also accord this treatment to applicants in markets below the top-90 who settle after they have filed their applications. Some entities claim to have entered into pre-filing joint ventures in accordance with our policy encouraging settlements, and want their joint ventures to be recognized with cumulative chances in a lottery. There is no way for us to verify the motivations of parties who join together to file an application. Some may have joined in the hope that a joint venture would receive a comparative credit in a hearing. Some may have sought joint ventures because they had money but no technical or marketing expertise, while others may have had expertise but no money. Absent some objective verification of intent, seemingly a fruitless undertaking, we cannot find it in the public interest to recognize pre-filing "settlements".[73]

V. Filing Procedures and Qualifications Standards for the Beyond 90 Markets

49. In the *Cellular Lottery Notice, supra* note 1, at para. 8, we tentatively stated that applications for markets 91 and beyond would be filed in accordance with the regular Public Mobile Radio Services notice and cut-off procedures set forth in Part 1 and Part 22 of our rules. We have received a number of comments in this proceeding, however, suggesting that the use of regular notice and cut-off filing procedures will not serve the public interest and proposing alternative or modified procedures. In addition, we specifically solicited comment on a number of related matters including whether to adopt geographic boundaries for the filing of applications for non-MSA and non-NECMA areas and whether the use of lottery selection procedures necessitates that we adopt basic service qualifications for all beyond 90 applications as a precondition to being placed in a lottery.

50. *Filing Procedures.* We adopted "one-day" or "date-certain" filing procedures [75] for the top 90 markets in order to reduce the delay in the filing of competing applications that occurs during the regular 60-day cut-off period set forth in Section 22.31 of our rules and to prevent applicants from engaging in one-upmanship to gain a comparative advantage.[76] We originally adopted this approach for the top 30 markets only;[77] however, we extended it to markets 31–90 as we became aware that there would be even more applications filed for these markets than for the top 30 markets, thereby increasing the potential for abuse of our processes.[78] In addition, we accepted applications in 30-market phases in descending size of population in order to reduce the processing burden on our staff and resources and to limit the time applications would have to await staff processing. The procedures reflected a policy of dealing first with the largest markets where the demand for cellular service was expected to be greatest, and where the shortage of mobile frequencies has been most acute.

51. With the adoption of lottery selection procedures, the use of notice and cut-off filing procedures for the below-90 markets is inappropriate. Although applicants would have no incentive to engage in one-upmanship without a comparative process, competing applicants could still examine an earlier filed application and simply copy it in order to obtain a "lottery ticket". Thus, notice and cut-off procedures which allow public inspection of earlier filed applications would allow copying and would result in the filing of superficially acceptable "lottery entries" by insincere applicants. This would contravene our intention that cellular applicants participate directly in the development of their proposals and that such proposals reflect the applicant's own determination of how best to serve a particular cellular market area. Under a date-certain approach, such as we are adopting, applications may not be viewed prior to the filing deadline, thereby precluding the copying problem.

52. The primary reason we have been reluctant to abandon notice and cut-off application procedures for the smaller cellular markets is that they do not "force" an applicant to file for a market which may not be ready to support cellular service.[79] This does not seem to be a problem in most cellular markets, however. Our review of the comments in this proceeding indicates that prospective cellular providers are prepared to apply for many of the remaining markets as soon as we are ready to accept their applications. Moreover, a one-day filing period, which will encourage the filing of applications for all viable markets at the earliest time possible without the delay and uncertainty of awaiting expiration of the cut-off period, is consistent with our desire to expedite the availability of cellular service on a nationwide basis.[80] However, we will also establish a subsequent open-ended period, subject to notice and cut-off rules, for the filing of applications for any initially unapplied for markets, as discussed below.

53. We will adopt "blind filing" notice and cut-off procedures as suggested by a number of commenters. Under this approach, we would withhold public inspection of the first-filed and all subsequent applications for a market until expiration of the cut-off period. A simple public notice announcing only that an application was filed for a given market would trigger the 60-day period. This approach would be significantly more burdensome to administer than a

whether we have authority under the lottery statute itself to adopt minority preferences in cellular service, we have postulated that our general authority to act in the public interest may include the ability to award preferences. Notice, *supra* note 1, at para. 12.

[72] We noted in Florida Telephone Co., FCC 84-149, adopted April 11, 1984, that the Commission's commitment to a diversity of views to serve the public applies only to mass media services and was not a justification applicable to this common carrier service.

[73] Nothing prevents applicants from agreeing before the applications are filed that they will enter into a joint venture after the filing date, thereby obtaining a cumulative chance. However, to be eligible for a cumulative chance, each applicant must file an individually acceptable cellular application. *See* para. 71, *infra*.

[75] Under these procedures, applicants are actually given a two-week period ending on the specified date to file their applications.

[76] One-upmanship occurs, under notice and cut-off procedures, when an applicant looks at the earlier-filed applications for a market and attempts to improve upon them in its own competing application in order to gain a comparative selection advantage. As a result, the applicant's proposal would no longer reflect its best view of how to serve the market but instead its use of the administrative process to obtain an advantage over competitors. A one-day filing period prevents this practice.

[77] Reconsideration Order, 89 FCC 2d at 87–88.

[78] Further Reconsideration Order, 90 FCC 2d at 574–75.

[79] Further Reconsideration Order, 90 FCC 2d at 575.

[80] The applications for markets 31–90 have been pending longer than we anticipated because we did not anticipate the burden on our resources that the process would impose. The lottery procedures we adopt here should reduce the backlog rapidly.

one-day process and we see no particular advantage to it given the high degree of applicant interest in most markets. The one-day filing procedure, which also prevents copying, has worked well in the top 90 markets and its adoption for the remaining markets will effectively prevent the abusive practices discussed above.

54. We have decided to accept applications for the below-90 markets in phases similar to those used for the above-90 markets. There, we accepted applications in three 30-market phases in order to reduce the administrative processing burden on our staff, avoid having applications filed just to sit on the shelves awaiting processing and establish an orderly processing system. A number of commenters urge, however, that we not postpone further the fourth round filing date and that we accept applications for *all* remaining markets either on a specified date or over a very short "window" period. For example, Cel-Tel suggests that we begin accepting applications for all remaining markets on March 1, 1984, but that final deadlines for each group of 30 markets be staggered throughout the remainder of the year.[81] We find that the approach we have used for accepting filings for the top-90 markets is administratively simpler, will not require that we sequester the applications from public inspection until the final deadline for each group, and will better accommodate the large number of anticipated filings without overburdening our resources. There is no public benefit in applicants rushing to prepare applications if we are not ready to process them expeditiously. This procedure should also serve to reduce the number of updating amendments required under Section 1.65 of our rules. Finally, since the setting of a phased acceptance schedule for the remaining markets is intended to establish and maintain an orderly processing system and is primarily an administrative concern, there is no prejudice or disadvantage to prospective applicants in our deciding not to accept applications for all remaining markets at one time.[82]

55. We will accept applications for the remaining MSAs and NECMAs in groups of 30 in decreasing size of population.[83] Applications for markets 91–120 will be due on July 16, 1984.[84] We expect to establish dates for the filing of successive 30 MSA and NECMA groups at regular intervals to be announced subsequently. The Common Carrier Bureau will issue a Public Notice as soon as possible, listing the markets to be filed for in the next round, as well as a list of the remaining MSAs and NECMAs. After applications for all MSAs and NECMAs have been filed, we will accept on a date certain applications for all non-MSA and non-NECMA areas. After that, we will establish an opening date for the filing of applications for any remaining areas, whether located within or without an MSA or NECMA, which have not been applied for. For this last category, we will use regular notice and cut-off procedures instead of a date-certain filing deadline. This will enable applicants to file for any remaining areas at such time as they believe these areas can support cellular service. We recognize that there may be areas within the smaller MSAs or non-metropolitan areas, such as interstate highways, in which carriers may be anxious to implement service because they connect major metropolitan areas. While the filing procedures we adopt here may not result in expeditious service for such areas in some cases, we cannot make provisions for every possible situation and still maintain an orderly, expeditious processing system for the vast majority of the country.

56. *Non-Metropolitan Areas.* In our *Cellular Lottery Notice*, at para. 9, we requested comment on whether we should establish some geographic boundary as the outer limit of an applicant's CGSA for non-MSA and non-NECMA areas. These outer boundaries would serve the same purpose as MSA and NECMA boundaries in metropolitan areas by establishing an outer limit to an applicant's service area. We noted that without outer boundaries, applications for non-MSA and non-NECMA areas could have radically different CGSAs and that it might be difficult to determine when applications are mutually exclusive. The establishment of outer boundaries for these otherwise undefined areas would provide a basis for determining when applications for such areas are mutually exclusive for cellular lottery purposes.[85] We proposed the use of entire states or alternatively Basic Trading Areas (BTAs) as defined in Rand McNally's *Commercial Atlas and Marketing Guide* as outer limits on a non-MSA, non-NECMA CGSA and solicited comment on these and other alternative definitions and on the threshold question of whether such outer boundaries are necessary at all.

57. We received comments on this issue from a cross-section of interested parties. More commenters urge that we not establish outer boundaries for non-MSA, non-NECMA areas than support any one definition. These commenters contend that the diverse physical, population and other characteristics of non-metropolitan areas make establishment of a single national standard for defining non-MSA, non-NECMA areas impossible; that all proposed boundaries represent artificial constraints on cellular design that will unnecessarily limit service and cause

[81] We have already deferred the March 1 filing date pending completion of this proceeding. *See* note 3, *supra*.

[82] Applications for a market or any part of a market are due on a specified date and subsequent applications for that market or any part of it will be rejected as untimely. *See generally* Green Country Mobilephone, Inc., FCC 84–180, released May 15, 1984. Under §§ 22.903(d) and 22.913(a) of the Rules, however, we will allow a cellular permittee or licensee to apply to modify its existing authorization in order to increase its CGSA within the boundaries of the relevant MSA or NECMA. Although this constitutes a "major application" and must be placed on Public Notice for Petitions to Deny, we will not permit the filing of mutually exclusive applications during the initial nationwide cellular licensing period. We have long held that the public interest is served by allowing a cellular system operator the flexibility necessary to modify its system in response to marketplace forces. *See* Cellular Communications Systems, 86 FCC 2d at 509. Such modifications are natural extensions of an existing permittee's or licensee's cellular authorization in reponse to growing or changing demand and should be subject to minimal regulatory oversight during the initial nationwide cellular licensing period. However, after the initial application phase, we will reopen any unapplied for areas to any applicant under regular notice and cut-off rules as discussed further in para. 55, *infra*.

[83] Applicants are expected to file their applications using the new application forms as specified in the Revision and Update of Part 22 of the Public Mobile Radio Services, Rules, 49 FR 3296, released December 19, 1983, *recon. pending*, when they become available. A Public Notice will be issued when the new forms have been approved by the Office of Management and Budget and are available for use. Until that time, the existing forms should be used.

[84] Since we established our initial phased application acceptance schedule, the Office of Management and Budget added San Juan, Puerto Rico to the list of MSAs. (See Public Notice of November 1, 1983 for a discussion of other changes in MSA markets). Because San Juan is now one of the 30 largest MSAs, it has been suggested that we treat it as a top-30 market for cellular application purposes and use comparative selection procedures. We disagree. We have already decided not to retain comparative hearings for areas which are alleged to have special or unique characteristics, see para. 28, *supra*, and the mere fact that San Juan is now classified as one of the most populous MSAs does not of itself provide a persuasive rationale for retaining them for San Juan. On the contrary, a lottery should enable cellular service to be implemented in San Juan more quickly than it would be through the comparative process—a significant public interest consideration since, as a highly populated area, it likely has a pressing demand for cellular service. We will accept applications for San Juan on July 16, 1984.

[85] For communities within an MSA or NECMA, there is no question as to which applications are mutually exclusive because the MSA or NECMA boundary provides the outer limit of each applicant's CGSA.

economic inefficiency; and that the viability of cellular service in rural, less populated areas is dependent upon the applicant's freedom to design its service area in response to local demand and market characteristics. State boundaries and Basic Trading Areas are criticized as too large, especially in the West, to reduce effectively the incidence of mutually exclusive applications; [86] as posing artificial barriers to natural interstate markets; and, after excluding MSA and NECMA areas within them, as not capable of supporting viable cellular systems.[87] Single and multi-county limits are also criticized as arbitrarily dividing natural cellular markets and potentially resulting in a "daisy chain" of mutually exclusive applications throughout large parts of the country.[88]

58. On the other hand, a few commenters support BTAs, stating that BTAs define areas that should be served by a single cellular licensee because they generally follow county boundaries and track existing patterns of business and commerce, sales, newspaper circulation, highways and transportation.[89] A number of commenters also support the use of county or multi-county boundaries, stating that they are large enough to cover natural markets without needlessly multiplying the incidence of mutually exclusive applications,[90] and would coordinate well with systems based on MSA and NECMA boundaries.[91]

59. After careful examination of the comments on this issue, we are convinced that the public interest would not be served by establishing strict geographical limits on the CGSAs of cellular applicants for non-MSA and non-NECMA areas. Our primary purpose in proposing such boundaries was administrative: To simplify our determination of mutually exclusive applications and thus expedite the licensing of cellular service. However, the weight of the comments suggests that the proposed boundaries would not necessarily reduce the incidence of mutually exclusive applications. More important, every proposed boundary would to at least some extent be arbitrary, and would restrict the ability of cellular system designers to propose service to natural markets and to respond to local market characteristics. The lower population densities and rural character of the non-metropolitan areas makes the design of viable cellular systems more difficult than in more populated areas. The imposition of CGSA boundaries would artificially restrict the ability of cellular applicants to identify local demand, growth potential and marketing receptivity and to design their systems accordingly. Under these circumstances, we find that the public interest will be best served by imposing minimal restrictions on the freedom of applicants to design systems to meet market demand for cellular service in non-metropolitan areas.

60. While we have concluded that maximum system design flexibility in non-metropolitan areas is in the public interest, we also conclude that some maximum limit on the overall size of an applicant's CGSA is necessary to discourage abusive filings, limit to some extent the number of mutually exclusive filings and reduce disparities in CGSA size. We will limit the total size of the CGSA proposed in a single application in non-MSA, non-NECMA areas to 2,000 square miles.[92] This is the approximate average size of the 318 MSAs existing in 1980. Establishing this maximum CGSA size will help achieve the administrative ends we desire while preserving system design flexibility.[93] We conclude that a square mileage limitation is a more reasonable method of achieving our administrative objectives than that which we proposed in the *Notice* and that it will not hinder the ability of cellular applicants to design viable systems in non-metropolitan areas.

61. Upon screening all applications for non-MSA, non-NECMA areas, our staff will identify those applications that are mutually exclusive. Generally, we will consider applications to be mutually exclusive if their CGSAs overlap at any point.[94] However, our staff will retain the flexibility to make expert judgments in order to avoid endless "daisy chains" and to facilitate the licensing process. For example, because it has been our policy to require adjacent operators to coordinate frequency use,[95] the staff may be able to disregard minor overlaps, or even some fairly significant overlaps, in determining whether two applicants are mutually exclusive. The staff must also retain flexibility to group applicants for lottery purposes to break the "daisy chain" at some logical point.[96] Furthermore, we will afford applicants in non-MSA areas the opportunity to amend their applications under § 22.23(g)(2) of the rules [97] or to enter into settlements before the lottery is actually conducted.

62. We recognize that the process set forth above could result in applicants

[86] This results from the fact that an individual state may contain multiple diverse mobile markets resulting in all applications within the state boundary being considered mutually exclusive.

[87] These remaining areas would in many cases be sparsely populated, non-contiguous counties or groups of counties that could not support cellular service or would be unattractive from a marketing and/or operational standpoint.

[88] Western Union suggests that defining each remaining county not in an MSA as a unique cellular area would prevent the creation of a "daisy-chain" series of mutually exclusive filings. We decline to adopt this approach because, as the carrier itself recognizes, it would result in "thousands of separate markets" many of which might never be included in a cellular system.

[89] MRTS also proposes a list of 150 non-MSA, non-NECMA areas based on its own analysis of logical trading areas and expected high cellular usage. It suggests that we adopt this list of "Significant Nonmetropolitan Areas" for cellular application purposes. Although we find MRTS proposal to be a commendable effort to establish logical boundaries for non-MSA areas, we have no way to test whether these groups better follow natural markets and expected cellular demand than any other geographic boundary. Therefore, we will decline to adopt MRTS' proposal for the same reasons that we are not adopting any outer boundaries, as discussed in para. 59, *infra*.

[90] Western Union suggests that where applicants propose different but overlapping systems, each applicant receive one chance in the lottery for each county it proposes to serve with the entire market area being awarded to the winner regardless of how many counties it actually proposed to serve. We reject this approach because it would defeat our intention that applicants define their own service area and force them in some cases to provide service in areas for which they did not intend even to apply.

[91] Other proposed outer boundaries include "Economic Development Areas" as defined by the Economic Development Administration, and "Areas of Dominant Influence", a measurement of television broadcasting markets used by the *Broadcasting/Cablecasting Yearbook*. These proposals are supported by only a few parties and subject to the same arguments against adopting boundaries expressed against states, BTAs and counties.

[92] Of course, an applicant is free to design any size system up to the 2,000 square mile limit. In addition, to facilitate orderly and expeditious processing, we will require each non-MSA, non-NECMA applicant to list on the cover of its application the major cities within its proposed CGSA.

[93] This approach is similar to that suggested by Centel in proposing that the CGSA in non-MSA areas include area in no more than four counties, all of which must be contiguous. We believe the approach we adopt here is more adaptable to the diverse geography of non-MSA areas and will better serve our goal of preserving applicant design flexibility.

[94] Roseville Telephone Company suggests that cellular systems would have enough excess capacity in these rural areas to coordinate frequency use and avoid intersystem interference even if systems experiencing up to 25 percent geographic overlap are not considered mutually exclusive. While this view may have some merit, such a standard would be difficult to measure and would engender disagreement and administrative complexity in close cases.

[95] We are amending our pre-application frequency coordination requirements in light of our adoption of lottery selection procedures. See para. 84, *infra*.

[96] The applicants will be apprised of any staff action and will have an opportunity to comment if they are aggrieved by the result.

[97] This section enables applicants to file major amendments to remove frequency conflicts as long as they do not create new conflicts. In the cellular context, an applicant might delete or relocate a transmitter (i.e., alter its CGSA) to avoid mutual exclusivity.

with different but mutually exclusive CGSAs being placed in the same lottery and, for example, the applicant proposing to serve the smallest area being randomly selected. This result would not contravene the public interest because our rules and procedures assure that the unlicensed area will ultimately be served. If there is a need for service, an applicant could apply to serve any such unlicensed area in the final "open-ended" application phase for previously unlicensed or unapplied for areas which should open approximately three months after the filing of applications for non-MSA, non-NECMA areas. Moreover, as noted above, we will continue to encourage these applicants to voluntarily eliminate their coverage conflicts or to enter into complete settlements to prevent such situations. In short, any temporary inequities can be addressed and these occasional dislocations do not outweigh the benefits of expeditious resolution of mutually exclusive applications for most non-MSA, non-NECMA markets.

63. *Basic Service Qualifying Standards.* In the *Cellular Lottery Notice*, at para. 11, we proposed adopting basic service qualifications standards for all cellular applicants for markets beyond the top 90. We proposed to require each applicant for the remaining MSAs or NECMAs to serve at least 75% of the population of the MSA or NECMA area. In non-MSA, non-NECMA areas, we suggested that applicants be required to serve all incorporated areas of 25,000 or more persons or to provide coverage of all four-lane or larger highways connecting MSAs. We tentatively concluded that these standards would be necessary to avoid the filing of superficial cellular proposals by applicants eager to obtain a "lottery ticket". Accordingly, we solicited comment on whether these or other additional basic qualifications are necessary to ensure that lottery entrants are technically and financially qualified to operate cellular systems.[98]

64. Our proposal to adopt additional basic qualifications standards received wide support. For example, TDS, the Carolinas RCCs, United Cellular Network and Amcell argue that adoption of basic qualifying standards would be necessary to screen out marginal, frivolous or defective applications, and to prevent our being inundated with applications proposing wholly inadequate coverage and capacity to meet present and future service needs. As to the standards themselves, the commenters differ significantly on the specific standards that should be adopted. Many commenters support our proposal that applicants for the below-90 MSAs or NECMAs be required to serve 75% of the population of the MSA or NECMA applied for. There was also substantial support for more stringent or comprehensive coverage standards. Metro Mobile, Maxcell Telecommunications, and TDS, among others, recommend that we require applicants to serve 85% to 95% of the population of the MSA. Some commenters also propose requiring service to all major highways, universities, significant industrial and commercial areas, military bases and significant population centers. Other proposed standards include: requiring applicants to demonstrate the ability of their proposed systems to meet a grade of service standard; requiring applicants to conduct a unique demand study for each market applied for and to set forth in their applications how the study was used in developing their proposals; requiring interference-free operation within an applicant's initial system; and requiring a five-year expansion plan. MCI approaches the subject somewhat differently, generally opposing these kind of standards and proposing instead that we require a substantially stricter demonstration of financial qualifications by applicants for the below-90 markets combined with strict enforcement of an 18-month construction period.[99]

65. We also received comments from a group of carriers disagreeing with our tentative conclusions and opposing the adoption of additional basic qualifications standards.[100] The opposition commenters generally assert that standards effective in preventing superficial applications cannot be developed, given the complexity of cellular technology, without reducing or eliminating system design flexibility. A few also criticize our proposals as unnecessary and/or too stringent given the population and demand characteristics of smaller markets. For example, Cellnet Partners comments that tougher basic qualifications will only complicate the licensing process this proceeding is intended to streamline.[101] Metro Mobile believes that cellular applicants must be encouraged to tailor their proposals to specific market characteristics and that the adoption of uniform eligibility standards would discourage market-specific cellular design and encourage generic cellular designs.[102] American Mobilphone comments that our proposed standards will not guarantee selection of the most qualified cellular applicants because they focus primarily on population while ignoring other indicia of system quality. The Regional Cellular Company oppose the 75% coverage requirement on the basis that population is too dispersed in the below-90 markets for such coverage to be economic.[103]

66. The Justice Department also discounts the need for basic qualifications standards to deter the filing of speculative applications. It contends that the lottery selection process itself provides this deterrent in that an unqualified lottery selectee would not survive post-lottery review; since an insincere applicant would have no reasonable expectation of actually being licensed, it would not choose to incur the expense of applying. Therefore, the Justice Department concludes that additional qualifying standards are unnecessary and would

[98] It should be emphasized that, relative to all other common carrier services, the basic qualifications for cellular applicants are already quite high. *See* 47 CFR 22.913, 22.917.

[99] MCI proposes that we strictly enforce § 22.917 of our rules and require each applicant to demonstrate its ability to finance the construction and operation of a cellular system in every market in which it seeks a license.

[100] Some commenters split on this issue, supporting basic qualifications standards for MSA/NECMAs, while opposing them for non-MSA/non-NECMA areas.

[101] However, Cellnet Partners supports a 75% population coverage standard for both MSA/NECMA and non-MSA/non-NECMA markets, but suggests that it be a presumptive guideline with lesser coverage allowed if justified for a particular market. It also supports requiring applicants to demonstrate that they are proposing a demand-based cellular system as a means of preventing "boilerplate" applications.

[102] Metro Mobile cites the difficulty of developing standards to ensure high quality service as supporting its belief that lottery procedures for selecting cellular applicants are not in the public interest. Although it opposes the adoption of standards, it offers a list of comprehensive standards it would support in the event we elect to adopt standards. These include a 90% population coverage standard for MSAs and NECMAs as well as highway coverage, adoption of our proposed basic qualification standards for non-MSA, non-NECMAs, and a variety of technical standards relating to system design, frequency, service, interference and system expansion. Metro Mobile's proposed qualifying standards are obviously intended to militate against lottery by suggesting that a complex set of rules would be necessary to ensure the selection of competent licensees. However, we believe the strict post-lottery screening process we are adopting here will assure the licensing of competent providers equally well with less administrative cost, complexity and delay.

[103] The Regional Cellular Companies also propose certain other qualifying standards for wireline carriers. In addition, NewVector filed a separate reply comment supporting the 75% coverage proposal for MSAs and suggesting stricter financial requirements, requiring demand studies and requiring that applicants demonstrate site availability.

offer no additional protection against poor applications.

67. We have decided to adopt with a slight modification the additional basic qualifying standard proposed in the *Cellular Lottery Notice* for applications for remaining MSAs and NECMAs. We will require applicants to define their CGSAs to include at least 75% of the population *or* 75% of the area of the MSA or NECMA for which they are filing. We will allow applicants to base their 75% coverage on either population or geographic area, rather than population only, to provide them additional flexibility to design systems based on local demand characteristics. For example, a population-only requirement could force applicants in some MSAs to propose disproportionate residential coverage to the detriment of primary highways, commercial or other business areas. Similarly, an area-only requirement could force coverage of sparsely populated or lightly travelled areas. The modified standard should avoid these dislocations by allowing an applicant to meet the threshold coverage standard by reference to either population or geographic area, whichever better relates to local demand characteristics.[104] Of course, we will continue to require each applicant to demonstrate that the combined 39 dBu contours of all base stations will provide coverage of at least 75% of the area of its CGSA, as specified by § 22.903 of the rules. This will help ensure that applicants for the below-90 MSAs and NECMAs propose generally comparable levels of system coverage, capacity and service quality in order to be eligible for inclusion in a lottery. It should also reduce the possibility of our being inundated with applications proposing wholly inadequate coverage and capacity to meet the present and future needs of a metropolitan area.

68. We will not adopt the additional qualifying standards we proposed in the *Notice* for non-MSA, non-NECMA areas. Our evaluation of the comments on this issue persuades us that we should allow cellular entrepreneurs in non-MSA/non-NECMA areas maximum flexibility in cellular design and coverage to cope with the particular problems presented in non-urban areas. Non-metropolitan areas, lacking population and industrial concentration, have different demand and marketing needs and characteristics than metropolitan areas. Because an MSA defines an integrated population, business and economic center, it makes sense to impose a population or area-based coverage requirement to ensure that each lottery entrant proposes generally comparable service within the MSA. Such standards are essentially irrelevant for non-MSA areas since an applicant will define its CGSA specifically to include areas that have a need for service and should provide such service without regulatory prescription. We will, however, continue to require that applicants for non-MSA/non-NECMA areas demonstrate 39 dBu coverage to 75% of the total area of the CGSA as specified in Section 22.903. This establishes a general level of system coverage that should help preclude the licensing of an inferior proposal and result in service coverage comparable to that found in metropolitan areas.

69. The limited basic qualifying standards for below-90 cellular applicants we adopt today reflect our conclusion that we should adopt such requirements only to the extent necessary to establish a general level of consistency and system capability. We agree with the commenters who stated that it is nearly impossible to establish standards that would prevent abusive applications without severely reducing the ability of cellular applicants to design creative, market-based solutions for varying market characteristics. We have placed a high regard on allowing cellular applicants to design their systems in response to market forces and have attempted to avoid adopting standards that would unnecessarily restrict that flexibility. Thus we have not adopted additional basic service qualification standards, such as requiring coverage of every major highway, university and industrial area, that would prevent cellular providers from making these decisions based on market forces. Establishing these kinds of standards would create a new regulatory threshold ultimately requiring interpretation on a case-by-case basis through consideration of Petitions to Deny and responsive pleadings. The delay and expense this would entail would undercut the benefits of lottery selection.

70. We have not adopted a grade of service standard because it would be difficult to administer and unlikely to ensure a consistent level of service quality or effectively deter frivolous applications. We recognize that a grade of service standard is superficially appealing since it would appear to ensure that each lottery entrant designs its system to offer a level of service quality consistent with the promise and potential of cellular technology. However, compliance with a specified grade of service would not ensure comparable system quality among applicants since calculation of grade of service is based on a number of variables which are not susceptible of easy validation. For example, if mutually exclusive applicants submit substantially different demand projections, we would be unable to verify their compliance with a grade of service standard without first determining the most accurate estimate of demand. This would entail analysis of each applicant's need survey and is precisely the type of lengthy, speculative comparative evaluation that lottery selection is intended to avoid. In addition, there is no single universally accepted methodology for calculating grade of service in cellular and no generally accepted "busy hour" blocking rate for mobile services for applicants to rely on in calculating their projected grade of service. Moreover, such a standard is unnecessary since applicants in markets 1–90 (where the Commission did not specify a grade of service) have proposed system grades of service comparable to that of landline systems (.02–.05 blocking rates), and we have no reason to believe the industry will not continue to adhere to this general standard. For these reasons, we conclude that adoption of a grade of service standard will not ensure higher-quality applications.

71. Finally, it bears repeating that the basic qualification requirements we now have in place are significant barriers to frivolous applications. Applicants must show financial ability (§ 22.917) and a variety of technical qualifications (§ 22.913) before their applications will be accepted for filing. All of these basic requirements remain in place. We are confident that they adequately ensure that the public will receive high-quality cellular service regardless of the method of selection. In addition, we recognize that under lottery selection procedures, some applicants may file mass-marketed, non-exclusive cellular applications to gain inexpensive entry into the lotteries for the below-90 cellular markets. While such applications are not *per se* unacceptable, we caution prospective applicants that mere "lottery tickets" will not be accepted for filing. To be acceptable, a cellular application should clearly demonstrate the applicant's technical and financial qualifications and demonstrate why grant of a cellular license to this particular applicant

[104] We will consider properly supported requests for waivers of the minimum coverage requirement in recognition of the fact that exceptional circumstances are bound to exist. Should our staff determine that a waiver is not justified, the applicant will be given an opportunity to file a conforming amendment.

would serve the public interest. If a significant and material issue exists regarding the sincerity of a tentative selectee's commitment or ability to provide high quality cellular service as a Commission licensee or if there are other reasons to question whether the public interest would be served by a grant, we have authority to designate the application for evidentiary hearing to resolve such issues.

72. *Petitions to Deny.* In the *Cellular Lottery Notice*, at para. 8, we envisioned that petitions to deny cellular applications would be filed prior to lottery.[105] (Petitions in markets 31–90 have already been filed.) The commenters addressing this issue urge almost unanimously that in a lottery regime petitions to deny against cellular applicants should be filed after the lottery is conducted, and only against the tentative selectee, to avoid the need for applicants to prepare and for our staff to catalogue and store great numbers of petitions and oppositions that will never be evaluated. The commenters state that the existing procedures would impose an unnecessary burden on both applicants and the Commission because petitions against all but the tentative selectee would ultimately become moot in most cases.[106]

73. We agree with the commenters that a post-lottery petitioning process similar to the process prescribed for mass media services in § 73.3584 of our rules will best serve the public interest. We will allow petitions to deny only after the lottery is held for a market and only against the tentative selectee. Such a procedure will spare most applicants the wasted time, effort and expense of preparing and filing petitions against all of the other competing applicants when only a small portion of those petitions will ever be evaluated by the Commission. Accordingly, we will amend our cellular rules to provide that petitions to deny applications for markets beyond the top-90 will be due 30 days after the Public Notice which announces the tentatives selectee is issued. A consolidated reply to these petitions by the tentative selectee will be due within 30 days.[107] This procedure promotes more effective and efficient use of both the public's and the staff's resources, particularly given the large number of mutually exclusive applications expected in many post-90 markets. In addition, it enables applicants to focus their attention upon the tentative selectee and subject its application to critical analysis.[108] This serves the public interest by helping to ensure that only tentative selectees who are technically and financially qualified to provide high quality cellular service will be licensed.[109] It also helps to simplify the licensing process since only a few top-ranked applicants would be likely to file petitions against the tentative selectee.[110]

[105] The lottery rules that apply generally to the Public Mobile Service provide for the filing of petitions to deny at the public notice stage, prior to lottery. *See* Second Lottery Report and Order, *supra* note 2 at para. 12.

[106] Maxcell estimates that petitions against below-90 applicants could cost as much as $5,000 to $10,000 to prepare per petition.

[107] MRTS suggests that we should also allow post-lottery petitions for markets 31–90 because the already-filed petitions to deny against applicants in those markets were filed in contemplation of comparative rather than lottery selection and that this change in selection procedure warrants an additional opportunity to be heard. We agree with MRTS' analysis. In addition, we believe supplementry petitions are justified in view of our previous policy, which deferred many issues to the comparative process, rather than resolving them at the petition stage. *See, e.g.*, Advanced Mobile Phone Service, Inc. (Buffalo Order), 52 RR 2d 1255 (Com. Car. Bur. 1982), at para. 25; LIN Cellular Communications Corporation (Los Angeles Nonwireline Order), 53 RR 2d 419 (Com. Car. Bur. 1983), at para. 5. Therefore, we will allow supplementary petitions against the tentative selectee under the procedures described here. *See also* para. 81, *infra*.

[108] Section 309 of the Act requires that petitions to deny contain specific allegations of fact sufficient to raise a substantial and material question that grant of the petitioned application would be inconsistent with the public interest. We anticipate that the competitive interests of mutually exclusive applicants will ensure that petitions to deny subject the tentative selectee's application to critical and thoughtful review against the statutory standard and our cellular objectives. At the same time, we caution that only issues of a substantial and material nature should be raised. The public interest is not served when petitions mainly point out obvious clerical and typographical errors or raise minor insubstantial issues or legal arguments that are inconsistent with established Commission precedent. *See* Cellular Communications of Cincinnati, Inc., 53 RR 2d 827 (Com. Car. Bur. 1983).

[109] As explained in para. 81, *infra*, we will rank all applicants in the random selection process. This is consistent with the lottery procedure followed in other services. When we find it necessary to designate a tentative selectee's application for hearing, we will simultaneously solicit petitions to deny against the next-ranked tentative selectee and establish a procedural schedule for such petitions and a consolidated opposition.

[110] In the Second Lottery Report and Order, *supra* note 2, at para. 40, we concluded that it would economize the efforts of interested parties in the Low Power Television lotteries to defer the preparation and filing of petitons until after lottery in light of the sheer number of applications involved as well as the nature of the issues that could be raised. These same conditions are also present in the cellular service given the increasing number of applications expected and the diverse, substantive issues that may be raised in this new service. For the other Public Mobile Services, where there are fewer mutually exclusive applicants and fewer concerns about basic qualifications, we continue to believe that existing procedures are the most efficient.

VI. Transfer and Ownership Issues

A. Comments

74. In the *Notice, supra* note 1, at para. 22, we tentatively decided to adopt the same relaxed anti-trafficking rules as those recently adopted for the Mass Media and Domestic Fixed Radio Services.[111] In the context of a cellular lottery we declined to propose more strict anti-trafficking rules because we did not feel that there would be a problem of insincere cellular applications. In a related matter, we solicited comment on whether we should limit the number of applications in each market in which a carrier can hold minority interests, the percentage of such minority interests, and whether there should be a limit on the number of applications any one carrier can submit. *Id.*, at n. 31.

75. There was a general consensus in favor of the Commission's anti-trafficking proposal. Most commenters agree that the sale of construction permits and certain licenses should be permitted only if it is demonstrated that the transferor will receive no profit. The commenters diverge on whether the licenses should be freely transferable after one, two, or three years of operation. A few commenters argue that strict anti-trafficking rules are needed to discourage speculation. In addition, several clarifications were suggested. Commenters suggest that the Commission permit trading (as opposed to sale) of construction permits. They also request confirmation that changes of ownership not requiring prior Commission approval are permitted at all times.

76. With respect to the number of applications a party may file, the comments agree that an applicant should be limited to one cellular application per market in which it has a majority interest. They disagree, however, on the level of minority interest to be allowed. American Teleservices and others suggest there should be no limit on minority interests for entities filing in the same market, while others recommend a one, three, or five percent limit on minority interests. Other commenters argue that an

[111] Amendment of § 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), BC Docket No. 81–87, 47 FR 55924, released December 2, 1982. Multipoint Distribution Service, General Docket No. 80–112 and CC Docket No. 80–116, 48 FR 33873, released July 15, 1983. In these proceedings we relaxed the anti-trafficking rules to permit free transferability of most licenses (i.e., stations constructed), but retained a limitation on the transferability of licenses awarded after comparative hearings and on the transferability of construction permits.

applicant should not be permitted to have more than one interest, even a second minority interest, in applications for the same market in order to discourage speculation. Finally, the commenters completely diverge on whether to restrict the number of markets in which an entity may apply. The majority of the commenters argue that there should be no limit. Other commenters propose a five, ten or twenty-five application limit. One group of commenters recommends that we should restrict the number of licenses awarded to a carrier, not the number of applications filed; they suggest a limit of five licenses in a region (as defined by the U.S. Department of Commerce). Several commenters contend that no restrictions should be placed on applicants or licensees; instead they suggest a restriction on the number of applications for the same market in which an engineering, consulting or law firm can participate. They point to numerous advertisements for "turn-key" systems or "non exclusive" cellular systems, arguing that such conduct must be stopped to prevent a flood of applications.

B. Discussion

77. We conclude that the adoption of the relaxed anti-trafficking rules for cellular service similar to those adopted for applications awarded by lottery in conventional mobile services [112] and the Low Power Television Service (LPTV) is in the public interest.[113] The sale of a construction permit, regardless whether it is awarded by comparative hearing or lottery, or a license awarded as a result of the expedited hearing procedures used in the top-30 markets for a station operated less than a year, will be permitted only after a showing that the transfer is not speculating in cellular licenses.[114] However, cellular licenses awarded by lottery will be transferable after construction without regard to a minimum license holding period. This policy, which is consistent with the general policy for licenses awarded by lottery in the conventional mobile services, best balances the public interest in efficient use of the spectrum through free transferability of licensee with a deterrent for insincere applicants to speculate in unbuilt or newly built facilities.

78. The issue of minority ownership shares in more than one application in a market is difficult to resolve in a totally satisfactory manner. In a closely held company or a partnership, anything less than 50 percent ownership deprives the holder of effective control, absent special circumstances. On the other hand, in a widely held public company, as little as 10 percent ownership may vest control. In many other cases, ownership shares are passive, and even very large holdings do not carry the right to vote or otherwise influence the company's decisions. In the cellular service, there is no single point below 50 percent ownership at which a presumption of control clearly arises; all evaluations would have to be made on an *ad hoc basis.*[115]

79. We must balance our desire to give applicants wide latitude in forming business relationships against our interest in maintaining consistency and simplicity in the administration of our cellular lottery. We cannot simply allow any amount of minority ownership up to 50 percent when a far smaller share will, in many cases, vest effective control. We would only be inviting endless petitions to deny and other forms of protest that a party was manipulating the lottery process. In establishing lottery procedures for the Low Power Television Service, we took a very strict approach to ownership of competing applications, barring directly mutually exclusive applications "by any applicant in which any party common to both applications is an officer, director, or has any interest, direct or indirect (footnote omitted)".[116] We have seen no persuasive reasons why we should adopt a different policy for cellular applications for markets beyond the top-90.[117] The advantage of precluding participation in more than one application per market is that we will avoid numerous protracted challenges to selectees and litigation of that difficult issue after holding lotteries.[118] Such challenges could even result in further lottery procedures because several related applications may have been incorrectly included in the lottery. On the other hand, there is no evidence that allowing the ownership of a minority share in multiple applications would advance the public interest. Accordingly, we will adopt a rule similar to that applicable to Low Power Television applications, *i.e.*, no party may have an ownership interest in more than one application for the same MSA market or have a mutually exclusive application for the same non-MSA/non-NECMA area, except that interests of less than 1% will not be considered.

80. Finally, we decline to adopt any restrictions on the maximum number of markets in which an applicant can apply or an entity may be licensed. Our rules do not presently have any restrictions on multiple ownership; in fact, we explicitly declined to adopt such restrictions in the *Report and Order*, 86 FCC 2d at 487; *Reconsideration Order*, 89 FCC 2d at 68. The fact that we will award licenses by lottery rather than comparative hearing does not mandate reconsideration of our previous decision. To be sure, the companies with greater resources will be able to file more applications, thereby increasing the chances that they will receive some licenses. The public interest does not require that we equalize the lottery odds between large and small prospective entrants; it only requires that everyone have an opportunity to participate and that the selectees, whether three different companies or three hundred, be financially and technically qualified to receive licenses.[119]

VII. Lottery Procedures

81. *Markets 31–90.* Lotteries for cellular applications in Rounds Two and Three will follow the same procedures currently set forth in Parts 1 and 22 of our rules. Approximately 30 days after the publication of this order, we will issue a Public Notice announcing the date and time of the lottery, and identifying the markets to be considered

[112] Revision and Update of Part 22, *supra* note 82, at para. 107 and n. 33.

[113] Second Lottery Report and Order, *supra* note 2, at para. 56. In LPTV, the one year holding period applies to licenses awarded by comparative hearing or by lottery when the licensee was the beneficiary of a diversity or minority preference.

[114] The burden of proof in these circumstances will be on the transferor. With respect to trading, we will allow a party with a full or partial ownership interest in the construction permit for a cellular system in one market to trade an ownership interest in the construction permit for another market. This will facilitate the orderly construction and development of cellular systems by allowing the consolidation of ownership and management into an effective entrepreneurial structure, while continuing to discourage insincere applicants. Consequently, cash may be an element in this transaction only when the parties demonstrate that the amount equalizes the value of the authorization to be traded.

[115] CF. American Radio-Telephone Service, Inc, Memeo No. 812, released November 16, 1982, at para. 5 (Com. Car. Bur.), *aff'd*, 93 FCC 2d 438 (1983).

[116] Second Lottery Report and Order, *supra* note 2, at para. 54. *See also* 47 CFR 73.3521.

[117] We will not retroactively impose this restriction on minority ownership for applications for markets 31–90 already on file because of the potential unfairness.

[118] Determining whether a minority share owner has power to exercise control, either positive or negative, is very difficult and time-consuming.

[119] We decline imposing a restriction on the number of applications for the same market in which an engineering, consulting or law firm can participate. This suggestion, relevant to professional ethics and conflicts of interest, is beyond the scope of the rulemaking.

and the participants to the lottery for each market. Applicants who wish to settle will be required to notify us at least two business days before the date of the lottery.[120] The lottery will be held under the direction of the Office of the Managing Director. For each market, the random selection will choose a tentative selectee and then repeat the random selection process for all applicants, so that in the event that the tentative selectee's application is denied, the other applicants will be ranked in order as alternative selectees. After the lottery is conducted, we will issue a Public Notice announcing the tentative selectee. We will give parties 30 days to file petitions to deny (or supplementary petitions in the event petitions were filed initially) the first tentative selectee. The tentative selectee will have 30 days to file a consolidated reply. Shortly thereafter, we will review the petitions filed against this selectee. If we are able to determine that the tentative selectee is qualified, we will grant the application. If, however, a substantial and material question of fact is raised, the application will be designated for hearing in accordance with § 1.823 of the Rules. If that selectee is found unqualified, we will review the application and the petitions then filed against the next-ranked selectee to determine whether that applicant is qualified. This process will be repeated until we grant one of the applicants an authorization.

82. *Markets beyond the top-90.* The cellular lottery for the remaining markets will be similar to the procedures described above, with a few modifications. Prior to conducting the lottery, applications will be pre-screened to determine that they are acceptable for filing under our cellular rules.[121] After pre-screening, we will issue a Public Notice identifying the mutually exclusive applications and setting a date for the lottery. Finally, as explained in para. 74, *supra*, petitions to deny applications for these markets will not be filed until after the tentative selectee is announced, and will be accepted initially against the first selectee only.

83. The considerations of administrative efficiency that support the filing of petitions to deny against only the tentative selectee, also support strictly limiting the filing of amendments to applications for the below-90 markets under lottery selection procedures. The numerous amendments to applications filed in the top-90 markets have severely disrupted our staff's ability to process cellular applications in an orderly, expeditious manner and have required us to limit additional amendments to those applications.[122] It would make little sense under lottery selection procedures to burden our staff with the screening and processing of even minor amendments to applications that will not be selected. Cellular applicants should by this time be able to file complete and accurate applications, particularly in light of the fact that absent comparative consideration, applications for the below-90 markets should be somewhat simpler. Accordingly, we will not accept amendments to applications for the below-90 markets prior to lottery except for amendments reflecting settlements and, in the case of non-MSA/non-NECMA markets, amendments that eliminate frequency conflicts without creating new conflicts. Amendments reflecting settlements are necessary to determine the proper number of chances for the surviving applicant, while amendments removing frequency conflicts may eliminate mutual exclusivity and obviate the need for a lottery in some markets. After lottery, the tentative selectee may file minor amendments; however we will not allow major amendments, as defined in § 22.23(c), to cellular applications in markets beyond the top 90 except that major amendments encompassed by § 22.23(g) may be filed by the tentative selectee.[123] In addition, any information required by § 1.65 must be filed within 14 days of the Public Notice announcing the tentative selectee.[124] This will give prospective petitioners notice of any significant changes prior to the filing of petitions to deny.

84. *Frequency Coordination.* Section 22.902(d) of the rules requires cellular applicants to coordinate their proposed frequency usage with adjacent existing users or pending applicants. By Public Notice dated November 1, 1982, Mimeo 567, the Common Carrier Bureau recognized that many applicants for markets 31–90 would find several unresolved applications for adjacent markets, each having vastly different frequency use plans and that requiring coordination with all such earlier-filed applications would be unnecessarily time-consuming and burdensome. It announced that applicants for markets 31–90 need not engage in pre-application coordination where there is more than one application for the same frequency block in a neighboring market. The same considerations will also exist in the below-90 markets and may become even more prevalent given the numerous applications expected. In addition, our adoption of lottery selection procedures makes it even more unrealistic to require existing licensees, much less pending applicants, to review and coordinate frequency usage with numerous below-90 filings that will ultimately not be selected.

85. We emphasize the importance of cellular licensees coordinating this actual frequency usage with existing users and new licensees in neighboring markets prior to commencing service. Frequency coordination enables cellular licensees to make maximum use of the available spectrum and preserves the ability of systems to expand to meet developing market demand. However, in light of the practical considerations referred to above, the public interest will be better served, and our goals of intersystem frequency coordination satisfied, by amending § 22.902(d) to require in the below-90 markets that only cellular permittees and licensees need engage in formal coordination with existing licensees, tentative selectees and pending (non-mutually exclusive) applicants in neighboring markets. We will also require every applicant granted a license to comply with the frequency coordination requirements of our rules by cooperating fully with and making all reasonable efforts to resolve frequency conflicts with neighboring systems and to avoid blocking their growth. This approach will ensure that applicants recognize their frequency coordination responsibilities while taking into account the realities of the cellular application process.

VIII. Conclusion

86. We are now at a vital crossroads in implementing the delivery of cellular radio service to the public. There is a pressing need to bring the benefits of cellular service to the public as expeditiously as possible while at the same time ensuring that cellular systems provide a high-quality, nationwide mobile communications service. Because of the high potential for cellular, we received a significantly

[120] *See, e.g.*, Lottery Notice, Mimeo No. 1646, released January 3, 1984. It is our intention, where possible, in a particular market to process timely filed settlements prior to any grant awarded by lottery procedures.

[121] Applications for markets 31–90 were pre-screened in anticipation for comparative hearings. It is not necessary to prescreen them again before their submission to the lottery.

[122] See our Order in CC Docket 79–318, FCC 82–409, released September 3, 1982, and our Memorandum Opinion and Order in CC Docket 79–318, 48 FR 33217, released April 22, 1982.

[123] We do not allow major amendments to cellular applications in the top-90 markets prior to designation for hearing. See § 22.918(a) of the Rules.

[124] The rules governing amendments to cellular applications designated for hearing before an Administrative Law Judge are unchanged.

higher number of applications than expected. In addition, the processing of cellular applications has required significantly more time than previously contemplated. Because of these factors, we are faced with the certainty of substantial delays unless we adopt new procedures to evaluate these mutually exclusive applications. These delays are inimical to the public interest and exacerbate the troublesome prospect of a wireline headstart undermining effective competition. We find, therefore, that the public interest will be significantly benefited by utilizing lotteries instead of comparative hearings to select from among mutually exclusive applicants. We are mindful of the adverse impact claims of those parties who have filed applications in anticipation of comparative hearings, when we find it necessary to utilize a lottery. Nevertheless, we find that any inequity to individual applicants which may result from our adoption of a lottery at this time is outweighed by the significant benefits to the public that will result from expedition of the nationwide implementation of cellular service. Having made this decision, we can now proceed to screen carefully the qualifications of selectees and quickly act on cellular applications that are found to be in the public interest.

Regulatory Flexibility Act—Final Analysis

87. *Need for and Purpose of Rules.* This action will allow lotteries to be used instead of comparative hearings to choose among mutually exclusive cellular applicants. This action is expected to greatly reduce the delay, lower the cost and speed the process of granting licenses in mutually exclusive cases.

88. *Issues Raised by the Public in Response to the Initial Analysis.* None.

89. *Alternatives that would lessen impact.* We have considered alternative approaches to a lottery such as streamlining the comparative hearing or utilizing auctions. Streamlining the comparative process is insufficient to achieve our goal of expediting cellular service and is far more costly. We decline to use an auction because it is unclear whether we have the authority to hold an auction while the authority to conduct lotteries is explicit.

Ordering Clauses

90. Authority for this rulemaking is contained in sections 1, 4 (i) and (j), 303, 309, 403 of the Communications Act of 1934, as amended, and Section 553 of the Administrative Procedure Act.

91. Accordingly, it is ordered, that Parts 1 and 22 of the rules ARE AMENDED as specified in Appendix B. These amendments and other policies adopted in this order will become effective 30 days after the publication of this document in the **Federal Register.**

92. It is further ordered, that applications for markets 91–120 must be filed within the two-week period commencing July 2, 1984 and ending July 16, 1984. Further filing dates will be announced by Public Notice. The Common Carrier Bureau also will issue a Public Notice listing the markets to be filed in this round, as well as a list of the remaining markets.

93. It is further ordered, that the Requests for Leave to file informal comments filed by American Mobile Communications and all other parties filing late-filed comments are granted.

94. It is further ordered, that the Petition for Reconsideration filed by Lincoln Telephone & Telegraph Company, *et al.*, of our *Order*, 48 FR 7383, released February 24, 1984, is dismissed as moot.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments

A. Bates Butler III and James A. Mather
Alascom, Inc.
Albuquerque Cellular Communications Co.
Alltel Mobile Phone Corporation
American Cellular Network Corporation
American Mobilphone of Alabama, Inc., *et al.*
American Teleservices
Ameritech Mobile Communications, Inc., *et al.*
Armstrong Telephone Company of West Virginia, *et al.*
Associated Communications Corporation
Basin Communications Systems Incorporated
Blue Ridge Cellular Communications
Bluegrass Broadcasting Co., Inc.
Blum, Nash & Railsback
Breaux, Representative John B.
CTI Manufacturing, Inc.
California Portaphone
Canaveral Cellular Telephones, Ltd.
Carolinas RCCs, Inc.
Cel-Tel Network
Cell-Fone of Albuquerque
Cell-Fone of Canton, *et al.*
Cell-Page of Allentown
Cell-Scan Phone Network
Cellnet Partners
Cellular Communications Systems of Austin, Inc.
Cellular Communications, Inc.
Cellular Mobile Radio Systems, Inc.
Cellular Radio Telephone, Inc., *et al.*
Cellular Systems Corporation
Cellular Systems, Inc.
Cellular Telecommunications Council
Cellular Telecommunications International, Inc.
Cellular of Northwest Ohio, Inc.
Celtel Communications, Inc.
Centel Corporation
Central Carolina Cellular Communications
Century Communications, Ltd.
Charisma Communications
Chesapeake Cellular Systems
Clifton Forge-Waynesboro Telephone Company, *et al.*
Coastal Utilities, Inc.
Columbus Cellular Radio, Inc.
CompComm, Inc.
Comtech Corporation
Continental Cellular Corporation, *et al.*
Continental Telecom, Inc.
Cox Communications, Inc., *et al.*
CMS, Inc.
Dean George Hill, P.C.
Denver and Ephrata Telephone and Telegraph Company
Eagle Communications Corporation
Firelands Cellular Communications
Fresno Cellular Communications
GTE Mobilnet Incorporated
Gencell, Inc.
Gulfside Cellular Communications
Gulf Star Communications, Inc.
Heartland Mobile Telephone System
Hendrix Electronics, Inc.
Hernreich Broadcasting Stations, Inc.
Home Telephone Company, Inc.
Huxley Cooperative Telephone Co.
ICT Cellular Corporation
Independent Cellular Telephone Company
Interstate Cellular Corporation
Kalona Cooperative Telephone Co.
Kansas Cellular Telephone Company
Kenneth L. Williams
Kentucky Cellular Telephone Co.
Lauer, James and Associates, Inc.
LIN Broadcasting Corporation
Long, Peterson & Zimmerman
Lovett, Hennessey, Stambler and Siebert, P.C.
MCI Cellular Telephone Company
Maxcell Telecom Plus, Inc.
Maxcell Telecommunications, Inc.
McCaw Cellular Communications, Inc.
Metro Mobile CTS
Metropolitan Radio Telephone Systems, Inc.
Michigan Independent Cellular Telephone Corporation
Mid-America Cellular Systems, Inc.
Midwest Mobilephone Corporation, *et al.*
Millicom Incorporated
Mobile Cellular Telephone, Inc.
Mobile Communications Corporation of America
Morris Communications, Inc.
Moultrie Independent Telephone Company
Multicom of Greenville, *et al.*
National Telephone Cooperative Association
National Urban League, Inc.
New Era Communications Corp.
North American Cellular Communications Corporation
Organization for the Protection and Advancement of Small Telephone Companies
Patriot Cellular Communications
Pierce Mobilnet
Pioneer Telephone Cooperative, Inc.
Pocono Cellular Telephone
Providence Journal Company
Radio Communications, Inc.
Ranch Radio, Inc.
Roseville Telephone Company
Rule Radiophone Service, Inc.
Sacramento Cellular Communications

San Marcos Telephone Company
Satellite Cellular Corporation
Schwartz and Jubon, Inc.
Shooshan and Jackson, Inc.
Signet Communications Company, Inc.
South Central Cellular Corporation
South Texas Cellular Communications, Inc.
Southern New England Telephone Company
Southwest Alabama Cellular
Southwest Cellular Corporation
Southwestern Mobile Cell
Telecinco, Inc.
Telecom Plus Transmission Services, Inc.
Telepage of South Carolina, Inc.
Telephone and Data Systems, Inc.
Tennessee Radio Telephone Corporation
Texas Cellular Network
Tidewater Cellular Communications
Total Availability Services, *et al.*
Tri-Cities Cellular Communications
Triad Citizen Cellular Radio, Inc.
Tulsa Cellular Telephone Co.
Turnpike Mobile Telephone System
USA Telecommunications, Inc.
Unifour Cellular Communications
United Cellular Network
United States Cellular Radio Corporation
United States Department of Justice
United TeleSpectrum, Inc.
United Television, Inc.
Vanguard Cellular Communications
Vega, Richard L. & Associates, Inc.
Vegas Instant Page
Volunteer Cellular Communications Company
Washington Post Company
West Michigan Cellular Communications, Inc.
West Texas Telephone Company
Western Union Telegraph Company
Wireless Telephone Service of New Mexico
Wisconsin Mobile Telephone, Inc.

Reply Commenters

Alascom, Inc.
Albany Mutual Telephone Company
American Cellular Network Corporation
American Mobilphone of Alabama, *et al.*
Ameritech Mobile Communications, Inc., *et al.*
Arvig Telephone Company
Benton Cooperative Telephone Company
Carolinas RCCs, Inc.
Cellnet Partners
Cellular Communications Systems of Austin, Inc.
Cellular Telecommunications Council
Cellular Telecommunications International, Inc., *et al.*
Centel Corporation
Clifton Forge-Waynesboro Telephone Co., *et al.*
Colorado Cellular, Inc.
Continental Telcom, Inc.
Dean George Hill, P.C.
Dominion Cellular, Inc.
Enterprise Telephone Company
Henry Geller and Donna Lampert
Home Telephone Company, Inc.
Kentucky Cellular Telephone Co.
Lakedale Telephone Co.
Maxcell Telecom Plus, Inc.
McCaw Cellular Communications, Inc.
MCI Cellular Telephone Company, *et al.*
Melrose Telephone Company
Metro Mobile CTS
Michigan Independent Cellular Telephone Corporation
Mid-America Cellular Systems, Inc.
Mid-Rivers Telephone Cooperative
Midwest Mobilephone Corporation, *et al.*
Millicom, Inc.
Municipality of Anchorage, *et al.*
New Vector Communications, Inc.
Organization for the Protection and Advancement of Small Telephone Companies
Poe and Associates, Inc.
Radio Communications, Inc.
Radiotelephone Communicators of Puerto Rico, Inc.
Rock Hill Telephone Co.
Sherburne County Telephone Company
Southern New England Telephone Company
Telephone and Data Systems, Inc.
United Cellular Network
United TeleSpectrum, Inc.
USA Telecommunications, Inc.
United States Telephone Association
Vanguard Cellular Communications, *et al.*

Appendix B

47 CFR Chapter I is amended as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

1. In Part 1, § 1.821 is revised by adding the words "or for frequencies in the Domestic Public Cellular Radio Telecommunications Service," to read as follows:

§ 1.821 Scope.

Where action on applications is permitted by the Chief, Common Carrier Bureau, under delegated authority, the provisions of this section, and the provisions referenced herein, shall apply to applications for initial licenses for stations in the Public Land Mobile Service or for frequencies in the Domestic Public Cellular Radio Telecommunications Service.

2. The introductory text of § 1.822 (a) is revised by adding at the end of the sentence the words "except as specified below:" and a new § 1.822 (a)(1) is added to read as follows:

§ 1.822 Grants by random selection.

(a) Applications in the common carrier services specified in § 1.821 "Scope" shall be filed, accepted or dismissed, placed on public notice, and subject to Petitions to Deny according to the rules established for the specific service except as specified below:

(1) In the Cellular Service, Petitions to Deny may be filed only against the tentative lottery selectee within 30 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 30 days of the due date for Petitions to Deny. No additional responsive pleadings will be accepted. If the tentative selectee is disqualified, or its application designated for hearing, the Commission will allow Petitions to Deny against the next-ranked tentative selectee.

* * * * *

PART 22—PUBLIC MOBILE RADIO SERVICES

Subpart B—Processing of Applications

§ 22.903 [Amended]

3. In Part 22, § 22.903 is amended by removing the words "Standard Metropolitan Statistical Area" or "SMSA" every time they appear in this part and inserting in their place "Metropolitan Statistical Area" or "MSA".

4. In Part 22, § 22.33 is amended by revising existing text, renumbering this text (a) and adding a new subparagraph (b). As revised § 22.33 reads as follows:

§ 22.33 Grants by random selection.

(a) If a properly filed application for an initial license in the Public Land Mobile Service, or in the Domestic Public Cellular Radio Telecommunications Service for markets below the top-30 cellular modified Metropolitan Statistical Areas, is mutually exclusive with another such application, the applicants shall be included in the random selection process set forth in Part I, § 1.821 *et seq.* No preferences shall be awarded. Renewal applications shall not be included in a random selection process.

(b) *Cumulative chances for partial cellular settlements.* The joint enterprise resulting from a partial settlement among mutually exclusive cellular applicants, if entered into after the filing of individual applications by its members, will receive the cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached.

Subpart K—Domestic Public Cellular Radio Telecommunications Service

5. Section 22.902 is amended by revising paragraphs (b) and (d) to read as follows:

§ 22.902 Frequencies.

* * * * *

(b) For cellular systems the assignment of frequencies will be divided into two blocks. Assignments will be made from the frequencies listed for Cellular Systems A and B. Common carriers not also engaged in the business of affording public landline message

telephone service will be assigned frequencies from Cellular System A, and common carriers also engaged directly or indirectly in the business of affording public landline message telephone service will be assigned frequencies from Cellular System B in those general areas in which they provide such landline service; except that, in the final cellular application phase for any initially unapplied for or unlicensed area, either within or without a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), a cellular applicant may apply for either frequency block and the applicant shall indicate in its application which it prefers to be assigned.

* * * * *

(d) *Frequency coordination.* (1) All permittees or licensees in the Domestic Public Cellular Radio Telecommunications Service shall coordinate proposed frequency usage with existing users in Cellular Geographic Service Areas within 75 miles of all base stations affected, and with tentative selectees and other non-mutually exclusive pending applicants whose facilities could affect or be affected by the new proposal in terms of intersystem frequency interference or restricted ultimate system capacity. This coordination requirement shall also apply to permissive changes (i.e. changes in frequency assignment not requiring prior Commission approval) within an authorized Cellular Geographic Service Area.

(2) In engineering a system or modification thereto, all applicants shall by appropriate studies and analyses select sites, transmitters, antennas and frequencies that will avoid intersystem interference with existing users in Cellular Geographic Service Areas within 75 miles of all base stations affected and with other applicants whose facilities could affect or be affected by the new proposals whenever there is only one applicant for each affected market.

(3) All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or reengineer a proposal in cases involving conflicts. All permittees and licensees shall make every reasonable effort to avoid blocking the growth of other systems that are likely to need additional capacity in the foreseeable future.

(4) Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures to be taken to reduce the likelihood of intersystem interference or would result in a reduction of quality or capacity of either system, the new licensee or permittee shall notify the Commission. Upon making a permissive change, a licensee shall notify the Commission of its frequency usage and report on its coordination as required under this subsection.

* * * * *

6. Section 22.903(a) is revised to read as follows:

§ 22.903 Cellular system service areas.

(a) The Cellular Geographic Service Area (CGSA) of a cellular system shall be defined by the applicant as the area intended to be served. No CGSA which includes area within a Metropolitan Statistical Area (MSA), or, in New England, a New England County Metropolitan Area (NECMA), as modified in paragraph (e), of this section, may extend beyond the boundaries of the MSA or NECMA except where any such extensions are *de minimis* and do not include area within another central MSA or NECMA. For MSAs and NECMAs below the top 90, the boundaries of the CGSA must include at least 75% of either the land area or population of the MSA or NECMA. In non-MSA, non-NECMA area, the total land area of the CGSA shall not exceed 2,000 square miles. The CGSA must be drawn on one or more U.S. Geological survey map(s) with a scale of 1:250,000. Within the CGSA the applicant must depict each base station site and its respective 39 dbu contour as determined by the methods described in paragraph (c) of this section. An applicant must demonstrate that the combined 39 dbu contours of all base stations will cover at least 75% of the total CGSA.

* * * * *

7. Section 22.913(a) is amended by adding new paragraphs (a) (10) and (11):

§ 22.913 Content of applications.

(a) * * *

* * * * *

(10) An exhibit indicating the State and counties included in the applicant's CGSA for non-MSA, non-NECMA areas.

(11) Applications for non-MSA, non-NECMA areas shall include on their cover or initial page a list of all major cities within the proposed CGSA.

* * * * *

8. Section 22.916 is amended by revising paragraph (a) and the introductory text of paragraph (b) and adding paragraph (c) to read as follows:

§ 22.916 Evaluation of cellular applications.

(a) Mutually exclusive applications for the top-30 cellular markets listed in § 22.903(e) that are acceptable for filing and meet our basic qualifying issues shall be designated for a comparative hearing. Applications involving basic qualifying issues shall also be designated for hearing on those particular issues, on an expedited basis, as described in paragraph (b) of this section. The comparative hearing shall be conducted by an Administrative Law Judge named in the designation order or a subsequent order.

(b) Expedited hearings procedures for the top-30 cellular markets. The following procedures shall apply to hearings in the top-30 cellular markets in the Domestic Public Cellular Radio Telecommunications Service.

* * * * *

(c) Evaluation of cellular applications for markets below the top-30. Mutually exclusive cellular applications for markets below the top-30 shall be randomly selected according to the procedures set forth in § 22.33 and § 1.822 *et seq.*

9. Section 22.918 is revised to read as follows:

§ 22.918 Amendment of cellular applications.

(a) *Top-90 markets.* Minor and technical amendments and those required by § 1.65 of the rules, but no major amendments as defined in § 22.23(c), may be proffered within forty-five days of public notice of the filing of an application for the top-90 cellular modified Metropolitan Statistical Areas.

(b) *Markets below the Top-90.* Amendments for applications for below-90 cellular markets may not be filed prior to conduct of the lottery for the market applied for. The tentative selectee may file minor amendments, but no major amendments except for those listed in § 22.23(g). Information required by § 1.65 shall be filed within 14 days of publication of the Public Notice announcing the tentative selectee.

(c) Notwithstanding the general cellular amendment rules specified in paragraphs (a) and (b) of this section, the amendments described in paragraphs (c) (1) through (4) of this section may be filed as specified therein:

(1) Amendments to applications for non-MSA, non-NECMA areas which resolve frequency conflicts with other pending applications but do not create new or increased frequency conflicts may be filed at any time.

(2) Amendments in connection with full settlement agreements under § 22.29 of the rules, or partial settlements resulting in a merger of interests between two or more mutually exclusive parties may be filed at any time.

(3) Amendments requested by the Commission or the Administrative Law Judge may be filed at any time.

(4) After an application is designated for hearing, amendments may be filed for good cause upon leave of the presiding officer.

10. Part 22 is amended by adding a new § 22.920 to read as follows:

§ 22.920 Considerations involving transfer or assignment applications for cellular authorizations.

(a) The provisions of § 22.40(b) of this part shall apply to transfers or assignments of cellular authorizations except as provided in § 22.920(b).

(b) This section does not apply to:

(1) The trading of an ownership interest in a construction permit for a cellular system in one market for a commensurate interest in another cellular market.

(2) Cellular licenses (*i.e.*, stations constructed) obtained by random selection.

11. Part 22 is amended by adding a new § 22.921 to read as follows:

§ 22.921 Ownership in mutually exclusive applications for cellular service for markets below the top-90.

No party may have an ownership interest, direct or indirect, in more than one application for the same MSA market or have a mutually exclusive application for the same non-MSA/non-NECMA area, except that interests of less then 1 percent will not be considered.

Statement of FCC Commissioner James H. Quello Dissenting in Part

In Re: Report and Order in the Cellular Lottery Rulemaking, CC Docket No. 83-1096

I concurred in the Notice of Proposed Rulemaking in this docket because I felt that the Commission should explore the use of this newly-acquired tool in all areas where our resources were being overtaxed. I was persuaded by assertions that there was very little difference among the applications and that no meaningful differences were likely to emerge from comparative proceedings. It has become increasingly clear that this is not the case and that significant differences exist but are being ignored in the zeal to implement the lottery process.

The complexity and capital costs of major cellular systems require careful scrutiny by the Commission to provide the best possible service to the public in the shortest possible time. Clearly, the public has already waited far too long for this exciting new service. While the lottery will certainly expedite the *selection* process, in the first instance, it is far less certain that it will expedite *service* to the public given the petitioning process after the winner is chosen. And, of course, there is no consideration of which among the applicants is likely to provide the best service. Thus, the benefits of using the lottery may well prove illusory while its flaws are obvious and enduring.

I have previously expressed my concern that the majority's eagerness to embrace the lottery process is damaging the comparative process.[1] That concern is heightened by each order, such as this one, which continues to find uniformity where disparity exists, eliminating issue after issue as unworthy of comparative consideration.

In those markets where applications are already on file, I find it unreasonable and unnecessary to so drastically change the rules under which mutually exclusive applications are to be decided. There are vast differences in the amount of effort and expense required to prepare an application whose merits are to be compared point-by-point and in preparing a minimally acceptable application to qualify for the lottery process. Those who mistakenly relied upon the Commission's repeated assurances[2] that lotteries would not be used in this service now find that they have spent significant sums of money to speculate in ping-pong balls.

I concurred with the majority in the use of the lottery in the smaller markets for two reasons. First, cellular systems for the smaller markets are likely to be far less complex than in the larger markets thus diminishing the expertise and financial depth required. Second, no applications for the smaller markets have yet been filed and no one will enter the process under false pretenses. It is a game of chance, pure and simple.

Finally, I wholeheartedly support the majority view that the wireline set-aside continues to be a valid concept for all markets.

Separate Statement of Commissioner Henry M. Rivera

RE: (1) Cellular Lottery Rulemaking, CC Docket No. 83-1096; and
(2) Application for Review filed by MRTS-Poe of Tampa (CC Docket No. 83-823) and Petition for Reconsideration filed by Cell-Tel Network (CC Docket No. 83-661).

I am steadfast in my belief that the fostering of opportunities for minority ownership and participation in all telecommunications services is a worthy pursuit by this Commission.[1] The Commission has solicited comments regarding the award of minority preferences for this common carrier service.[2] Unfortunately, the record does not establish how awarding preferences on this basis would advance the public interest objectives of the cellular radio service.[3] To eliminate the existing uncertainty on this score, I hope that Congress will give us a clear statutory directive.[4]

[FR Doc. 84-15404 Filed 6-6-84; 8:45 am]

BILLING CODE 6712-01-M

[1] *See* MCI Cellular Telephone Co., CC Docket Nos. 82-796 and 82-721, —— FCC 2d —— (released March 6, 1984) (Quello, Commr., concurring).

[2] *See* Cellular Communications Systems, 86 FCC 2d 469, 499 (1981) *modified*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982) *aff'd sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. March 3, 1983); Second Lottery Report and Order, 93 FCC 2d 952 (1983), *recon. pending*.

[1] The Commission has previously articulated this belief. For example, in 1978, while establishing policies designed to foster minority participation in broadcasting, the Commission recognized that attention should be directed toward improving minority participation in common carrier and other non-broadcast services. *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979, 984 (1982). Recently, in conjunction with the adoption of *Policy Statement Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982), the Commission submitted legislative recommendations to Congress promoting the extension of specified ownership diversification measures for all telecommunications services. *See* FCC NEWS Report No. 5112 (Mimeo No. 1404), released December 3, 1982 (with accompanying Statement of Commissioner Henry M. Rivera).

[2] *Notice of Proposed Rulemaking*, CC Docket 83-1096, FCC 83-430, 48 FR 51493, released October 28, 1983, at paragraph 12.

[3] I am encouraged by the supportive statement of Representative Tim Wirth, Chairman of the House Committee on Telecommunications, Consumer Protection and Finance, 130 Cong. Rec. H 10,561 (daily ed. Nov. 18, 1983). Statutory guidance, comparable to the Minority Telecommunications Ownership Tax Act of 1983 [H.R. 2331, 98th Cong., 1st Sess. (1983)], is necessary to alter the status quo with dispatch.

[4] The purpose underlying this special consideration accorded minority participation in mass media services—diversity of broadcast content—is inapposite in common carrier services such as cellular radio. *Compare Las Misiones de Bejar Television Co.*, —— FCC 2d ——, adopted March 15, 1984 (Dissenting Statement of Commissioner Henry M. Rivera) (Minority Ownership, in and of itself, furthers mass media ownership and content diversity).

47 CFR Part 67

[CC Docket No. 80-286]

Jurisdictional Separations; Establishment of a Joint Board; Change in Effective Date

AGENCY: Federal Communications Commission.

ACTION: Final rule; change in effective date.

SUMMARY: The Commission advances the existing effective date of June 13, 1984, for previously adopted changes in the rules for jurisdictional separations to June 1, 1984. This is necessary because the majority of the access charge tariffs are now scheduled to become effective May 25, 1984. This action will allow the separations changes and the majority of the access charge tariffs to go into effect at approximately the same time while avoiding the record keeping burdens inherent in changing separations procedures part way through the month.

DATES: The deferral of the effective date is to take effect immediately upon Commission release of this order (May 29, 1984). The separations changes will go into effect June 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Claudia Pabo of the Common Carrier Bureau at (202) 632-9342.

Order

In the Matter of Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket No. 80-286.

Adopted: May 25, 1984.

Released: May 29, 1984.

By the Chief, Common Carrier Bureau.

1. On December 1, 1983, the Commission adopted revisions in the procedures governing the allocation of telephone company plant costs between the federal and state jurisdictions. *Amendment of Part 67,* 49 FR 7934 (March 2, 1984). These changes in the jurisdictional separations rules were set to become effective on April 3, 1984, at the same time as the access charge tariffs. *Id.* at para. 75. The Commission subsequently deferred until June 13, 1984, the effective date of the access charge tariffs filed in mid-March by the National Exchange Carrier Association (NECA) and the individual exchange carriers. *Investigation of Access and Divestiture Related Tariffs,* CC Docket No. 83-1145, Phase I, FCC 84-104, released March 27, 1984. At the same time, the Commission deferred the effective date of the revisions in Part 67 of the Commission's rules to June 13, 1984, although it noted that this date might be changed if the access tariffs became effective before June 13, 1984. *Amendment of Part 67,* CC Docket No. 80-286, 49 FR 14111 (April 10, 1984).

2. On May 10, 1984, the Commission directed the NECA to file revised tariffs for switched access to the local exchange to become effective May 25, 1984. *Investigation of Access and Divestiture Related Tariffs* and *MTS and WATS Market Structure,* CC Docket No. 83-1145, and CC Docket No. 78-72, FCC 84-201, released May 15, 1984. The switched access tariffs filed by individual local exchange carriers are also scheduled to become effective on this date with a few exceptions. In addition, tariffs covering customer line charges for multiline business users will become effective on May 25, 1985. Tariffs governing special access to the local exchange will become effective at a later date. Since the tariffs to become effective May 25, 1984, represent the majority of the costs to be recovered by the access charge tariffs and the revisions in the separations procedures relate almost exclusively to costs recovered by these tariffs, we conclude that the effective date of the revised separations procedures should be advanced to coincide with the effective date for these tariffs. Although the tariffs will become effective on May 25, 1984, we are advancing the effective date for the separations changes to June 1, 1984, to eliminate the record keeping and administrative burdens which would result from changing separations procedures part way through the month.[1] These benefits will significantly outweigh any difficulties resulting from the brief period of mismatched costs and access charge tariff revenues.

3. Accordingly, it is ordered, That the effective date for the changes in the jurisdictional separations procedures discussed above is advanced to June 1, 1984.[2]

Federal Communications Commission.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84-15137 Filed 6-6-84; 8:45 am]

BILLING CODE 6712-01-M

[1] In its Petition for Reconsideration in this proceeding, Southwestern Bell noted the desirability of making the separations changes effective at the beginning of a month in order to reduce the administrative burdens involved.

[2] This action is taken by the Chief, Common Carrier Bureau pursuant to delegated authority and is to be effective immediately upon Commission release. 47 U.S.C. 151, 154(i), 154(j), 221(c) and 410(c) and 47 CFR 0.91 and 0.291(h). The notice and comment requirements of the Administrative Procedure Act do not apply since this action is procedural in nature. 5 U.S.C. 553(b)(3)(A). We also find that notice and comment on this matter is unnecessary since we are merely advancing the effective date of previously adopted rules by approximately two weeks to coincide more closely with the effective date of the switched access tariffs and the customer line charge tariffs for multiline business users. 5 U.S.C. 553(b)(3)(B).

Proposed Rules

Federal Register
Vol. 49, No. 111
Thursday, June 7, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 504

User Fees

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Agriculture proposes to amend 7 CFR Chapter V, by adding Part 504—User Fees, to provide for the charge of user fees for the deposit and distribution of microbial cultures. These fees are necesary to offset increasing costs.

DATE: Written comments must be received by the contact person listed below on or before July 9, 1984.

FOR FURTHER INFORMATION CONTACT: A. J. Lyons, Curator, ARS Patent Culture Collection, Northern Regional Research Center, USDA–ARS, 1815 N. University Street, Peoria, Illinois, 61604; (309) 685–4011.

SUPPLEMENTARY INFORMATION: The Department of Agriculture accepts for deposit microbial cultures that are maintained for patent requirements. The Department also distributes samples of these cultures. OMB Circular No. A–25 provides that a reasonable charge should be made for all Federal activities which convey a special benefit to an indentifiable recipient above and beyond those benefits which accrue to the public at large. In accordance with OMB Circular No. A–25, and to offset increased costs in maintaining the depostory the Department proposes to charge user fees for the deposit and distribution of microbial cultures. Accordingly, this proposed rule would amend the regulations to set forth the user fees.

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and been determined not be a "major rule." In addition, it will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Terry B. Kinney, Administrator, Agricultural Research Service, made these determinations.

List of Subjects in 7 CFR Part 504

Agricultural research, Fees.

1. Accordingly the Department proposes to amend chapter V, title 7, Code of Federal Regulations by adding a new Part 504 to read as follows:

PART 504—USER FEES

Sec.
504.1 General statement.
504.2 Fees for deposit and requisition of microbial cultures.
504.3 Payment of fees.
504.4 Exemptions from user fee charges.
504.5 Address.

Authority: 31 U.S.C. 9701.

§ 504.1 General statement.

This part sets forth fees to be charged for the deposit and distibution of microbial patent cultures. The fees set forth in this part are applicable to the Agricultural Research Service (ARS) Patent Culture Collection, Northern Regional Research Center, Peoria, Illinois.

§ 504.2 Fees for deposit and requisition of microbial cultures.

(a) Depositors of microbial cultures must pay a one-time $500 user fee for each culture deposited on or after November 1, 1983.

(b) For cultures deposited on or after November 1, 1983, requesters must pay a $20 user fee for each culture distributed. Cultures which were deposited on or after November 1, 1983 have an identification number greater than 15,722.

§ 504.3 Payment of fees.

(a) Payment of user fees must accompany a culture deposit or request.

(b) Payment shall be made by check, draft, or money order payable to USDA, National Finance Center.

§ 504.4 Exemptions from user fees charges.

(a) USDA laboratories and ARS cooperators designated by the Curator of the ARS Patent Culture Collection are exempt from fee assessments.

(b) The Curator of the ARS Patent Culture Collection is delegated the authority to approve and revoke exemptions from fee assessments.

§ 504.5 Address.

Deposits of requests for microbial patent cultures should be directed to the Curator, ARS Patent Culture Collection, Northern Regional Research Center, USDA–ARS, 1815 N. University St, Peoria, Illinois 61604; (309) 685–4011.

Signed at Washington, D.C., on May 29, 1984.

Terry B. Kinney, Jr.,
Adiminstrator, Agricultural Research Service.

[FR Doc. 84–15287 Filed 6–6–84; 8:45 am]
BILLING CODE 3410–03–M

Federal Grain Inspection Service

7 CFR Part 810

Proposed Revision of the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes that revisions be made to delete moisture content as a grade-determining factor in the U.S. Standards for Corn, Sorghum, and Soybeans. The moisture content of corn, sorghum, and soybeans will continue to be reported on all official certificates as required by regulations under the U.S. Grain Standards Act (the Act). This proposal would (1) provide for consistency among standards, (2) treat moisture content as a condition of the grain rather than a fixed measure of quality, and (3) would recognize current trade practices.

DATE: Comments must be submitted on or before July 23, 1984.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resource Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C., 20250; telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., (address as above), telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Department Regulation 1512–1. The action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of corn, sorghum, and soybean inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Moisture Content in Grade Determination

In the current U.S. standards for Corn (7 CFR 810.350–810.353 and 810.901, 810.904, 810.905), the U.S. Standards for Sorghum (7 CFR 810.551–810.560), and the U.S. Standards for Soybeans (7 CFR 810.601–810.603 and 810.901–810.903), a maximum allowable moisture content is stated for each numerical grade. The grade table for corn is § 810.353 contains the maximum moisture limits for grades U.S. Nos. 1, 2, 3, 4, and 5 as 14.0, 15.5, 17.5, 20.0, and 23.0 percent, respectively. The grade table for sorghum in § 810.557 contains the maximum moisture limits for grades U.S. Nos. 1, 2, 3, and 4 as 13.0, 14.0, 15.0, and 18.0 percent, respectively. The grade table for soybeans in § 810.603 contains the maximum limits for grades U.S. Nos. 1, 2, 3, and 4 as 13.0, 14.0, 16.0, and 18.0 percent, respectively. FGIS proposes that moistures content be deleted as a grade-determining factor in these standards.

The moisture content will continue to be shown on all official certificates which show the official grade determination as required under 7 CFR 800.162(a)(3) of the regulations.

Moisture content is not a grade-determining factor in the U.S. Standards for Wheat, Barley, Oats, Triticale, and Rye. Accordingly, this proposal would add consistency among the various grain standards.

Moisture content is a condition of the grain rather than a quality factor. Newly harvested corn, sorghum, or soybeans may be graded U.S. Sample grade due to high moisture content but may equal a U.S. No. 1 quality on all other factors: The corn, sorghum, or soybeans may be dried to a moisture content equal to a U.S. No. 1 or 2 grade and can then be graded accordingly. Pursuant to current trade practices, discounts for moisture generally are assessed on the actual moisture content rather than numerical grade to account for weight loss and drying costs of the handler. High moisture grain is a normal condition during movement from harvest into market channels or storage. Moisture content by itself does not imply an intrinsic quality, but rather measures the amount of dry matter and water content of the grain. Moreover, moisture content can be specified through contracting which is a common practice, for example, with corn. Since specifying a maximum moisture content is a common practice, the numerical grade limit in most instances does not serve a useful purpose.

Minor non-substantive changes are proposed to the table in § 810.603 to add .0 to all pounds and percents listed, as appropriate.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), upon request, such information may be presented orally in an informal manner. Also, pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. FGIS is considering that in the public interest an effective date of less than one calendar year after promulgation may be warranted. An early effective date would facilitate domestic and export marketing. Further, it would be desirable that the revision become effective before the beginning of the crop year. FGIS, therefore, anticipates that this revision, if adopted, would become effective September 1, 1984.

List of Subjects in 7 CFR Part 810

Exports, grains.

PART 810–OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, it is proposed that § 810.353(a), § 810.557, and § 810.603(a) be revised as follows:

§ 810.353 Grades, grade requirements, and grade designations.

* * * * *

(a) Grades and grade requirements for corn (See also paragraph (d) of this section.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Broken corn and foreign material (percent)	DAmaged kernels	
			Total (percent)	Heat damaged kernels (percent)
U.S. NO. 1	56	2	3	0.1
U.S. NO. 2	54	3	5	.2
U.S. NO. 3	52	4	7	.5
U.S. NO. 4	49	5	10	1
U.S. NO. 5	46	7	15	3

U.S. Sample grade:

U.S. Sample grade shall be corn which does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; or which contains stones; or which is musty, or sour, or heating; or which has any commercially objectionable foreign odor; or which is otherwise of distinctly low quality.

* * * * *

§ 810.557 Grades and grade requirements for all classes of sorghum.

(See also § 810.559.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of —		
		Damaged kernels		Broken kernels, foreign material, and other grains. (percent)
		Total (percent)	Heat damaged (percent)	
U.S. No. 1	57	2	.2	4
U.S. No. 2	55	5	.5	8
U.S. No. 3 [1]	53	10	1	12
U.S. No. 4	51	15	3	15

U.S. Sample grade:

U.S. Sample grade shall be sorghum which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4,

(b) Contains more than 7 stones which have an aggregate weight in excess of 0.2 percent of the sample weight or more than 2 crotalaria seeds (*Crotalaria* spp.) 1,000 grams of sorghum,

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut odor), or

(d) Is badly weathered, heating, or distinctly low quality (see § 810.552(d)).

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

§ 810.603 Grades, grade requirements, and grade designations.

* * * * *

(a) Grades and grade requirements for Soybeans. (See also paragraph (d) of this section.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Splits (percent)	Damaged kernels		Foreign material (percent)	Brown, black, and/or bicolored soybeans in yellow or green soybeans (percent)
			Total (percent)	Heat damaged (percent)		
U.S. No. 1	56	10	2	0.2	1	1
U.S. No. 2	54	20	3	.5	2	2
U.S. No. 3 [1]	52	30	5	1	3	5
U.S. No. 4 [2]	49	40	8	3	5	10
U.S. Sample grade:						

U.S. Sample grade shall be soybeans which do not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 4, inclusive; or which are musty, sour, or heating; or which have any commercially objectionable foreign odor; or which contain stones; or which are otherwise of distinctly low quality.

[1] Soybeans which are purple mottled or stained shall be graded not higher that U.S. No. 3.
[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

* * * * *

Authority: Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: May 24, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–15190 Filed 6–6–84; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 1006 and 1012

[Docket Nos. A0–356–A20 and A0–347–A23]

Milk in the Upper Florida and Tampa Bay Marketing Areas; Notice of Recommended Decision and Opportunity To File Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Orders

Correction

In FR Doc. 84–13719, beginning on page 21537, in the issue of Tuesday, May 22, 1984, on page 21542, in the second column, in § 1006.52(a), in the sixth line, "with" should read "within".

BILLING CODE 1505–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 240

[Release Nos. 33–6537; 34–21009; IC 13979; File No. S7–22–84]

Issues Related to the Americus Trust Filings; Advance Notice of Possible Commission Action

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of written comments.

SUMMARY: The Commission is today publishing a release soliciting written comments on issues related to a new type of securities trading and investment product. The Commission has received filings to register under the Securities Act of 1933 trust certificates or "units" to be issued by thirty series of a unit investment trust registered under the Investment Company Act of 1940. Each trust series proposes to issue its units in exchange for shares of common stock of a single major industrial issuer. Units of each trust series may be divided by a unitholder into two component parts that may be traded separately. One component carries the dividend and voting rights in the underlying common stock, and the other component carries the right to its capital appreciation over a specified price as of a specified, future date. This mechanism would permit shareholders of certain industrial issuers to exchange their shares of stock for trust certificates which, in turn, would enable them to divide the ownership rights that attach to shares of common stock and separately sell those rights. The Commission seeks public comment to assist it in determining whether there are any legal, regulatory or public policy concerns that would warrant special consideration or action by the Commission regarding this new securities product.

DATE: Comments must be received on or before July 9, 1984.

ADDRESS: Three copies of all comments should be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Anthony A. Vertuno, Chief, Office of Disclosure Legal Services, (202) 272–2107, Division of Investment Management, for questions concerning the operation of the trust series; Richard Chase, Assistant Director, Division of Market Regulation, for questions concerning trading of the units or their component parts, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is today requesting public, written comment on various legal and policy issues concerning a new type of securities trading and investment product. The Americus Shareholder Services Corporation ("Americus") currently has pending with the Commission filings to register under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a *et seq.*] trust certificates to be issued by thirty series of a unit investment trust under the Investment Company Act of 1940 (the "1940 Act") [15 U.S.C. 80a–1 *et seq.*] [1] Each trust series proposes to issue its certificates or units in exchange for shares of common stock of a single, specified major industrial issuer on a one for one basis. The unit may then be divided by its unitholder into two parts—the PRIME [2] component and the SCORE [3] component. The PRIME component would represent, among other things, the right to vote the shares of the corporation deposited in exchange for the unit certificate and the right to receive its dividends. The SCORE component would represent the right to receive capital appreciation on the underlying portfolio security above a designated value upon termination of the trust series. Each trust series would have a life of five years. It is contemplated that the PRIME and SCORE components would be separately traded on a national securities exchange. Americus contemplates applying to list the unit

[1] Under current practice, unit investment trust sponsors do not set up a completely new trust organization for each new portfolio. Instead, a sponsor will organize and register as an investment company under the 1940 Act a single unit investment trust which is intended to have many different portfolios. Each separate portfolio of the trust will issue a separate "series" of units for which a separate registration statement will be filed under the Securities Act. Each series related to an individual portfolio, and a purchaser of units in a particular series looks only to that portfolio for his investment return. A typical new series of a particular trust usually resembles a previous series in its manner of organization, operation and in the type and quality of its portfolio securities, differing only in the selection on those specific portfolio securities.

[2] "PRIME"—a trademark of Americus Shareowner Services Corp. standing for "Prescribed Right to Income and Maximum Equity."

[3] "SCORE"—a trademark of Americus Shareowner Service Corp. standing for "Special Claim in Residual Equity."

ceritificates and the PRIME and SCORE components on the New York Stock Exchange (the "NTSE").

Through the mechanism of these components, Americus, the sponsor of the unit investment trust certificates, is offering shareholders the opportunity to divide the rights that customarily attach to ownership of a share of common stock in a corporation. The Commission is seeking public comment from all interested persons in order to assist the Commission in determining whether there are any legal, regulatory or public policy concerns that would warrant special Commission regulatory or other action with respect to the Americus Trust concept, unit certificates and their components parts.

The Internal Revenue Service has recently proposed a rule under Section 7701 of the Internal Revenue Code, concerning the classification for federal tax purposes of investment arrangements, such as the Americus Trust.[4] Commentators may wish to consider that proposed rulemaking in developing comments in response to this release. The tax status of the Americus Trust is briefly discussed below.[5]

II. Proposed Operation of the Americus Trust Services[6]

The offer to exchange trust certificates (the "units") for shares of a specified industrial issuer would be made through broker-dealers registered with the Commission. Purchasers of units in an Americus Trust series[7] would pay a cash deposit fee that would be divided between Americus and the selling broker-dealer. The offer would be made on a first come first served basis and would expire either on a specified expiration date or when a specified maximum number of shares have been validly tendered, whichever comes first. Each trust series would not accept more than 5% of the outstanding shares of the selected issuer. Once a unit is received, the holder would be permitted to separate the unit into PRIME and SCORE components.

The PRIME component of each unit would represent the right of its holder: (1) To receive cash dividends and distributions paid on the underlying stock held by a trust series, less operating expenses for that series; (2) to receive non-cash distributions on the stock that are taxable and that have a value of less than 5% of the net asset value of the trust; (3) to receive all rights to acquire additional shares of the common stock unless it would not be economical to distribute such rights, in which event the trust series would sell the rights and distribute the proceeds; (4) to direct the vote of that portion of the stock held by the trust series that corresponds to the holder's proportionate interest; and (5) to receive upon termination of the trust series a distribution of stock and cash (for fractional interests) having a value of the lesser of the Termination Claim or the net asset value per unit.

The SCORE component would represent the right of its holder to receive upon termination of the trust series a distribution of stock and cash equal to the value of the excess of net asset value per unit over the Termination Claim.

Consistent with the defined rights of component holders and the operation of the trust, the trustee would not, for example, distribute stock received as a result of a stock split. The stock would be held by the Trust, avoiding any change in the net asset value of the series. A unit holder's net asset value would, as a result of the stock split, be represented by a larger number of the underlying shares.

The holders of PRIME components or SCORE components would be able to recombine those components into units by acquiring, at the then prevaliling market price, an equal number of complementary components. Each recombined unit then could be redeemed for shares of the underlying stock in accordance with the proportionate net asset value of that unit. Because the individual components would not be redeemed by the Trust, Americus has undertaken to arrange for the maintenance of a secondary market to allow holders of components to sell them individually prior to the termination of the series (Americus Trust Shareowner Service Corp. (pub. avail. February 12, 1977)). As noted above, Americus plans to list Units, PRIME and SCORE components on the NYSE, but states in its filings with the Commission that there can be no assurance that the Trust will be able to maintain the requisite number of units outstanding or number of unitholders necessary to maintain such listing during the life of the Trust.

Each trust series has a term of five years, at the end of which it proposes to distribute the shares held in its portfolio to the holders of units and components. For each trust series a "Termination Claim" will be established at the time of the commencement of the offering for purposes of determining the relative values of the PRIME and SCORE components upon termination of the trust. The termination claim is a dollar amount, set at least ten dollars higher than the closing price of the shares on the date prior to the effective date of the registration statement, rounded up to the nearest five dollars.[8]

On the termination of each trust series, the holders of whole Units, PRIME components and SCORE components would receive payments in shares of stock with any fractional balance paid in cash. If the net asset value per unit is equal to or less than the Termination Claim the holders of the PRIME components would receive shares equal to the net asset value per unit and the holders of SCORE components would receive nothing. If net asset value per unit is greater than the Termination Claim, the holders of PRIME components would receive shares of stock equal to the Termination Claim and the holders of SCORE components would receive shares of stock equal to the excess in value of the shares of stock over the Termination Claim.

Shareholder Communications. The trustee for each Americus trust series would act as transfer agent for the units and the components and would maintain lists of unit holder and PRIME and SCORE holders. The form of "Custody Agreement" between the sponsor and the trustee, filed with the Commission, provides that the trustee will transmit, as soon as practicable, to Prime holders all proxy materials received from the issuer. In addition, the sponsor has indicated that the trustee will undertake to deliver to PRIME component holders all other materials furnished by the underlying issuer to the trustee and all materials furnished by third parties to the trustee. The trustee will, however, forward proxy and other corporate communications only upon an undertaking by the underlying issuer or third party to reimburse the trust for its

[4] Classifications of Investment Arrangements With Multiple Classes of Ownership, 49 FR 18741 (May 2, 1984).

[5] See discussion captioned "Tax Considerations."

[6] The description of the trust contained in this release is based upon the pending registration statement filed on Form S-6 for Americus Trust, Exxon Series A, Registration No. 2-88874, available at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

[7] The Americus Trust for AT&T Common Shares was filed with the Commission and declared effective October 25, 1983. This unit investment trust was created to allow AT&T shareholder to consolidatae in a single security the various parts of the AT&T organization after the divestiture in January, 1984. That trust, which issued certificates divisible into two component parts, operates and is structured like the recent Americus Trust filings.

[8] For example, if, on the trading day prior to the date that the registration statement of an Americus Trust for ABC company common shares was declared effective, ABC shares closed at $62.00 the Termination Claim would be $75.00.

reasonable expenses in forwarding those materials.[9]

Upon receipt of any notice of any meeting at which the holders of the underlying stock are entitled to vote, the trustee is required to transmit to each Prime component holder (or Unit holder): (a) Copies of all materials that are received from the issuer in connection with the matters to be voted upon, and a form of proxy executed by the trustee or its nominee covering the number of votes the Unit or PRIME component holder is entitled to cast; and (b) a brief statement as to the manner in which such proxies are to be completed and returned to the issuer thereof.[10] The trustee does not have the authority to cast votes on behalf of Unit or PRIME component holders who do not return completed proxy cards to the Company.

Mergers and Tender Offers. The trust is required to reject any offer to purchase or exchange securities whether pursuant to a merger or tender offer or otherwise for any of the stock whether from the issuer or a third party (except in the case of a reorganization of the issuer or other issuer of stock as to which its shares owners are entitled to vote.) If the purchase or exchange occurs involuntarily any cash received in exchange for the stock would be added to the trust assets to replace the stock so purchased and would be held in the trust without interest. Also, any property, other than cash and including securities, issued in exchange for stock would be added to the trust's assets to replace the stock so exchanged and then would be held in trust. If a Unit holder wished to take advantage of a tender offer he would be required to redeem his units for shares of stock. Moreover, component holders would have to recombine the components into complete units in order to redeem and take advantage of the tender offer.

Tax Considerations. Americus received in September 1980, a private letter ruling from the Internal Revenue Service ("IRS") concerning the tax attributes of an Americus Trust. The ruling classifies the trust as a "grantor trust," and no gain or loss is to be recognized upon the deposit of a share of stock in the trust in exchange for a unit of the trust. Under this classification, the cost basis of the unit to a dipositor would be the cost of the original shares. For purposes of determining gain or loss recognized on the sale of a PRIME or a SCORE component, the unit holder's basis in the unit must be apportioned between the sold component and the retained component according to the relative fair market value of the two components at the time of sale.

On April 27, 1984, IRS issued a notice of proposed rulemaking designed to clarify the classification for federal tax purposes of investment arrangements with multiple classes of ownership.[11] As proposed, the rule will apply to "investment trusts" for which interests are issued after April 27, 1984 and which have multiple classes of ownership enabling investors to fulfill varying profit-making objectives. That kind of trust would be classified as an association (taxable as a corporation). The rule, as proposed, would apply to the filings currently pending with the Commission for the Americus Trust. The rule would appear to make the Trust a less attractive investment for many investors. The exchange of shares for units in the Trust would be a taxable event, and dividends received by the Trust would be taxable to the Trust.

III. Request for comments

Several corporations and individuals have written to the Commission raising various issues about the Americus Trust concept.[12] Issues raised in those letters and by others include:

(1) Whether the SCORE component is the functional equivalent of an options and whether trading in SCOREs should be regulated in the same way as options trading,

(2) Whether proliferation of the Americus concept would lead to market and investor confusion and disrupt the primary trading market for the issuer's equity securities,

(3) Whether trading in the components will adversely impact trading in the options markets,

(4) Whether the Americus Trust would impede communications by issuers with their shareholders,

(5) Whether Unit or PRIME component holders are beneficial owners of the underlying shares for various regulatory requirements,

(6) Whether the trust would adversely affect corporate governance by dividing share ownership rights in a way that would create conflicting interests, and

(7) Whether the PRIME and SCORE components would impact tender offers and related regulatory requirements, and

(8) Whether the fact that a PRIME and SCORE components is not alone redeemable but may only be redeemed together as a unit is consistent with Sections 4(2) and 22(e) of the Investment Company Act of 1940.

The Commission invites comment on all these questions and the specific aspects of Americus Trust instruments discussed below as well as on any other aspects of the trust concept not addressed here.

A. Issues Relating to Options Trading and Secondary Market Trading in the Underlying Stocks

In a letter dated dated March 15, 1984 to Chairman Shad, Representative John Dingell has stated that SCOREs may be functionally the same as stock options and discussed the concerns that New York Stock Exchange ("NYSE") trading of SCOREs raises in light of this comparability. The letter raises a number of concerns that historically have been raised by NYSE proposals to trade stock options, including: (1) Competitive concerns stemming from the NYSE's dominant position in the equities market; (2) "back door" entry of the NYSE into trading options on individual stock through listing of Americus Trust SCOREs on those stocks; (3) potential "side by-side" trading issues;[13] (4) issues related to the NYSE specialist's time and place advantages and ability to anticipate and set prices; and (5) equal regulation concerns resulting from the fact the special disclosure and investor protection requirements that apply to listed options would not be applicable to trading in SCOREs. In addition, the letter raises the possiblity that a proliferation of Americus Trust series on the same stock might adversely affect the liquidity of the market for that stock.[14] Various of these concerns have

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[9] *See* Securities Exchange Act Rule 14a-3(d) and 14b-1, although the trust would not appear to be a person enumerated in those rules.

[10] Since the Trustee is the owner of record of the underlying common stock, it would be necessary for the Trustee to execute the proxy before sending it to the unit or PRIME component holder.

[11] Classifications of Investment Arrangements With Multiple Classes of Ownership, 49 FR 18741 (May 2, 1984).

[12] The Commission has received letters from several issuers, including International Business Machines Corp. ("IBM"), Procter & Gamble Company, Xerox Corp., Standard Oil Company (Indiana), Texaco Inc., GTE Corp., Royal Dutch Petroleum, Atlantic Richfield Company and Hewlett-Packard Company. Representative John D. Dingell, Chairman of the House Subcommittee on Oversight and Investigations, has expressed various concerns relating to Americus Trust in a letter to Commission Chairman John S.R. Shad, dated March 15, 1984.

[13] "Side-by-side" trading refers to the trading of a security and derivative instrument related to that security on the same trading floor.

[14] In his March 15 letter, Congressman Dingell further suggested that SCOREs "appear to expose investors to the same risks as exchange-traded options on common stocks. These risks include (1) intricacies of the security itself; (ii) risk of total loss of investment in the case of long positions; (iii) risk of unlimited loss for uncovered short positions; (iv) inducement to engage in very complex trading strategies (such as hedging, spreading, etc.)."

also been expressed in letters to the Commission from a number of the issuers of securities proposed to be the subject of Trust series.

SCOREs would appear to have a number of economic characteristics that are analogous to listed stock options. In particular, like call options, they offer the investor the opportunity to speculate on a leveraged basis on possible price increases in the underlying stock. Americus has responded to the concerns raised by commentators by noting that there are a number of differences between listed stock options and SCOREs, at least in their current form.[15] At present, a single issue of SCOREs is proposed to be offered on each underlying stock at an exercise price (or "termination claim") $10 to $15 above the prevailing market price for the underlying stock, with the expiration date of the SCORE fixed approximately five years into the future. The maximum offering of any SCORE issue is proposed to be 5% or less of the public float of the underlying stock. Listed stock options, by contrast, are issued at a variety of exercise prices, with additional exercise prices offered as the price of the underlying stock changes. This assures that there are always "at-the-money" options available on the stock. Moreover, there is no limitation on the number of stock options outstanding at any given time, and, in some instances in the past, the open interest in some options classes has nearly equalled the entire public float of the underlying stock. New stock options are issued quarterly, with a maximum duration of nine months. By far the most actively traded series of options are those with three months or less to expiration. This means that stock options generally would seem to be shorter term investments than SCOREs.[16]

In economic terms, SCOREs would appear to resemble warrants even more closely than they do options.[17] Like SCOREs, warrants invariably are issued in offerings at a single exercise price (generally above the current market price) and a single expiration date (generally three to ten years in the future).[18] Also, warrant offerings generally equal only a modest percentage of the public float of the underlying stock. While warrants and options share many of the same leverage characteristics, the Commission and the securities exchanges have not adopted rules governing warrants comparable to those governing listed options. In that connection, warrants can be traded "side-by-side" with the underlying stock, with the same specialist frequently handling both the warrant and stock.

While a single trust series would appear more analogous to warrants than standardized options, the potential exists for Americus Trust (or another entity) to issue in the future additional PRIMEs and SCOREs (or similar securities) on the same underlying stock at different termination claim (or strike) prices and different termination dates. At some point, sufficient series of such units may be outstanding to increase substantially their similarity to listed options.[19] Commentators have suggested that the proliferation of trust series on NYSE-listed common stock may create possibilities for price manipulation and the misuse of market information that the current prohibition of side-by-side exchange trading of options and equities is intended to prevent.[20] In addition, one commentator has contended that if there are in fact regulatory similarities between SCOREs and options then Americus Trust's disclosure of the market rules involved in purchasing SCOREs should have to meet the rigorous investor protection[21] and disclosure requirements for options under exchange rules and Rule 9b–1 under the Act.[22]

The Commission requests comment on the degree of similarity between standardized options and the SCOREs issued by Americus Trust. In this connection, the Commission requests comment on the need, if any, for similar regulatory treatment for SCOREs and standardized options. Specifically, commentators are encouraged to address whether option disclosure and investor protection requirements should be applied to trading in SCOREs. Commentators should also address any potential effects of side-by-side trading of SCOREs and the underlying stock and of trading of trust instruments and the underlying stock by the same specialist.

Several commentators have also expressed concerns that a proliferation of Americus Trust-type instruments could interfere with traditional investment vehicles and decrease liquidity in stock of the issuer underlying the trust. Those commentators argue that a portion of the public float of the underlying security is taken out of circulation each time an Americus Trust unit is created, thus potentially reducing the market liquidity of the underlying stock. It should be noted, however, that at this point the Americus offerings specifically provide for a maximum trust size of up to 5% of the shares outstanding of the underlying securities, and that each of the 30 subject securities has a substantial public float and is actively traded. At the same time, it is possible that multiple issues of units on the same securities, whether offered by Americus or in the form of some competing instruments,[23] could potentially constrict the supply of the underlying stocks to a greater extent.[24] The Commission

[15] *See* letter from A. Joseph Debe, President, Americus Sharepower Service Corp., to Kathryn B. McGrath, Director, Division of Investment Management, dated April 16, 1984 ("Americus letter").

[16] In addition, SCOREs, unlike call options, do not provide the holder the right to receive underlying common stock at a specified price upon exercise. The SCORE holder, at termination of the trust, receives stock from the trust equal in value to the appreciation in the net asset value per unit of the stock above the termination claim.

[17] As discussed below, however, SCOREs also differ from warrants in certain significant respects which, in the Commission's view, justify regulating them as distinct investment vehicles.

[18] In his March 15 letter, Congressman Dingell observed that "during at least the last nine months of a SCORE's term, any initial difference between a SCORE and an 'exchange-trade' option, with respect to duration, disappears." This feature is also true of warrants.

[19] Americus has indicated that, at this time, they do not plan to have in existence at any one time more than two or three Americus Trusts relating to a particular company. *See* Americus letter, p.4.

[20] The Commission has, in the past, raised concerns over trading options and stocks side-by-side on the primary market for the underlying stock. In particular, the Commission has been concerned that, because the primary market specialist is uniquely positioned as the focal point for most orders and inquiries on the underlying stock, he would have consistent access to market information which would provide him with an unfair competitive advantage over all other participants in the options market. Similarly, over all other participants in the options market. Similarly, the Commission has been concerned that side-by-side trading might increase the risks of market participants engaging in stock/option manipulation. *See* Securities Exchange Act Release No. 34–20921, May 2, 1984 (49 FR 19590, May 8, 1984).

[21] In particular, options exchange rules impose strict selling practice requirements with respect to customer suitability, account openings and firm supervision of options related activity. *See*, for example, Rules 921, 922, 923, and 926 of the American Stock Exchange; Rules 9.7, 9.8, 9.9, 9.15, and 9.21 of the Chicago Board Options Exchange.

[22] Rule 9b–1 requires that an options disclosure document be prepared containing specified information regarding the risks of trading options, and that a broker-dealer deliver the disclosure document prior to accepting a customer's order to trade options. In this connection, IBM, in its March 30, 1984 letter to the Commission, noted that the Americus Trust prospectus which describes the risks inherent in purchasing SCOREs would not be delivered by broker-dealers to persons buying SCOREs in the secondary market.

[23] *See* letter to the Commission from IBM, dated March 30, 1984. IBM has suggested that termination dates and termination claims would not be set with regard to orderly options marketing administration, but rather with regard to the marketing convenience of the trust sponsors.

[24] The Commission notes that trading volume in the AT&T Americus securities has been minimal and of no apparent impact on the liquidity of the underlying securities. This does not preclude, however, a measurable market impact if, for example, 5 percent or more of the underlying stock were tendered to such trusts.

requests public comment on the possible impact of Americus-type securities on the markets for the underlying securities. Commentators may also wish to address how the IRS's proposed rule, discussed above, would impact these kinds of issues.

B. Issues Relating to NYSE Listing Criteria

Commentators have suggested that Americus Trust instruments are not encompassed by current NYSE listing standards and that such standards must be amended to accommodate NYSE listing and trading of these securities.[25] The Commission's staff did not object to NYSE trading in the Americus Trust AT&T securities in the absence of amendments to NYSE listing criteria. However, the trading of the Americus AT&T securities, particularly in the unique circumstances of the AT&T divestiture and the development of special purpose investment companies that would hold only AT&T companies is not precedent for listing additional trusts without specifically tailored listing criteria.[26] The Commission views the novel functional properties of Americus Trust units, PRIMEs and SCOREs as sufficiently distinct from existing NYSE listed securities to warrant such an amendment to the NYSE's rules. The Commission has therefore formally requested the NYSE to file amendments to NYSE listing criteria with the Commission pursuant to Section 19(b)(2) of the Act.[27]

The NYSE has stated to the Commission that PRIMEs and SCOREs are similar to already listed issues and have "basic characteristics" of preferred stock and warrants, which already have specific listing criteria under provisions of the NYSE Listed Company Manual.[28] In responding to the NYSE, the Commission cited several differences between PRIMEs and SCOREs, on the one hand, and preferred stock and warrants on the other, stemming primarily from the fact that PRIMEs and SCOREs are not issued by the issuer of the underlying securities.[29] In addition, while, as discussed above, SCOREs have certain economic characteristics in common with warrants, the Commission noted that there appear to be relatively few similarities between PRIMEs and preferred stock.[30]

In the Commission's letter to the NYSE, it suggested that the NYSE consider using its warrants criteria as a starting point for Americus Trust SCORE and PRIME listing standards. These standards would ensure that any trust would have an initial term to expiration of at least 3 years and a minimum issuance equal to at least 1 million shares. The Commission suggested, however, that the NYSE consider additional standards to restrict the percentage of outstanding stock accounted for by trust units[31] and limit issuers of Americus-type instruments to no more than one termination claim level for each expiration date. These additional requirements might address the concerns raised by commentators regarding (1) the similarity of Americus Trust-type instruments to options, (2) the potential adverse effects on market liquidity for the subject stock, and (3) the possibility that proliferation of the Americus concept would lead to market and investor confusion and disrupt the primary trading market for the issue's equity securities.

The Commission encourages comment on appropriate listing criteria for Americus Trust instruments and urges commentators to address whether the minimum standards for listing of warrants under Section 703.12 of the NYSE Manual would be appropriate as minimum listing requirements for Trust instruments. Specifically, comment is requested on whether the current warrants standards assure that an active market in PRIMEs and SCOREs can be sustained, and whether the requirements that a warrant have an initial term to expiration of at least 3 years and a minimum issuance of 1 million shares are appropriate to apply

[25] Congressman Dingell, in his March 15, 1984 letter to Chairman Shad, stated the view that current NYSE listing standards do not rationally apply to PRIMEs and SCOREs. The letter suggested that amendments to listing standards should address such matters as (a) minimum criteria for the trust issuer; (b) minimum characteristics for PRIMEs and SCOREs; (c) limitations on the numbers and kinds of series of PRIMEs and SCOREs that may be issued and outstanding at any time; and (d) minimum requirements for the terms of the trust agreement governing rights of holders of PRIMEs and SCOREs.

[26] Prior to the NYSE's listing of Americus Trust in AT&T, the Commission staff discussed the appropriateness of listing and trading an instrument that was not specifically included in the Exchange's listing criteria. The staff was particularly concerned because of the unique characteristics of the PRIME component of the trust and some of the economic characteristics the SCORE component shares with standardized options contracts. The staff informed the NYSE, however, that it would not object to the Exchange's listing of the Americus AT&T securities in the absence of new listing standards designed specifically to govern those novel trading instruments. The staff took this position because the NYSE was proposing to list only a single trust under the unique circumstances involving the divestiture of the AT&T regional holding companies. The staff viewed the Americus Trust offering as another means for AT&T shareholders to have available a single market vehicle for trading the AT&T holding company and regional company stock received for their AT&T shares under the divestiture.

Nevertheless, the staff indicated to the NYSE that there were serious questions concerning the applicability of existing NYSE listing standards to Americus Trust units, and that, if Americus Trusts were created on additional stocks, the staff would treat a proposal by the NYSE to list these trusts as a separate question that might require amendments to the Exchange's listing standards through a filing with the Commission under Section 19(b)(2) of the Act. After Americus Trust filed 30 additional registration applications, the staff again discussed with the NYSE the matter of the adequacy of current Exchange listing standards with respect to listing Americus Trust-type securities as well as the need to file a proposed rule change with the Commission to authorize the listing of those trusts. In this regard the staff reaffirmed that it did not view the AT&T trust as precedent for NYSE listing and trading of additional trusts without a rule filing under Section 19(b)(2).

[27] *See* letter from George A. Fitzsimmons, Secretary, SEC, to John J. Phelan, Jr., Chairman, NYSE, dated June 1, 1984. As stated in its letter, the Commission, in requesting such a filing, does not wish to place the NYSE at a competitive disadvantage vis-a-vis other securities markets. Because of the unique properties of the Americus Trust, the Commission would raise similar regulatory issues with any market proposing to list such trust instruments.

[28] *See* letter from Richard A. Grasso, Executive Vice President, NYSE, to Richard G. Ketchum Associate Director, Division of Market Regulation, dated April 17, 1984.

[29] In its letter, the Commission noted that, unlike SCOREs and PRIMEs, warrants and preferred stock are issued by the company, and constitute means by which the company seeks to raise capital for ongoing corporate purposes. Perhaps more significantly, exercised warrants or convertible preferred stock result in an increase in outstanding common shares. Thus, they cannot serve to decrease the public float of the underlying stock and, in most circumstances, should not materially adversely affect liquidity of the underlying stock. However, each SCORE and PRIME issue created results in one less share of the underlying stock that is available to be freely traded. Thus, if a corporation offered warrants or preferred shares equal in number to half of its outstanding common stock (which would be permissible under the NYSE's rules), this would not decrease the amount of stock outstanding, and could very well increase it if the warrants were subsequently exercised (or the preferred converted). On the other hand, a series of Americus offerings of that magnitude, if successful, would cut in half the amount of the common that was traded outside the trust. At the very least, the creation of SCOREs, PRIMEs and combined units in addition to the common stock could fragment the market for the stock, thus potentially impairing its liquidity.

[30] Among the reasons cited by the NYSE in the past for analogizing PRIMEs to preferred stock (as distinct from warrants) are that dividends are payable to preferred stock but not warrant holders, and that preferred shareholders may vote their stock, but warrant holders do not vote. There are a number of differences, however, between PRIMEs and preferred stock. PRIMEs lack, for example, significant preferred stock characteristics such as seniority with respect to dividend rights and issuer liquidation rights, among other rights specified under Section 703.05 of the NYSE Manual.

[31] In contrast, Section 703.12 of the NYSE Manual permits companies to issue warrants exercisable for purchase of up to 18.5 percent of the issuer's outstanding stock, and a greater amount (up to 50 percent) if approved by shareholders.

to Americus Trust securities. Commentators are encouraged to evaluate whether the requirement governing the "strike price" for warrants under § 703.12 (*i.e.*, 25 percent over the market price at the time the warrants are issued) is an appropriate standard for Trust Termination Claims. Commentators are also invited to consider the appropriateness of applying the distribution, market value, and earnings criteria in Section 102 of NYSE Listed Company Manual.[32] In this connection, commentators should consider the effect of the Trust in reducing the number of common shares of an issuer that are available for trading as well as the effect if either Americus or an Americus-type trust seeks to make additional trust offerings on the underlying common stock of the same issuer.[33] Finally, commentators should discuss whether limitations on the number of Americus Trust-type instruments in the same security reduce concerns that the SCOREs might be used as surrogates for standardized options.

List of Subjects in 17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 1, 1984.

[FR Doc. 84-15333 Filed 6-6-84; 8:45 am]

BILLING CODE 8010-01-M

[32] Section 102 provides that, to qualify for listing on the NYSE, a company must have a minimum of 2,000 holders of 100 or more shares, and 1.1 million shares outstanding having an aggregate market value of $9-18,000,000 (subject to adjustment, depending on market conditions). In addition, a company must have earnings before federal income taxes of at least $2.5 million for the latest fiscal year and $2 million for each of the preceding two fiscal years; or aggregate earnings of $6,500,000 for the three preceding fiscal years together with a minimum for the most recent fiscal year of $4,500,000 with the stipulation that all three years be profitable.

[33] Commentators should consider that questions of market liquidity bear on both trading in the individual components as well as on the ability of the holder of trust components to recombine them into units in order to redeem them for common shares through the Trust. In this regard, as a grantor trust, Americus is required to reject all tender offers for common stock held in the trust. Therefore, a trust component holder can take advantage of a tender offer only by recombining PRIME and SCORE components and redeeming the units through the trust for common stock.

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Labor proposes revisions to the sections of 20 CFR Part 10 which concern the procedures for submitting bills for medical services provided to Federal employees covered under the Federal Employees' Compensation Act, and the limits of coverage for medical services thus provided. The chief effect of the revision will be to establish limits for fees for medical procedures and services according to a published schedule developed and maintained by the Director of the Office of Workers' Compensation Programs.

The proposed rule provides for the development and implementation of a fee schedule; directs its maintenance and revision by the Director of the Office of Workers' Compensation Programs; sets forth procedures for providers and claimants to seek reconsideration of fee requests under the schedule; and establishes a required format for medical bills other than hospital bills.

DATE: Written comments must be submitted on or before August 6, 1984.

ADDRESS: Send written comments to Thomas M. Markey, Deputy Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C., 20210; Telephone (202) 523-7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Deputy Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Consitution Avenue, NW., Washington, D.C., 20210; Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: Federal employees injured in the performance of duty are entitled to medical care in accordance with 5 U.S.C. 8103 of the Federal Employees' Compensation Act (FECA), which provides that the United States shall furnish: .

* * * the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation * * *

The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

Under this authority, the Secretary of Labor authorized from the Employees' Compensation Fund, $151,307,000 during Fiscal Year 1983 for payments to physicians and other persons for medical services to injured Federal employees. While compensation for loss of wages comprises the major outlaw under the FECA, medical costs are nevertheless a substantial portion of total outlays and have risen dramatically, from an approximate average of $15 million in 1967 and 1968, to $69,500,000 in FY 1977, to the present level.

Studies of the program's medical outlays indicate the need for stricter controls on medical expenses under the program. While the Office has implemented many modifications of internal procedures to tighten controls, this approach has not been fully successful in the case of medical fee containment. Because of the extraordinarily wide range of bill formats received in district offices, the variety of descriptions used to identify procedures, and the range of fees which prevail from one community or state to the next, local OWCP offices have not effectively solved the problems of monitoring fees for medical procedures. Thus, the Office seeks to bring about greater accuracy, consistency and accountability in the billings received from providers for payment of medical services rendered to claimants under the FECA. The Office also can thereby provide its district claims offices with a defined benchmark or standard by which to process bills for reasonableness of payment within specific geographic areas. By defining the schedule and procedures the Office anticipates it also can speed the overall process for medical payment to providers.

To remedy these problems, the Office of Workers' Compensation Programs, which administers the FECA Program, undertook to study information

concerning medical fees, examining several State Workers' Compensation and private insurance programs which impose a schedule of fees on providers of medical services. It found no comprehensive existing schedule which applied to all jurisdictions served by the Office, covered all billed medical procedures, and was easily applicable and modifiable for OWCP's constituency. The search for an existing schedule to adopt was thus transformed into a search for accurate, comprehensive data on which to base a medical fee scale suitable to OWCP's special needs.

The development of a National medical fee schedule for FECA claims began in the Spring of 1982 with a survey of available prototypes or sources of medical fee data. Contacting Federal agencies and industry sources, OWCP found no body of data which could be used to accurately identify customary charges for individual medical and surgical procedures in each geographic area surved by the Program. The data and existing fee schedules were confined to one State or geographic region, limited to a small range of medical services, or were not defined by specific procedures. Medical charges for an area, in addition, correlate poorly with such other economic indices as personal income, or area cost of living.

In moving to develop its own schedule of fees, OWCP found that a number of State systems and private insurers apply ralative value scales for medical procedures which assign a value to each common service reflecting the time and skill required to perform it, together with the risk and difficulty entailed. Relative value indices are published and routinely maintained by various sources, and are available for use without the costly and time-consuming information collection which would be required to determine customary charges for procedures in different areas. New medical techniques and advances in old techniques can be reflected in yearly revisions to the nationwide scale, without the necessity of collecting data on rising changing costs for such a service in each geographic locale. Thus a relative value scale is flexible and easy to maintain. Finally, it provides a scale based on the judgement of medical professionals, independent of regional charging patterns. The criteria for assigning such a value are readily accessible for public discussion.

The Office proposes to adopt a relative value scale modelled after the scale utilized by the State of Washington Department of Labor and Industries, which uses the widely accepted American Medical Association system of coding for individual medical procedures, the Physicians Current Procedural Terminology, 4th Edition (CPT4). The State of Washington, of those state systems examined, has the most current and comprehensive data available, and consults with medical groups and holds public hearings before assigning or adjusting the values assigned to procedures.

Procedures will be classified into four categories: medicine, surgery, pathology and radiology. Each procedure will be assigned a relative value representing the time, skill, risk and effort required to perform it. The maxiumum allowable charge for each billed procedure will be derived by multiplying its assigned unit value by a dollar factor ("conversion factor") for that category of procedure, and by a geographic index factor which reflects the average cost of medical services in the locale where the procedure was performed.

The most comprehensive body of cost data available to the office was that provided by the Health Care Financing Administration, which receives aggregate cost data from 52 Medicare carriers in 245 locations, and represents medical payments for over 23 million Medicare enrollees. Although the HCFA data is the most comprehensive available, it could not fully meet the needs of the OWCP. The data tends to disproportionately reflect the costs incurred for medical services to the older segment of the U.S. population; thus it does not reflect the same range and relative balance of medical procedures and costs associated with the OWCP's claimant population. The HCFA data also tends not to reflect medical services and related costs arising out of occupational injury and disease as in the case of OWCP claimants. The HCFA data also is about two to three years behind the current year and therefore does not reflect current costs. Despite these shortcomings, the HCFA data was one of the prime sources for developing reasonably reliable measures of geographic variations in medical costs, and was used as a check on the reliability of the data obtained from within OWCP's own operation. The HCFA data thus was crucial to the overall validity of OWCP's effort.

A measure of average per capita cost of medical care can be derived for each United States county by dividing total Medicare expenditures per county by the number of enrollees there. A further study was undertaken to determine how best to aggregate county data to reflect regional patterns of medical costs, since a county-by-county fee scale would be difficult for physicians and patients to adapt to, and enormously unwieldy for the Program to publish, monitor, and keep current.

In the Spring of 1983, the OWCP completed an extensive modification of its automated processing system, and began to collect data identified by CPT4 code from its own field offices, to determine what geographic division best reflected regional cost differences based on the Program's own billing experience. Standard Metropolitan Statistical Areas (SMSA) established by the Bureau of the Census, and Department of Commerce Bureau of Economic Analysis (BEA) areas were among those selected for test. At the same time, a major industry source which collects cost data on a smaller range of medical procedures was used as a comparison. For each geographical unit identified, an index value was assigned, which represented the average cost of medical care for the counties within that unit, based on HCFA data, indexed against the State of Washington, which was assigned the value 100. Statistical analysis based on up to six months of billing exerience and over 90,000 coded procedures showed that to aggregate data by SMSAs produced a high correlation of the HCFA data with industry data, and a closer relationship between HCFA data and Program billing experience.

Based on these analyses, the Office now proposes to assign an individual geographic index value to each SMSA, and an individual value to the area composed of all counties within a state which do not fall within an SMSA. SMSA's (as well as non-SMSA's) with identical HCFA average per capita costs will be grouped together, for the purpose of setting geographic index values. A second set of geographic index values for each SMSA and non-SMSA area will then be derived through statistical analysis of the FECA program's own cost data for medical services. The two sets of geographic indexes—the one based on HCFA data and the other based on FECA data will then be compared using appropriate statistical methods to derive the final geographic index to be applied to each SMSA and non-SMSA.

The schedule and its design will be reviewed yearly and amended as necessary to reflect updates in any of the source data, or where appropriate, alternative data, from which the components are derived. SMSA's also are periodically adjusted, based on census data.

The maximum allowable charge for a billed service performed in a particular locale will be obtained by multiplying the unit value for that procedure by the conversion dollar factor for the category of service by the geopraphic index value for the locale where service was performed.

Thus, for example, if the unit value for a medial meniscectomy is 14.0, and the dollar conversion factor for surgery is $59.49, the maximum allowable fee for a meniscectomy in an SMSA where the geographical index is computed to be 1.1 would equal 14×$59.49×1.1, or $916.15.

Some examples of calculated maximum allowable fees under the proposed schedule are:

Medical Services

Office Visit, Intermediate, Established Patient, provided in Sacramento, California.
CPT4 code: 90060 RELATIVE UNIT VALUE: 20.0
GEO INDEX VALUE Sacramento (California): 1.81 MEDICAL COST PER UNIT: $1.13
Unit Value×Cost Per Unit×Geographic Index=Maximum Allowable Fee=$40.91

Pathological Services

Urinalysis, performed in San Antonio, Texas
CPT4 Code: 81000. RELATIVE UNIT VALUE: 12.0
GEO INDEX VALUE (San Antonio): 1.80 PATHOLOGY COST PER UNIT: $0.49
Maximum Allowable Fee: (12.0×$.49×1.80)=$10.58

X-Ray Services

Radiologic examination, ankle AP and lateral views, complete, minimum three views, performed in Atlanta, Georgia
CPT 4 code: 73610 RELATIVE UNIT VALUE: 6.0
GEO INDEX VALUE (Atlanta): 1.76 X-RAY COST PER UNIT: $5.19
Maximum Allowable Fee: $54.81

Surgical Services

Medial Meniscectomy, performed in Tulsa, Oklahoma
CPT4 code: 27332 RELATIVE UNIT VALUE: 14.0
GEO INDEX VALUE (Tulsa): 1.71 SURGERY COST PER UNIT: $59.49
Maximum Allowable Fee: $1,424.19

The system as planned will approve approximately 95% of all billed medical procedures with the remaining 5% subject to reduction, and appeal thereof. Comments are requested on the effects or impact of this aspect of the fee schedule proposal. Under the schedule, the Office will compare the physician's charge for a particular service with the computed maximum allowable charge for that service performed in that SMSA statistical area. When the fee is higher than the maximum allowable, the allowable amount will be paid, and the physician advised of the right to submit additional information supporting the payment of a larger fee. If the claimant has paid the provider more than the allowable fee and requests reimbursement, the Office will offer to assist the claimant in developing the evidence that a higher fee was warranted.

To simplify the collection of the necessary information and obtain greater accountability OWCP now specifies, and the proposed rule will require that providers, other than hospitals and pharmacies, submit bills using the American Medical Association "Health Insurance Claim Form" (HCFA–1500 Health Insurance Form, OWCP 1500a, Instructions for Completing Health Insurance Form), which is widely employed in the Medicare and Medicaid programs.

Requests for Specific Comments

The Department specifically requests comments on the following: (1) Whether the adoption of a fee schedule is likely to result in some physicians increasing or decreasing their usual and customary charges to equal the scheduled fee for particular medical procedures; (2) whether a fee schedule would have a substantial adverse impact on physician's decisions to provide or not provide medical services to injured Federal employees; and (3) other possible cost control systems which could accomplish the stated purpose of this proposal.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5 U.S.C. 8145 provides that the Secretary of Labor shall administer the Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5. U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies; and may prescribe the form and content of the authorization certificate.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The total expenditure for medical costs in FY 1983 was approximately $151,307,000. A considerable portion of this cost—payments to hospitals and pharmacies and travel reimbursement—will be unaffected by the regulatory proposal. Of the remainder, it is expected that at most a five percent alteration in cost could be expected in the first year of fee reductions. This would produce an effect on the economy far below $100 million. No significant increase in consumer or government cost is expected; rather containment of costs is hoped for. No adverse effect on competition or U.S. enterprise can be foreseen.

Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB, under OMB control Nos. 1215–0055 and 1215–0142.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause a significant economic impact to any small entity subject to its provisions. This conclusion is reached because the application of the fee schedule proposed by these rules will not significantly reduce the amount of money paid to most medical providers for the medical services rendered to FECA beneficiaries. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health professions, Workers' compensation, Employment, Administrative practice and procedure, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney disease, Lung disease, Tort claims.

For the reasons set out in the preamble, Part 10 of Chapter 1 of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority for Part 10 is revised to read as follows:

Authority: (5 U.S.C. 301), Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145), (5 U.S.C. 8149), Secretary of Labor's Order No. 16–75, 40 FR 55913 as amended by Secretary of Labor's order No. 1–81, 46 FR 28048, Employment Standards Order No. 78–1, 43 FR 51469.

2. Section 10.1 is amended by revising paragraph (b) to read as follows:

§ 10.1 Statutory provisions.

(a) * * *

(b) The Act provides for the payment of dollar benefits to enumerated classes of persons who are injured or disabled while in the performance of their duties in service to the United States and to persons within such classes who become sick or disabled as a result of their employment with or service to the United States. The Act further provides for the payment of dollar benefits to certain survivors of persons who have died as a result of or while in the performance of employment or services rendered to the United States. In addition to dollar benefits, eligible beneficiaries who have become disabled as a consequence of a service related injury, disease or other compensable condition, shall be entitled to receive the full range of medical benefits and services made necessary by the compensable condition, which shall be provided at the expense of the United States, subject to the limitations imposed by §§ 10.411 and 10.412 of this part. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries. In the case of death due to a compensable injury, disease or other condition, certain burial expenses shall be paid, subject to the provisions of 5 U.S.C. 8134.

* * * * *

3. Section 10.411 is revised to read as follows:

§ 10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.

(a)(1) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees except for treatment and supplies provided by hospitals and pharmacies, shall be supported by medical evidence as provided in § 10.410, itemized by the physician or provider on the American Medical Association standard "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form," and shall be forwarded promptly to the Office for consideration. Charges for supplies, services or treatment provided by hospitals or pharmacies shall be itemized on the provider's billhead stationery or a standard form, and likewise forwarded to the Office. The provider of such service shall identify each service performed, using the applicable code from the Physicians' Current Procedural Teminology (CPT as periodically revised), with brief narrative description or, where no code is applicable, a detailed description of service performed. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(2) Bills for prescription drugs must include the generic or trade name of the drug provided, the prescription number and the date the prescription was filled.

(b) The physician or other provider (or official designee) shall sign the billing form signifying that services were performed as described, and were necessary, and signifying agreement to accept the fee determined by the Office as payment in full for each itemized service.

(c) Bills submitted by providers, other than hospitals and pharmacies, which are not itemized on the American Medical Association "Health Insurance Claim Form," or are not signed by the provider and the claimant, or on which procedures are not identified by the provider using CPT codes, may be returned to the provider for correction and resubmission.

(d)(1) Payment for medical and other health services furnished by physicians and other persons for work-connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service, as determined by the Director. The Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of an assignment of a value to each procedure identified by CPT code which represents the relative skill, effort, risk, and time required to perform the procedure, as compared to other procedures of the same general class; a classification of the procedure, into one of the following categories: medical, surgical, pathology, radiology; an index representing the average cost of medical care per capita in the locality where service is provided, in relation to other areas, as a measure of the reasonable cost of a single service in that area; and a monetary value assignment (conversion factor) for one unit of value in each of the four categories of service. Payment for performance of a procedure identified by a CPT code shall be not more than the amount derived by multiplying the relative value for that procedure by the geographic index for services in that area and by the dollar amount assigned to one unit in that category of service.

(2) The "locality" which serves as a basis for determination of average cost is defined by the Bureau of Census Standard Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(3) The relative value assignments published by the State of Washington Department of Labor and Industries shall be adopted, using the most recent revision. The conversion factors for each of the four categories of service used in the State of Washington will be adopted as the base dollar multipliers for those categories and will be associated with the average cost of medical care, derived from HCFA data for Washington State. The geographic index factor for a given SMSA shall be based on statistical analyses of charges to OWCP, for groupings of SMSA's that have similar HCFA per capita medical costs when compared to the per capita cost of medical care for the State of Washington. Index factors will be further adjusted to reflect statistical data concerning charges submitted for services to OWCP.

(4) Thus, if the unit value for a particular surgical procedure is 14.0, and the dollar value assigned to one unit in that category of service (surgery) is $59.49, then the maximum allowable charge for one performance of that procedure, in a locale whose index is

1.0, would be the product of 14, 1.0, and $59.49, or $832.86.

(e) Where there is wide variation in the time, effort and skill required to perform a particular procedure from one occasion to the next, the Director may choose not to assign a relative value to that procedure, but the allowable charge for the procedure may be set individually based on consideration of a detailed medical report and other evidence. The Office may, at its discretion, set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

(f) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when deemed necessary or appropriate.

(g)(1) A provider's designation of the CPT code to identify a procedure being billed shall be accepted by the Office if it is consistent with medical reports and other evidence. Where no code is supplied, the Office may determine the correct procedure code based on the narrative description of the procedure supplied on the billing form and in associated medical reports, and pay no more than the maximum allowable fee for that procedure. If the charge submitted by a provider for a treatment or service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, the Office shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. The provider shall also be notified of procedures for requesting reconsideration of the balance of the charge. A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination. Such request should be made, on the form specified by the Director, to the Assistant Deputy Commissioner for Federal Employees' Compensation in the OWCP office having jurisdiction over the injured employee's case, and must be accompanied by documentary evidence that the actual procedure performed was incorrectly identified by CPT code; that the presence of a severe or concomitant medical condition made treatment especially difficult; or that the provides possessed unusual qualifications. Board-certification in a specialty is not sufficient evidence in itself of unusual qualification to justify an exception. These are the only circumstances which will justify reevaluation of the paid amount.

(2) Within 30 days of receiving the request for reconsideration, the Assistant Deputy Commissioner shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(h) If an appealed amount continues to be disallowed by the decision of the Assistant Deputy Commissioner, the provider may apply, within thirty days of the Assistant Deputy Commissioner's decision, to the Assistant Regional Administrator of the region having jurisdiction over the district office. The application must be made on a form designated by the Director, and may be accompanied by additional evidence. Within 60 days of receipt of the application, the Assistant Regional Administrator shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

(i) A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with these regulations shall not request reimbursement from the employee (patient) for additional amounts.

4. Section 10.412 is revised to read as follows:

§ 10.412 Reimbursement for medical expenses, transportation costs, loss of wages and incidental expenses.

(a)(1) If bills for medical, surgical, or dental services, supplies, or appliances have been paid for by an injured employee on account of an injury incurred in the performance of duty, an itemized bill on the American Medical Association "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form", receipted and signed by the person who has received payment, together with a medical report as provided in § 10.410, may be submitted to the Office for consideration. If services were provided by a hospital or pharmacy, the bill may be submitted on the provider's billhead stationery or other standard form. The provider of such service shall identify each service performed using the applicable code from the Physicians' Current Procedural Terminology Code (CPT as periodically revised), with brief narrative description, or where no code is applicable, a detailed description of service performed. Where payment has been made to a hosptial, corporation or firm, the receipted bill shall bear the signature or initials of the person acting for the payee. The bill must clearly show the amount paid by the claimant, and must give clear evidence, whether by signed statement of the provider or mechanical stamp or other device, that payment for the service was received. Requests for remibursement for prescription drugs must include the name of the prescribed drug, the prescription number, the date of purchase, and a receipt showing payment rendered.

(2) These requirements may be waived if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the claimant to obtain the required information.

(b) Copies of bills shall not be paid unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.411.

(c) A claimant who is only partially reimbursed for medical expenses, because the amount paid by the claimant to the physician for a service exceeds the maximum allowable amount set by the Director's schedule, may, within 30 days, request reconsideration of the fee determination. Such request should be made on a form provided by the Secretary to the Assistant Deputy Commissioner of the FEC office having jurisdiction over the injured employee's case. The Office shall, on receipt of such request, fully advise the claimant of the type of evidence required to justify a greater payment. Within 30 days of receipt of evidence, the Assistant Deputy Commissioner shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(d) If an amount remains unpaid after the decision of the Assistant Deputy Commissioner, a claimant who is not satisfied with that decision may appeal to the Assistant Regional Administrator of the region having jurisdication over the district office, within 30 days of issuance of the decision, using a form designated by the Director. Additional evidence may accompany the appeal request. The Assistant Regional Administrator shall, within sixty days of this request, issue a written decision whether to allow any additional amount

in reimbursement considering the evidence submitted. This decision shall be final and not subject to further review.

Signed at Washington, D.C., this 1st day of June 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-15181 Filed 6-6-84; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket 84-3, Notice 2]

Participation in Contract claims Awards and Settlements; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemeaking (FHWA Docket No. 84-3, 49 FR 11678, March 27, 1984) which proposed to revise the extent to which Federal-aid highway funds may participate in awards and settlements of Federal-aid highway contract claims brought by private contractors against State highway agencies. The revised regulation would clarify the current regulation by specifying more definitive criteria in determining eligibility for participation. All comments to the docket were to be received on or before May 29, 1984. The comment period is being extended to July 30, 1984. This extension is being provided in response to a request by the American Association of State Highway and Transportation Officals (AASHTO) that additional time was needed to prepare comments.

DATE: Comments must be received on or before July 30, 1984.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 84-3, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All coments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Cunningham, Chief, Construction and Maintenance Division, Office of Highway Operations, (202) 426-0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are form 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

(23 U.S.C. 110, 120, 315; 49 CFR 1.48(b))

Issued on: June 1, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 84-15228 Filed 6-6-84; 8:45 am]

BILLING CODE 4910-22-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures Payments for Acquisition of Improvements; Extension of Comment Period

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Notice of Extension of Comment Period.

SUMMARY: This notice extends the period of comment on the proposed rule regarding Payments for Acquisition of Improvements pursuant to 25 U.S.C. 640d-14. The reason for extending the comment period from June 11, 1984 to July 11, 1984, is to allow more time for comment as requested by the Navajo Tribe.

DATE: Comments must be received by July 11, 1984.

ADDRESS: Comments may be sent to the Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002. Telephone No. (602) 779-2721.

FOR FURTHER INFORMATION CONTACT: Paul Tessler, CFR Liaison Officer, P.O. Box KK, Flagstaff, AZ 86002. Telephone No. (602) 779-2721.

The principal author of this final rulemaking is E. Susan Crystal, Attorney at Law, of the Navajo and Hopi Indian Relocation Commission.

SUPPLEMENTARY INFORMATION: On May 10, 1984, the Commission published a proposed rule in the **Federal Register**, Vol. 49, No. 92, p. 19847. The rule proposed adoption of regulations to allow payment under limited circumstances, for habitations and other improvements acquired by the Commission pursuant to 25 U.S.C. 640d-14. The proposed rule provided a thirty (30) day comment period commencing May 10, 1984 and ending June 11, 1984. The Commission has determined that the comment period should be extended until July 11, 1984, in order to allow sufficient time for the Navajo Tribe and other interested parties to submit comment.

Authority: 25 U.S.C. 640d, Pub. L. 93-531, 25 U.S.C. 640d-14.

Ralph A. Watkins, Jr.,

Chairman, Navajo-Hopi Indian Relocation Commission.

[FR Doc. 84-15229 Filed 6-6-84; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 181 and 183

[CGD 83-012]

Certification, Safe Loading and Flotation Standards; Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The notice of proposed rulemaking [49 FR 14538] published April 12, 1984 proposed miscellaneous amendments to the Certification Regulations in Subpart B of Part 181 and the Safe Loading and Flotation Standards in Subparts C, E, G and H of Part 183 of Title 33, Code of Federal Regulations. Public comments were invited by May 29, 1984. Notices of proposed rulemaking and final rules are normally published in the Boating Safety Circular which is distributed to approximately 19,000 recreational boat manufacturers, dealers, distributors and other interested parties. Since the issue of the circular containing this notice will not be published until June 1984 by which time the comment period will have closed, the period for public comment is extended until July 13, 1984.

DATE: Comments must be received on or before July 13, 1984.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/44), (CGD 83-012), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, between 8 am and 4 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426-1065, between 8 am

and 4 pm Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published on April 12, 1984 provided that public comments should be received by May 29, 1984. The miscellaneous amendments proposed would revise or remove sections of the Certification regulations and the Safe Loading and Flotation Standards to relieve the regulatory burden upon recreational boat manufacturers. Changes in the actual weights of currently manufactured outboard motors would be reflected in the table used to determine safe loading capacities and the amount of required flotation material and would require the installation of additional floation material in some boats. Since the Coast Guard feels that the proposed rule has not been fully disseminated to all affected parties, the time for public comment shall be extended to July 13, 1984.

Dated: June 4, 1984.

J. A. McDonough, Jr.,

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

[FR Doc. 84-15312 Filed 6-6-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 756

[OPTS-62034; TSH-FRL 2555-1]

Toxic Substances; 1,3-Butadiene; Initiation of Regulatory Action

Correction

In FR Doc. 84-12983, beginning on page 20524, in the issue of Tuesday, May 15, 1984, make the following corrections.

1. On page 20525, in the second column, in the twelfth line from the top, "rates" should read "rats".

2. Also on page 20525, in the second column, in the first full paragraph, in the fourth line, "rates" should read "rats".

3. On page 20528, in the first column, in the last line, "(CAS A106-99-0)" should read "(CAS 106-99-0)".

BILLING CODE 1505-01-M

40 CFR Part 763

[OPTS-211012B; TSH-FRL 2595-8]

Response to Citizen's Petition on Asbestos; Regional Public Meetings; Correction

On May 29, 1984 at 49 FR 22407, the Environmental Protection Agency published a document in the Notices section of the **Federal Register** (FR Doc. 84-14197). The document should have appeared in the Proposed Rules section of the issue.

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6599]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 49 FR 19357 on May 7, 1984. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for Mercer County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in Mercer County, West Virginia, previously published at 49 FR 19357 on May 7, 1984, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Under the Source of Flooding of Bluestone River, at the location description, "Most upstream county boundary," the elevation of 2,202 feet National Geodetic Vertical Datum (NGVD) is incorrect. It should be revised to read 2,302 feet NGVD.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12147, 44 FR 19367; and delegation of authority to the Administrator)

Issued: May 31, 1984.

Jeffery S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-15272 Filed 6-6-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 83

Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: These revisions to the Federal Crime Insurance Program are proposed to achieve the following: The definition of "named insured" under the residential policy is simplified, the limitation on money coverage is being raised from $100 to $200 and the loss limit of $500 in the aggregate is being raised to $1500 under the residential policy for loss of jewelry, silver, furs, fine arts and the like. Other revisions provide greater clarity to existing provisions and reflect program experience which has indicated the desirability of more precise terminology.

DATE: All comments received on or before July 9, 1984 will be considered before final action is taken on the proposed rule.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C 20472, Telephone Number (202) 287-0395.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street SW., Room 433, Washington, D.C. 20472, Telephone Number (202) 287-0800.

SUPPLEMENTARY INFORMATION: These amendments are the result of the experience gained in the twelve years the Federal Crime Insurance Program has been in operation. Examination of the coverage being offered by various private insurance carriers prompted recommendations to the Federal Insurance Administrator which will grant additional benefits to current policyholders similar to those offered by the private sector while not adversely affecting the loss experience of the program under the residential coverage. Because the proposed rule confers a greater benefit to insureds which would be to their immediate advantage FEMA has determined that the effective date of

this rule will be the date of publication of the final rule.

FEMA has determined that an Environmental Impact Statement is not needed for this proposed Rule. A copy of the Finding of No Significant Impact and an Environmental Assessment is available at the above address.

It has also been determined that this regulation is not a major rule under the Terms of E. O. 12291 and it will not have a significant impact on a substantial number of small businesses and that Regulatory Analyses are not needed. Furthermore, this amendment does not require the submission of any information and thus is not subject to section 3504(L) of the Paper Work Reduction Act.

List of Subjects in 44 CFR Part 83

Crime insurance coverage, Rates and prescribed policy forms.

Accordingly it is proposed to amend 44 CFR Part 83 as follows:

1. Section 83.5 in the following respects:

a. Under the heading "Conditions" of the Residential Crime Insurance Policy, within Section 1; described as "Definitions" the paragraph entitled (a) "Named insured" and the paragraph entitled (i) "Residence employee" are revised to read as follows:

§ 83.5 Required residential policy form.

* * * * *

Federal Insurance Administration Residential Crime Insurance Policy

* * * * *

Conditions

(a) *Named insured.* "Named insured" means the insured named in the Application. "Insured" means the named insured and any person while a permanent member of the insured's household, including a residence employee, but not including a tenant, not related to the named insured or his spouse, and who pays board or rent to either.

* * * * *

(i) *Residence employee.* "Residence employee" means an employee of an insured who performs duties in connection with the maintenance or use of the residence premises, including household or domestic service.

b. Under the heading "Conditions" of the policy within paragraph 3, described as "Limits of liability; settlement options" the proviso in the second sentence, first paragraph is revised to read as follows:

* * * "Provided, however, that the limit of the insurer's liability for loss of money is $200 and for loss of securities is $500, and for loss of jewelry, including without limitation, watches, necklaces, bracelets, rings, gems, precious and semi-precious stones, and articles of gold, silver or platinum, including flatware and hollowware, furs, fine arts, antiques, coin or stamp collections is $500 for any one article and $1500 in the aggregate per occurrence."

c. Under the heading "Conditions" of the Residential Crime Insurance Policy paragraph 4, described as "Insured's duties when loss occurs," the paragraph is revised as follows:

4. *Insured's duties when loss occurs.* "Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss with the Insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the insurer in writing. The insurer may, in its discretion, waive the requirement that the proof of loss be sworn to. Upon the insurer's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss."

* * * * *

2. Section 83.23 entitled "Amount of commercial policy deductible" is amended by adding new paragraph (c) to read:

§ 83.23 Amount of commercial policy deductible.

* * * * *

(c) "higher deductibles, percentage participation clauses and other underwriting devices may be employed by the insurer to meet special problems of insurability."

3. Section 83.26 (b) of the "Commercial Crime Insurance Policy" in the following respects is amended. Under the heading "Conditions" of the policy, paragraph (6) entitled "Insured's duties when loss occurs" is revised to read as follows:

§ 83.26 Required commercial policy form.

* * * * *

Conditions

* * * * *

"Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss with the insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the insurer in writing. The insurer may, in its discretion, waive the requirement that the proof of loss be sworn to. Upon the insured's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate with the insurer in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss."

Issue Date: June 1, 1984.

Authority: 12 U.S.C. 174bbb-17.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-15273 Filed 6-6-84; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Granting Accredited Institutional Members of the American Association of Zoological Parks and Aquariums a General Exception to the Migratory Bird Permit Requirements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: There are several zoological parks and aquariums who are accredited Institutional Members of the American Association of Zoological Parks and Aquariums (AAZPA) that do not now qualify for a general exception to the migratory bird permit requirements under present regulations but whose propagation of various migratory bird species (i.e., flamingos, ibises, etc.) benefits the migratory bird resource through the production of captive-bred birds, thereby promoting knowledge useful to their conservation, increasing the captive population, and reducing the demand for taking such species from the wild. The Service wants to encourage these zoological parks and aquariums to continue these activities by granting them an exception to the migratory bird permit requirements. With such an exception, they would be authorized to buy and sell lawfully acquired migratory birds and their progeny subject to the restrictions of 50 CFR 21.12(b), and recover expenses incurred to propagate them.

DATE: Comments on this notice must be received by August 6, 1984.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C., between 7:45 a.m. and 4:15 p.m. Comments should bear the identifying notation REG 10–02–002064. All materials received may be inspected weekdays during normal business hours at the office of the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343–9242.

SUPPLEMENTARY INFORMATION:

Background

The general prohibitions applicable to activities involving migratory birds are set forth in section 2 of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703. These prohibitions include taking, possession, and sale. Under section 3 of the Act (16 U.S.C. 704), however, the Secretary of the Interior is authorized to allow by regulation activities involving migratory birds, including taking, possession, export and sale, if consistent with the various migratory bird treaties. Thus, the general scheme of the MBTA is that all activities involving migratory birds are prohibited unless authorized by regulations.

This general scheme is reflected in regulations implementing the MBTA found at 50 CFR 21.11. Under these regulations it is unlawful to, *inter alia*, "take, possess. * * * [or] sell * * * any migratory bird, * * * except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part [50 CFR Part 21] * * * or as permitted by regulations in this part [50 CFR Part 21] or Part 20 (the hunting regulations)."

General exceptions to the migratory bird permit requirements appear in 50 CFR 21.12. One of the exceptions found in paragraph (b) of that section states in relevant part:

> (b) State game departments, municipal game farms or parks, and public museums, public zoological parks, and public scientific or educational institutions may acquire by gift or purchase, possess, transport, and by gift or sale dispose of lawfully acquired migratory birds or their progeny, parts, nests, or eggs without a permit; *Provided*, That such birds may be acquired only from persons authorized by this paragraph or by a permit issued pursuant to this part to possess and dispose of such birds, or from Federal or State game authorities by the gift of seized, condemned, or sick or injured birds. Any such birds, acquired without a permit, and any progeny therefrom may be disposed of only to persons authorized by this paragraph to acquire such birds without a permit. 50 CFR 21.12(b)

Because of the definition of "public" found in 50 CFR 10.12, the general exception has been granted only to non-profit organizations whose facilities are open to the general public. The term is defined as follows:

> "Public" as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. 50 CFR 10.12.

Why Does the Service Want To Grant Accredited AAZPA Institutional Members a General Exception to the Migratory Bird Permit Requirements?

Currently, under 50 CFR 21.12(b) as noted above, only zoological parks and similar institutions that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit are excepted from the migratory bird permit requirements.

The Service has determined that there are several other zoological parks and aquariums that do not qualify for the general exception to the migratory bird permit requirements under present regulations but whose propagation of various migratory bird species (i.e., flamingos, ibises, etc.) benefits the migratory bird resource through the production of captive-bred birds, thereby reducing the demand for taking such species from the wild. The Service wants to encourage these zoological parks and aquariums, such as Sea World, Busch Gardens, and Discovery Island (Disney World), to continue these activities by including them in the general exception to the migratory bird permit requirements. With such an exception, they would be authorized to buy and sell lawfuly acquired migratory birds and their progeny, subject to the restrictions of 50 CFR 21.12(b), and recover expenses incurred to propagate them. Under 50 CFR 21.12(b), they would be required to purchase from, or sell to, only those persons or institutions that hold appropriate MBTA permits or that qualify under applicable MBTA exemptions. Accurate records of all transactions conducted under authority of 50 CFR 21.12(b) must be kept and those records are subject to examination by the Service. It should be noted, however, that the general permit exception under the MBTA does not apply to bald and golden eagles. Nor does the general permit exception relieve anyone from restrictions, conditions, or requirements that may apply under other applicable laws. Therefore, for instance, bald and golden eagles or birds listed as endangered or threatened under the Endangered Species act of 1973 are still subject to the requirements found in 50 CFR Parts 22 and 17 respectively.

Who Are Accredited Institutional Members of AAZPA?

The American Association of Zoological Parks and Aquariums (AAZPA) is the largest professional zoological park and aquarium organizaion in the world. Virtually every major zoological park, aquarium, wildlife park and oceanarium on the North American continent is a member, as are the vast majority of their professional staff members.

AAZPA is incorporated in the State of West Virginia. Article IV, Sections 1, 2, 3, and 4 of its Charter state the following objects for which the corporation is formed:

> *Section 1.* To promote the welfare of zoological parks and aquariums and their advancement as public educational institutions, as scientific centers, as natural science and wildlife exhibition and conservation agencies, and as cultural recreational establishments, dedicated to the enrichment of human and natural resources.
>
> *Section 2.* To foster continued improvement of the zoological park and aquarium profession through the development and regulation of high standards of ethics, conduct, education and scholarly attainments. * * *
>
> *Section 3.* To aid, foster and engage in the exchange of zoological specimens for exhibition, conservation, scientific and preservation purposes, cooperating with governmental agencies for the health and welfare of animals * * * and to foster sound captive animal management practices and engender research and study designed to increase biological knowledge and understanding.
>
> *Section 4.* To advance public education on the need for wildlife conservation and preservation; to assume leadership in the captive propagation of rare and endangered animal species; to actively participate in the international efforts of wildlife preservation; and to review periodically the status of endangered species of animals and take action, binding all members, in protecting these species.

AAZPA is operated exclusively for charitable, scientific, and educational purposes as defined in section 501(c)(3)

of the Internal Revenue Code. Its members are subject to a Code of Professional Ethics which form the basis for disciplinary actions by AAZPA against members who violate the Code. Institutional Members of AAZPA, as defined in Article VI, Section 2 of the AAZPA bylaws, include zoological parks, aquariums, wildlife parks, or oceanariums that wish to be identified with, participate in, or offer support to AAZPA. Institutional Members must be sponsored by three disinterested Professional Fellows and apply and qualify for AAZPA accreditation. Accreditation involves a thorough inspection of the applicant's facility to determine if the applicant has estabilised and is maintaining professional standards and has met the qualitative evaluation of AAZPA's Accreditation Commission in light of those standards. The Accreditation Commission consists of nine Professional Fellow members of AAZPA who serve three-year appointed terms.

The AAZPA accreditation program would serve to prevent any abuse of this exception by AAZPA Institutional Members. The importance of the accreditation process is described in the biannual AAZPA Director as follows:

> The AAZPA Accreditation program for zoological parks and aquariums was established during 1972, and our first Accredited facilities received that status in 1974. The Accreditation program is becoming increasingly more important with the initiation of various state and federal regulations. During recent years, nearly every session of the U.S. Congress has reflected the introduction of legislation addressing itself to a national accreditation program for zoos and aquariums. Without the establishment of our own accreditation program, there is little doubt that the federal government would have initiated an accreditation program. It would have been administered by the federal government with little or no input from our profession.
>
> Accreditation is now one of the Association's most important programs, with an increasing number of facilities being Accredited each year. These range in size from modest collections to large, complex facilities. Interestingly, a number of institutions have been denied accreditation, thus attesting to the professional manner with which the Accreditation Commission accepts it responsibility.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.G. 3501 *et seq.* and 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

Primary Author

The primary author of this proposed rule is John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

Determination of Effects of Rules

The Department of the Interior has determined that this is not a major rule under Executive Order 12291. The Department has also certified that the rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Only a very small number of zoological parks and aquariums operated for profit are expected to qualify under these amendments for an exception to the migratory bird permit requirements. Based upon staff discussions and information received from representatives of AAZPA, no more than ten zoological parks and aquariums should be added to those already excepted. The net effect, however, should be a reduction in price that all zoological institutions pay for those migratory birds they are authorized to buy and sell. Zoological parks and aquariums operated for profit have already demonstrated that they have the resources and expertise available, and under this proposal would have additional incentive to establish propagation projects for species of migratory birds that have high interest among zoological parks generally.

The economic effect of this action is minimal because only a select group engaged in a narrow range of commercial activities is affected. Further, it is anticipated that the zoological parks and aquariums that meet the new criteria for exception to the general permit requirements will not actively or massively propagate migratory birds for commercial purposes. The mere broadening of the criteria for exception to the general permit requirements without broadening the scope of commercial opportunities should not create a sizeable market or cause any other significant economic effect on the entities engaged in the commercial activities permitted under the present regulations. The primary economic effect on the entities affected by this action would be on their ability to recover some of the costs involved in the propagation of migratory birds for exhibition, education, conservation, and scientific purposes.

These determinations are discussed in more detail in a Determination of Effects which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**"

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Division of Law Enforcement, 1375 K Street, NW., Suite 300, Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**" Comments on the draft environmental assessment should be mailed or delivered to the address given at the beginning of this proposal during the comment period on the proposed rule.

Public Comments Requested

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble during the comment period.

List of Subjects in 50 CFR Part 21

Exports, Imports, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, Code of Federal Regulations is proposed to be amended as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for Part 21 reads as follows:

> **Authority:** Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 96–616, 92 Stat. 3112 (16 U.S.C 712).

§ 21.12 [Amended]

2. Amend § 21.12, paragraph (b) by adding the phrase "accredited institutional members of the American Association of Zoological Parks and Aquariums (AAZPA)," after the phrase "public zoological parks," and before the phrase "and public scientific or educational institutions."

Dated: March 30, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 84-15332 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a plan and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council has submitted a fishery management plan (FMP) for the bluefish fishery for review by the Secretary of Commerce. Comments are invited from the public on this FMP and any other documents made available.

This FMP proposes measures for managing the bluefish fishery in the western Atlantic Ocean. A bluefish management program is necessary to address the problems that could occur if the commercial fishery in the Fishery Conservation Zone were to expand significantly. The FMP is intended to avert future expansion of the fishery which, if left unchecked, could negatively impact the recreational and traditional commercial fishery.

DATE: Comments will be accepted until August 17, 1984.

ADDRESSES: Send comments to Mr. Richard Schaefer, Acting Regional Director, NMFS, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930. Copies of the FMP, the Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Mr. John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Peter Colosi (Regional Plan Coordinator), 617-281-3600, ext. 272.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act.

The receipt date for this FMP is June 4, 1984. Proposed regulations for this FMP will be published within 30 days. On February 23, 1983, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP (48 FR 8124).

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

Dated: June 4, 1984.

Roland Finch,

Director, Office of Resource Management, National Marine Fisheries Service.

[FR Doc. 84-15325 Filed 6-4-84; 5:10 pm]

BILLING CODE 3510-22-M

50 CFR Part 630

[Docket No. 40449-4049]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the identification of a signal, extracted from the International Code of Signals, listed under "§ 630.7 Facilitation of enforcement" in the proposed rule, Atlantic Swordfish Fishery, that was published April 19, 1984, 49 FR 15585.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202-634-7432.

Dated: May 17, 1984.

Carmen J. Blondin,

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

§ 630.7 [Corrected]

In FR Doc. 84-10621, page 15588, column 2, under § 630.7 Facilitation of enforcement in paragraph (d)(2), the signal for "RY-CY" is corrected to read "(.-.-.-- -.-.-.--)"

[FR Doc. 84-13835 Filed 6-6-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 111
Thursday, June 7, 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 COMMERCE

Foreign-Trade Zones Board

[Docket No. 30-84]

Foreign-Trade Zone 89, Las Vegas, Nevada; Application for subzone for Porsche Auto Plant in Reno, Nevada

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Nevada Development Authority, grantee of Foreign-Trade Zone 89, Las Vegas, requesting special-purpose subzone status for the automobile preparation facility of Porsche Cars North America, Inc. (PCNA) located in Reno, Nevada, within the Reno Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 1, 1984. The applicant is authorized to make this proposal under Nevada Revised Statutes 273A.010–273A.050.

The proposed subzone for PCNA will be located on a site adjacent to Reno's Cannon International Airport with access to the air cargo apron. The 14-acre facility will be used to prepare high performance sports cars for sale in the U.S. market, employing 50 persons. Processes would include dewaxing, installation of parts and accessories, performing mechanical modifications, painting, and making minor body corrections. The facility will also serve as a parts warehouse and distribution center. PCNA is establishing a similar facility in Charleston, SC (see FTZ Board Docket No. 31–84). The autos will arrive from abroad as essentially finished products, however, PCNA will consider purchasing domestically parts such as tires, batteries, glass, air conditioners and radios/tape players to be added prior to entry. Spare parts would be sourced primarily abroad.

Zone procedures will allow PCNA to defer duty payment on complete autos and parts until they are shipped to dealers. Because parts inventory turnover is slow and because the autos are high-valued items which require substantial prep-time, the savings from duty deferral appear to be significant. On certain foreign parts added to the autos, the company can also take advantage of the same duty rate that is available to importers that ship fully completed autos from abroad. These savings will encourage PCNA to add value in the U.S. while helping it to compete with imported sports cars modified abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 550 Battery Street, P.O. Box 2450, San Francisco, CA 94111; and Colonel Arthur E. Williams, District Engineer, U.S. Army Engineer District Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 10, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 1755 E. Plumb Lane, #152, Reno, NV 89502

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: June 1, 1984.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 84-15254 Filed 6-6-84; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 31-84]

Foreign-Trade Zone 21, Dorchester County, South Carolina; Application for Subzone for Porsche Auto Plant in Charleston, South Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, requesting special-purpose subzone status for the automobile preparation facility of Porsche Cars North America, Inc. (PCNA) located in Charleston, South Carolina, within the Charleston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 1, 1984. The applicant is authorized to make this proposal under section 54-3-230 of Code of Laws of South Carolina.

The proposed subzone for PCNA will be located on airport property adjacent to the cargo apron at Charleston International Airport in Charleston. The 13-acre facility will be used to prepare high-performance sports cars for sale in the U.S. market, employing 50 persons. Processes would include dewaxing, installation of parts and accessories, performing mechanical modifications, painting and making minor body corrections. The facility will also serve as a parts warehouse and distribution center. PCNA is establishing a similar facility in Reno, NV (see FTZ Board Docket No. 30–84). The autos will arrive from abroad as essentially finished products, however, PCNA will consider purchasing domestically parts such as tires, batteries, glass, air conditioners and radios/tape players to be added prior to entry. Spare parts would be sourced primarily abroad.

Zone procedures will allow PCNA to defer duty payment on complete autos and parts until they are shipped to dealers. Because parts inventory turnover is slow and because the autos are high-valued items which require substantial prep-time, the savings from duty deferral appear to be significant. On certain foreign parts added to the autos, the company can also take advantage of the same duty rate that is available to importers that ship fully completed autos from abroad. These

savings will encourage PCNA to add value in the U.S. while helping it to compete with imported sports cars modified abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Ralph C. Muser, Acting Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 SE. 5th Street, Miami, FL 33131; and Lt. Colonel Lee Smith, District Engineer, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, SC 29402.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 10, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 200 E. Bay Street, P.O. Box 876, Charleston, SC 29402

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: June 1, 1984

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-15255 Filed 6-6-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration/ Import Administration

[A-791-401]

Certain Carbon Steel Products From South Africa; Antidumping Duty Investigations

AGENCY: International Trade Association, Commerce.

ACTION: Notice.

SUMMARY: On May 10, 1984, United States Steel Corporation withdrew its antidumping petition, filed on February 10, 1984, on certain carbon steel products from South Africa. Based on that withdrawal, we are terminating the antidumping investigations.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Case History

On February 10, 1984, we received a petition filed by United States Steel Corporation on behalf of the U.S. industry producing certain carbon steel products. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that certain carbon steel products from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The allegations of sales at less than fair value include an allegation that home market sales are being made at less than the cost of production in South Africa.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the U.S. International Trade Commission (ITC) of our action and initiated such investigations on March 7, 1984 (49 FR 8462). The ITC subsequently found, on April 4, 1984, that there is a reasonable indication that imports of certain carbon steel products from South Africa are materially injuring, or are threatening to materially injure, a U.S. industry (49 FR 13442).

Scope of Investigations

The products covered by these investigations are certain carbon steel products which are fully described in the Product Description Appendix of this notice.

Withdrawal of Petition

On May 10, 1984, petitioners notified us that they were withdrawing their petition and requested that the investigations be terminated. Under section 734(a) of the Act, upon withdrawal of petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to these investigations of petitioner's withdrawal and our intention to terminate, and we have consulted with the International Trade Commission. We have determined that termination of these cases is in the public interest.

For these reasons, we are terminating our investigations of certain carbon steel products from South Africa.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix IV—Description of Products

For purposes of these investigations. 1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2, Subbart B of the *Tariff Schedules of the United States Annotated ("TSUSA")*, for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the *TSUSA*, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the *TSUSA*. Such products are generally referred to as structural shapes.

2. The term *"carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the *TSUSA*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

3. The term *"hot-rolled carbon steel flat-rolled products"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel flat-rolled products are flat-rolled carbon steel products, whether or not corrugated or crimped; not cold rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; 0.1875 inch or more in thickness and over 8 inches in width and pickled; as currently provided for in item 607.8320 of the *TSUSA*; and over 8 inches in width; in coils; as currently provides in item 607.6610 or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

4. The term *"cold-rolled carbon steel flat-rolled products"* covers the following cold-rolled carbon steel products. Cold-rolled carbon steel flat-rolled products are flat-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

5. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320, or 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc not included.

[FR Doc. 84-15250 Filed 6-6-84; 8:45 am]
BILLING CODE 3510-DS-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

Summary: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1984 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: July 12, 1984 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave. NW., Washington, D.C. The meeting will continue to its conclusion on June 13, in Room 6802, Herbert C. Hoover Building.

Agenda

General Session

1. Opening remarks by the Chairmen.
2. Presentation of papers or comments by the public.
3. Subcommittee reports:
(a) Discrete Semiconductor Device,
(b) Microcircuits and
(c) Semiconductor Manufacturing Materials and Equipment.
4. New Business.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public participation: The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Supplementary information: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: May 1, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-15253 Filed 6-6-84; 8:45 am]
BILLING CODE 3510-25-M

[C-469-021]

Bottled Green Olives From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on bottled green olives from Spain would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise made on or after May 3, 1982 shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 12, 1974, the Treasury Department published in the **Federal Register** a countervailing duty order on bottled green olives from Spain (42 FR 8634).

On May 3, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification by the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On May 21, 1984, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bottled green olives from Spain if the order were revoked (49 FR 22720). As a result, the Department is revoking the countervailing duty order concerning bottled green olives from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct Customs officers to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1982 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

The ITC's decision and this revocation do not affect shipments of the merchandise entered on or before May 2, 1982. These shipments are subject to the administrative review procedures set forth in section 751 of the Tariff Act of 1930.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: June 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-15303 Filed 6-6-84; 8:45 am]
BILLING CODE 3510-OS-M

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Savannah Sales Corporation. This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00017."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government ciminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Savannah Sales Corporation on April 18, 1984. The application was deemed submitted on April 1984. A summary of the application was published in the **Federal Register** on May 2, 1984 (49 FR 18765). Also on May 2, the Commerce and Justice Departments granted the applicant's request for expedited review. Thus, this certificate is issued on an expedited basis.

Description of Certified Conduct

Based on analysis of the applications and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Savannah Sales Corporation meet the four standards of the Act:

Savannah Sales Corporation—Application No. 84–00017.

Export Trade

(a) Wood chips, including residue wood chips (Standard Industrial Classification (SIC) number 24215), and not including pulpwood wood chips (SIC number 24113).

(b) Export trade services (consulting; international market research; advertising; marketing; insurance; product research and design exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the foregoing commodity (the "Export Trade Services").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

(A) On its own behalf and for its own account, Savannah Sales may:

(1) Bid for the sale of, and contract to sell, wood chips to buyers in the Export Markets.

(2) Obtain quotes and purchase wood chips from its members and, as necessary, from other domestic suppliers individually, for the sole purpose of export to buyers in the Export Markets.

(3) Upon receiving or anticipating a request from a buyer in the Exports Markets for the price of wood chips, Savannah Sales may ask one or more of its members or other domestic suppliers individually to supply a price quotation to Savannah Sales for wood chips, may aggregate the price and supply data received, may add its own mark-up to the composite price, and may transmit a price quotation based on such composite price and mark-up to the buyer. Upon placement of an order by a buyer, Savannah Sales may purchase wood chips and ship to the buyer.

(B) Savannah Sales may provide Export Trade Services to its members and other domestic suppliers individually.

(C) Savannah Sales may prescribe the following conditions on the transfer of shares in the corporation: The selling shareholder must offer its common stock to the corporation at book value for 10 days, and after 10 days, for 15 days at book value to any other shareholder of the corporation. After the 15-day period, the shares may be sold to anyone, subject to this same restriction on any subsequent retransfer of shares.

(D) In order to negotiate mutually favorable terms and to develop Export Trade in the Export Markets, Savannah Sales and its members may exchange:

(a) Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale of United States business plans, strategies or methods of Savannah Sales or any member) that is already generally available to the trade or public,

(b) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Market, and

(c) Information on costs specific to exporting to the Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage, and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing).

Members

For purposes of this certificate, the following are "members" within the meaning of § 325.2(k) of the Regulations: Pollard Lumber Co., Inc.; Claude Howard Lumber Co., Inc.; W. M. Sheppard Lumber Co., Inc.; H.V. & T.G. Thompson Lumber Co., Inc.; Griffin Lumber Co.; Evans Lumber Co., Inc.; Caribbean Lumber Co., Inc.; Upchurch Forest Products, Inc.; M. W. Umphlett & Sons, Inc.; Shearouse Lumber Co.; Elliott Sawmilling Co., Inc.; and Coastal Lumber Co.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Dated: June 4, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–15326 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments; Cincinnati Art Museum et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–171. Applicant: Cincinnati Art Museum, Eden Park, Cincinnati, OH 45202. Instrument: Infrared Reflectography Equipment, Model FA 70H/BG12. Manufacturer: Vanandel B.V., The Netherlands. Intended Use:

1. Examine art works to reveal underdrawing and stages of the painting process in art historical research.

2. Assist in determining the authenticity of works of art in the Cincinnati Art Museum.

3. Determine the condition of works of art in problems of conservation.

4. Instruct students in art history, conservation, and museology in the operation of the equipment and the interpretation of the technical documents obtained when using infrared reflectography.

Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–202. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Instrument: Leo Wafer Lifetime Measuring System, Model #1302. Manufacturer: Leo Giken Co., Ltd., Japan. Intended use: Determination of minority carrier recombination lifetime in (a) heavily doped crystalline silicon and (b) crystalline $CuInSe_2$. In both cases the lifetimes are rather low and the semiconductor conductivity is rather high. Application received by Commissioner of Customs: April 27, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–15310 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Shriners Burns Institute et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–103. Applicant: Shriners Burns Institute, Boston, MA 02114. Instrument: Electron Microscope, Model EM 410G with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 10323. Instrument ordered: September 1, 1983.

Docket No. 84–105. Applicant: Duke University Medical Center, Durham, NC 27710. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 10140. Application received by Commissioner of Customs: February 8, 1984.

Docket No. 84–106. Applicant: Stanford University, Stanford, CA 94305. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use: See notice at 49 FR 10324. Instrument ordered: October 3, 1983.

Docket No. 84–112. Applicant: Brigham and Women's Hospital, Boston, MA 02115. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer JEOL Ltd., Japan. Intended use: See notice at 49 FR 13734. Instrument ordered: January 19, 1984.

Docket No. 84–114. Applicant: Yale University, New Haven, CT 06511. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 13734. Instrument ordered: February 22, 1984.

Docket No. 84–116. Applicant: Baylor College of Dentistry, Dallas, TX 75246. Instrument: Electron Microscope, Model JEM100CX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 49 FR 19089. Instrument ordered: November 22, 1983.

Docket No. 84–117. Applicant: Regents of the University of California, San Francisco, CA 94143. Instrument: Electron Microscope, with SEGZ Side Entry Goniometer, Model JEM–100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 13734. Instrument ordered: January 27, 1984.

Docket No. 84–121. Applicant: Albert Einstein College of Medicine, Bronx, NY 10461. Instrument: Electron Microscope, Model JEM–1200EX with SEG and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 13735. Instrument ordered: January 9, 1984

Docket No. 84–124. Applicant: Overlook Hospital, Summit, NJ 07901. Instrument: Electron Microscope, Model EM 109 with Accessories. Manuafacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 13735. Instrument ordered: April 16, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United

States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Calalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-15309 Filed 6-6-84; 8:45 am]

BILLING CODE 3510-DS-M

Stainless Steel Round Wire; Announcement of Third Quarter 1984 Monitoring Prices

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of the third quarter 1984 monitoring price levels for imports of stainless steel round wire products.

SUMMARY: The Department of Commerce announces that base prices for third quarter 1984 monitoring prices of stainless steel round wire products will decline 0.4 percent from their second quarter 1984 base price levels. Size extra prices for stainless steel round wire will increase an average of 4.2 percent from their second quarter levels. The change in the yen/dollar exchange rate is the major factor in the decline in base prices. Changes in labor costs accounted for much of the increase in size extra prices. The Department uses these prices to monitor the prices of stainless steel wire and cold-drawn round bar under 0.703 inches in diameter for possible initiation of antidumping or countervailing duty investigations if unfair sales of these products appear to be injuring domestic producers. Each quarter the Department reviews Japanese steel production and delivery costs and revises monitoring prices accordingly. The third quarter monitoring price applies to stainless steel round wire products and round stainless steel drawn bars in sizes under 0.703 inches in diameter exported to the United States on or after July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Juanita S. Kavalauskas, Agreements Compliance Division, Import Administration, Room 3099, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION: Import price monitoring procedures for stainless steel round wire are the same as those published in the Trigger Price Procedures Manual (46 FR 49928). Japanese stainless steel wire manufacturers agreed to supply cost of production and transportation information necessary to monitor the import prices. Commerce uses Special Summary Steel Invoices to monitor imports of stainless steel round wire and small cold-drawn bar under 0.703 inches in diameter. In computing the invoice price for comparison to the monitoring price, Commerce will use a 13.5 percent annual rate (1.125 percent per month) when interest must be adjusted and the actual rate is not known. For its calculation of monitoring price levels, the yen/dollar exchange rate the Department uses to convert Japanese steel producers' yen denominated production cost to dollars is the average of the 36 months preceding the calculation and publication of the quarter's monitoring price levels. The exchange rate used in the Department's third quarter 1984 production cost estimate is 238 yen to the dollar (the yen/dollar exchange rate average for May 1981 through April 1984).

Other Charges

Monitoring prices are an estimate of the Japanese stainless steel wire manufacturers' cost of production plus the cost of transporting to the United States and handling in the United States. Each monitoring price includes ocean freight, insurance, interest and handling as well as the base price and extras. The ocean freight, handling and interest are shown for each of the major importing regions: Pacific Coast, Atlantic Coast, Gulf Coast and the Great Lakes. All prices are shown in U.S. dollars per metric ton.

The interest component of the delivery charge reflects the current level of prime interest rate. Handling and ocean freight charges remain unchanged. The extras shown define the coverage in terms of sizes, grades, and qualities.

The following rules apply to product coverage and extras:

(1) If a product fails to fit the general description because the cost of producing that product varies substantially from the cost of producing the product described in the heading, the product is not covered.

(2) If a product is covered by a grade which is not in the base coverage and for which no grade extra is listed, the product is not covered.

(3) If a product has a size specification that falls above the largest size specification shown or below the smallest size specification shown, it is not covered.

(4) If a product has a size specification that falls between two size specifications listed, it is covered and the size specification with the higher dollar value is to be used unless otherwise noted on the page.

(5) If a product embodies extras other than size or grade which are not listed, the product is covered. In those cases, the base monitoring price plus any applicable extras listed will be applied.

A list of stainless steel round wire and cold-drawn bar products subject to price monitoring and the applicable base prices and extras are contained in the Appendix of this notice.

Alan F. Holmer,

Deputy Assistance Secretary for Import Administration.

BILLING CODE 3510-25-M

APPENDIX

3RD QUARTER 1984 MONITORING PRICES PER METRIC TON

STAINLESS STEEL ROUND WIRE

ROUND STAINLESS STEEL DRAWN BARS
IN SIZES UNDER 0.703 INCHES

AISI Categories 23 and 16

Charges to CIF	Ocean Freight	Handling	Interest
Pacific Coast	$110	$9	2.6%
Gulf Coast	135	5	3.4%
Atlantic Coast	135	4	3.4%
Great Lakes	176	4	4.1%

Interest = F.O.B. monitoring base price including size extra times interest factor.

Insurance = 1% of base price + extras + ocean freight.

Extras ($/M.T.):

1. Annealed Wire - Group I
   - A. Base Prices Including Grade Extras
   - B. Size by Grade Group
   - C. Small Bar Size Extras

2. Hard/Spring Wire - Group II
   - A. Base Prices Including Grade Extras
   - B. Size by Grade Group

3. Soft/Intermediate Wire - Group III
   - A. Base Prices Including Grade Extras
   - B. Size by Grade Group

4. Coating

5. Finish
   - A. Centerless Ground
   - B. Centerless Ground and Polished

6. Diameter Tolerance

7. Straightening and Cut-to-Length
   - A. Size Range
   - B. Length

8. Packaging

Note: This coverage applies to stainless steel round wire and stainless steel bar under 0.703 inches produced by drawing. Bar, in these sizes, if produced by hot rolling, is not covered by published prices.

1. Group I - Annealed Wire: Soft wire in which there is no further cold drawing after the last annealing treatment. This wire is made by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright finish by annealing wet, oil or grease-drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.

A. Grades	Base Price
301	1,710
302	1,663
303	1,756
304	1,710
305	1,872
310	3,148
314	3,612
316	2,452
316-L	2,614
317	2,916
317-L	3,078
304-L	1,872
17-4PH*	2,030
308	1,849
308-L	2,011
309	2,359
309-L	2,521
321	2,011
302 HQ (18-19LW)**	1,826
347	2,313
384	2,266
409	1,385
410	1,083
416	1,083
420	1,130
430	1,130
430-F	1,339
434	1,431
434-A	1,246
446	1,710

*May also be designated as type 630 or as UNS 17400
**May also be designated as type 302 CU and as 306

GROUP I - ANNEALED WIRE (Continued)

B. Size *

Size *	Grade Group: 300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.574" - .703"	336	424	336
.501" - .573"	336	424	336
.500"	343	424	343
.375" - .499"	372	439	372
.3125" - .374"	379	439	379
.250" - .312"	415	439	415
.234" - .249"	463	460	463
.216" - .233"	484	477	484
.200" - .215"	553	496	553
.185" - .199"	601	541	601
.170" - .184"	608	553	608
.155" - .169"	637	575	637
.142" - .154"	665	656	665
.128" - .141"	677	751	676
.113" - .127"	737	799	677
.099" - .112"	839	894	679
.086" - .098"	892	980	685
.076" - .085"	951	1,027	721
.067" - .075"	985	1,082	857
.058" - .066"	1,044	1,202	967
.051" - .057"	1,092	1,256	1,018
.044" - .050"	1,142	1,328	1,066
.038" - .043"	1,218	1,373	1,143
.033" - .037"	1,316	1,531	1,242
.030" - .032"	1,364	1,633	1,364
.027" - .029"	1,457		1,457
.024" - .026"	1,559		1,559
.021" - .023"	1,700		1,700
.019" - .020"	1,776		1,776
.018"	1,855		1,855
.017"	1,900		1,900
.016"	1,929		1,929
.015"	1,976		1,976

*All intermediate sizes to take next higher price.

GROUP I - ANNEALED WIRE (Continued)

Size *	Grade Group: 300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.014"	2,129	--	2,129
.013"	2,248	--	2,248
.012"	2,298	--	2,298
.011"	2,401	--	2,401
.010"	2,558	--	2,558
.009"	2,708	--	2,708
.008"	2,997	--	2,997
.0075"	3,152	--	3,152
.007"	3,381	--	3,381
.0065"	3,805	--	3,805
.006"	4,246	--	4,246
.00575"	4,642	--	4,642
.0055"	5,538	--	5,538
.00525"	5,629	--	5,629
.005"	5,815	--	5,815
.00475"	5,903	--	5,903
.0045"	6,184	--	6,184
.00425"	6,606	--	6,606
.004"	7,214	--	7,214
.00375"	14,945	--	14,945
.0035"	17,339	--	17,339
.00325"	19,973	--	19,973
.003"	22,586	--	22,586
.0027"	24,524	--	24,524
.0025"	25,659	--	25,659
.002"	31,306	--	31,306

*All intermediate sizes to take next higher price.

C. Small Bar*: Small cold-drawn bar in wire gauges is to be priced using these size extras:

Size Range**	Grade Group		
	300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.574" - .703"	303	255	303
.501" - .573"	303	255	303
.500"	329	282	329
.375" - .499"	329	282	329
.3125" - .374"	369	316	369
.250" - .312"	369	316	369
.234" - .249"	369	316	369
.216" - .233"	441	393	441
.185" - .215"	441	393	441

*Annealing and pickling is included in base material cost. Size extras include cost of straightening and cut-to-length.

**Intermediate sizes to take next higher price.

2. Group II - Hard/Spring Wire: Wire drawn in several drafts as required to produce the high tensile strengths required for such products as spring wire.

A. Grades -	Base Price
301	1,710
302	1,663
303	1,756
304	1,710
305	1,872
310	3,148
314	3,612
316	2,452
316-L	2,614
317	2,916
317-L	3,078
321	2,011
17-4PH*	2,030
17-7PH***	2,637
308	1,849
308-L	2,011
309	2,359
309-L	2,521
302 HQ (18-19LW)**	1,826
347	2,313
384	2,266
409	1,385
410	1,083
416	1,083
420	1,130
430	1,130
430-F	1,339
434	1,431
434-A	1,246
446	1,710

*May also be designated as type 630 or UNS 17400
**May also be designated as type 302 CU or 306
***May also be designated as type 631 or UNS 17700

GROUP II - HARD/SPRING WIRE (Continued)

B. Size *

Size *	Grade Group 300 Series & 17-7PH
Over .375"	696
.3125" - .374"	696
.2500" - .312"	696
.234" - .249"	696
.216" - .233"	696
.200" - .215"	696
.185" - .199"	696
.170" - .184"	696
.155" - .169"	696
.142" - .154"	701
.128" - .141"	701
.113" - .127"	701
.099" - .112"	706
.086" - .098"	782
.076" - .085"	839
.067" - .075"	911
.058" - .066"	1,011
.051" - .057"	1,216
.044" - .050"	1,397
.038" - .043"	1,473
.033" - .037"	1,616
.030" - .032"	1,702
.027" - .029"	2,050
.024" - .026"	2,236
.021" - .023"	2,455
.019" - .020"	2,746
.018"	3,323
.017"	3,609
.016"	3,700
.015"	3,786
.014"	3,962
.013"	4,105
.012"	4,396
.011"	5,621
.010"	5,769
.009"	5,993
.008"	6,198

*All intermediate sizes to take next higher price.

3. Group III - Soft/Intermediate Wire: Wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties can be varied between soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry-drawn tempers. Cold-heading wire belongs in this group.

A.

Grades	Base Price
301	1,710
302	1,663
302 (302HQ, 18-9LW)	1,826
303	1,756
304	1,710
305	1,872
310	3,148
314	3,612
316	2,452
316-L	2,614
317	2,916
317-L	3,078
321	2,011
17-4PH*	2,030
308	1,849
308-L	2,011
309	2,359
309-L	2,521
347	2,313
384	2,266
409	1,385
410	1,083
416	1,083
420	1,130
430	1,130
430-F	1,339
434	1,431
434-A	1,246
446	1,710

*May also be designated as type 630 or UNS 17400

GROUP III - SOFT/INTERMEDIATE WIRE (Continued)

B. Size *

Size	Grade Group: 300 Series & 17-7PH	400 Series	17-4PH 15-5PH
Over .375"	591	462	591
.3125" - .374"	591	462	591
.2500" - .312"	591	462	591
.2340" - .249"	644	505	644
.2160" - .233"	644	505	644
.200" - .215"	644	505	644
.185" - .199"	696	548	696
.170" - .184"	696	548	696
.155" - .169"	696	582	696
.142" - .154"	772	644	772
.128" - .141"	772	753	772
.113" - .127"	825	808	825
.099" - .112"	930	915	930
.086" - .098"	1,025	992	1,025
.076" - .085"	1,073	1,039	1,073
.067" - .075"	1,187	1,130	1,187
.058" - .066"	1,287	1,283	1,287
.051" - .057"	1,330	1,450	1,330
.044" - .050"	1,383	1,468	1,383
.038" - .043"	1,502	1,573	1,502
.033" - .037"	1,597	1,678	1,597
.030" - .032"	1,707	1,840	1,707
.027" - .029"	1,864		1,864
.024" - .026"	2,007		2,007
.021" - .023"	2,165		2,165
.019" - .020"	2,312		2,312

*All intermediate sizes to take next higher price.

4. Coating: Material provided uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved. Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Size Range	Metallic: Copper	Metallic: Nickel	Non-metallic
Over .154"	112	34	26
099" - .154"	167	34	26
.063" - .098"	223	45	35
.041" - .062"		69	53
.030" - .040"		95	69
.025" - .029"		95	69
.020" - .024"		130	100
.015" - .019"		170	131
.010" - .014"		202	159

[FR Doc. 84-15315 Filed 6-6-84; 8:45 am]
BILLING CODE 3510-25-C

5. Finish

Size Ranges *	Centerless Ground	Centerless Ground and Polished
.595" - .703"	480	603
.501" - .594"	480	603
.500"	530	670
.375" - .499"	542	692
.3125" - .374"	542	692
.250" - .3124	542	692
.234" - .249"	881	1,011
.216" - .233"	881	1,011
.200" - .215"	921	1,122
.185" - .199"	1,077	1,302
.170" - .184"	1,268	1,507
.155" - .169"	1,519	1,776
.142" - .154"	1,770	2,026
.128" - .141"	2,081	2,339
.113" - .127"	2,607	2,886
.093" - .112"	5,310	5,845

*Intermediate sizes to take next higher price.

These extras are applicable to all grades listed.

Straightening and cut-to-length extras are included in the above finish extras.

6. Diameter Tolerance

Standard: AISI or JIS Specification

	Extra
Standard	Base
Not less than 1/2 standard	99
Closer than 1/2 to 1/4 standard	25% of size extra
Closer than 1/4 standard	50% of size extra

7. Straightening and Cut-to-Length: Use the sum of the appropriate extras from A and B below to form the total extra.

A.

Size Range	Extras
.595" - .703"	101
.501" - .594"	101
.500"	101
.375" - .499"	125
.3125" - .374"	125
.170" - .3124"	227
.099" - .169"	567
.051" - .098"	1,640
.032" - .050"	1,892

B.

Length	
Under 12"	89
12" to under 18"	57
18" to under 24"	57
24" to under 30"	38
30" to under 36"	38
36" to under 48"	38
48" to under 60"	38
60" to under 72"	38
72" to under 120"	33
120" to under 168"	33
168" to under 192"	33
192" to under 216"	33
216" to under 240"	33
240" to under 264"	26
264" to under 288"	26
288" to 316"	26

8. Packaging

Bundle	26
Wooden Boxes	88
Fibre Drums	81
Coil Carriers	26
Spools	
Sizes under .020"	158
Both Spools and Wooden Boxes	
Sizes .020" and greater	88
Sizes under .020"	246

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held Wednesday, June 20, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., 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: June 5, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84–15422 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–DR

Minority Business Development Agency

Minority Business Development Center Program; Applications Solicitions; Correction

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

The following correction is made to the notice that appeared in the May 24, 1984 issue of the **Federal Register**, page No. 21973, correct the **SUMMARY** paragraph to read as follows:

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its competitive Minority Business Development Center (MBDC) program to operate a MBDC for a 12-month period, from October 1, 1984 to September 30, 1985 in the New Brunswick-Perth Amboy-Sayreville, New Jersey SMSA. The total cost for the MBDC will be $187,000 which will consist of a maximum of $158,950 Federal funds and a minimum of $28,050 non-Federal funds (which can be a combination of cash, in-kind contribution and fees for service).

Gina Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 84–15226 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–21–M

Minority Business Development Center Program; Applications Solicitation; Correction.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

The following correction is made to the notice that appeared in the May 24, 1984 issue of the **Federal Register**, page No. 21973 correct the **SUMMARY** paragraph to read as follows:

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its competitive Minority Business Development Center (MBDC) Program to operate a MBDC for a 12-month period from October 1, 1984 to September 30, 1985 in the counties of Niagara and Erie in New York State (Buffalo SMSA). The total cost for the MBDC will be $187,000 which will consist of a maximum of $158,950 Federal funds and a minimum of $28,050 non-Federal funds (which can be a combination of cash, in-kind contribution and fees for service).

Gina Sanchez,

Regional Director New York Regional Office.

[FR Doc. 84–15227 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permit; Embassy of the Polish People's Republic

On May 31, 1984, a general permit to incidentally take marine mammals during commercial fishing operations in 1984 was issued to: The Embassy of the Polish People's Republic, New York, New York 10017 in Category 1: Towed or Dragged Gear, to take 40 northern sea lions, 30 harbor seals and 24 small cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street NW., Washington, D.C.

Dated: May 31, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–15343 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Permit To Take Endangered Marine Mammals

On March 30, 1984, Notice was published in the **Federal Register** (45 FR 12733) that an application had been filed with the National Marine Fisheries Service by William S. Lawton, 3300 34th Avenue South, Seattle, Washington 98144, for a Scientific Research and Scientific Purposes Permit to take humpback whales by harassment.

Notice is hereby given that on May 29, 1984, the National Marine Fisheries Service issued a Scientific Research and Scientific Purposes Permit 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), to William S. Lawton, subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 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 are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and in subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

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, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Juneau, Alaska.

Dated: June 1, 1984.

Richard B. Roe,

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–15342 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Application for Permit; St. Louis Zoological Park

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name St. Louis Zoological Park (P86C).

b. Address Forest Park, St. Louis Missouri 63111.

2. Type of Permit Public Display.

3. Name and Number of Animals: Baikal seals (*Phoca sibirica*) 4.

4. Type of Take: Import for permanent maintenance. Seals are currently held in captivity by U.S.S.R

5. Location of Activity: Lake Baikal, U.S.S.R.—September 1983.

6. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. the holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: June 1; 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–15340 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Permit; S. Jonathan Stern

On April 16, 1984, Notice was published in the **Federal Register** (49 FR 15012), that an application had been filed with the National Marine Fisheries Service by S. Jonathan Stern, c/o Dr. Hal Markowitz, Department of Biological Sciences, San Francisco State University, for a permit to take minke whale (*Balaenoptera acutorostrata*) by harassment for the purpose of scientific research.

Notice is hereby given that on May 31, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to S. Jonathan Stern for the above taking subject to certain condition set forth therein.

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, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 31, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–15341 Filed 6–6–84; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations with the Government of Hong Kong To Review Trade in Categories 359pt., 650 and 659pt.

June 1, 1984.

ACTION: On May 24, 1984, the United States requested consultations with the Government of Hong Kong with respect to the Categories 359pt. (cotton overalls, coveralls, jumpsuits and similar apparel) and 650 (man-made fiber dressing gowns). A similar request was made on May 29 concerning man-made fiber swimsuits in Category 659pt. These requests were made on the basis of the agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 359pt., 650, and 659pt., produced or manufactured in Hong Kong and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984. The Government of the United States also reserves the right to control imports of this category at the established limit.

Any party wishing to comment or provide data or information regarding the treatment of these categories under the bilateral agreement, or on any other aspect thereof, or to comment on domestic produciton or availability of textile products included in these categories is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washignton, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-15251 Filed 6-6-84; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations on Trade in Categories 359pt. and 659pt. from Taiwan

June 1, 1984.

On May 24, 1984, the American Institute in Taiwan (AIT), under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of cotton coveralls, overalls, and jumpsuits in Category 359pt. and man-made fiber swimwear in Category 659pt., produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of apparel products in Categories 359pt. and 659pt., produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-15252 Filed 6-6-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Information Collection Requirement Submitted to OMB for Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Department of Defense has submitted to OMB for approval a request for an extension of a currently approved collection of information. The request contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the extension request may be obtained.

Extension

Police Record check. In compliance with sections 504 and 505, Title 10, US Code, applicants for enlistment in the Armed Forces of the United States must be screened to identify any discreditable involvement with police or other legal officials. Form DD 369 is sent to the FBI as part of the entrance National Agency Check. Results are used to determine general enlistment eligibility and job skill placement decisions.

State and local governments (police and law enforcement agencies); 10,000 respondents; 51,250 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 10535, Pentagon, Washington, DC 20301, telephone (202) 694-0187.

A copy of the information collection extension may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 30800, Pentagon, Washington, DC 20301, telephone (202) 695-0643. This information collection effort is not for contract.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1984.

[FR Doc. 84-15265 Filed 6-6-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The United States Air Force has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

MARS Member Station Questionnaire Transcript, OMB # 0701-0021

The Military Affiliate Radio System (MARS) Program has developed the AFCC Form 132 as a means of receiving data about the membership and their capabilities in the MARS Program. This form lists name, callsign, address, FCC license data, station capabilities, military status (if any), official position, and emergency capability of the MARS member. It is a concise and simple method of recording the data needed for the performance of duties in the program. From this simple form all types of computer lists are developed for use by state, region, and national officials, as well as Master Net Control Stations. It is a vital link between HQ AFCC/SIMO and the affiliate member of USAF MARS Program.

MARS Program Affiliates: 3,000 responses; 2540 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel Vitiello, DOD Clearance Officer,

WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, Telephone (202) 694–0182.

A copy of the information collection proposal may be obtained from Suzanne Richey, HQ AFCC/SIMO, Scott AFB, IL 62225, Telephone (618) 256–3476.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1984.

[FR Doc. 84–15264 Filed 6–6–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Meeting Change

The following change has occurred for the meeting of the Army Science Board Ad Hoc Chief of Staff Task Force on Soldiers and Families, which was originally announced in the **Federal Register** issue of Thursday, 31 May 1984 (49 FR 22679), FR Doc. 84–14605:

Meeting Date: Wednesday, 18 July 1984 (instead of on Thursday, 21 June 1984).

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–15261 Filed 6–4–84; 11:59 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 & Wednesday, 26 & 27 June 1984.

Times of Meeting: 0830–1700 hours (Closed).

Place: Ballistic Missile Defense Program Office, Crystal City, Virginia.

Agenda

The Army Science Board Ballistic Missile Defense Follow-On Ad Hoc Subgroup will meet for classified briefings and discussions. The agenda will cover a review of Strategic Air Defense 2000, discussions of exo-atmospheric discrimination, and anti-tactical missiles. This meeting will be closed to the public in accordance with section 552(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, Army Science Board.

[FR Doc. 84–15262 Filed 6–6–84; 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).

Dates of Meeting: Thursday & Friday, 5 & 6 July 1984.

Times of Meeting: 0830–1700 hours (Closed).

Place: U.S. Army Tank Automotive Command (TACOM), Warren, Michigan.

Agenda

The Army Science Board Ad Hoc Subgroup on TACOM (an Army laboratory) Effectivenesss Review will meet for classified briefings and discussions. The morning of 5 July will be an Executive Session. It will be followed by a Command overview and detailed program briefings by TACOM. Agenda items for 6 July are discussions and interactions with TACOM personnel on cross-sectional selection of programs of particular interest and another Executive Session. 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 interwined 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, Army Science Board.

[FR Doc. 84–15263 Filed 6–6–84; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement Suppiment for the South Aberdeen and Cosmopolis Flood Damage Reduction Project

AGENCY: U.S. Army Corps of Engineers, Seattle District, Defense.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS) supplement for the South Aberdeen and Cosmopolis Flood Damage Reduction Project.

SUMMARY

1. *Proposed Action*

The project area is comprised of portions of the cities of Cosmopolis and Aberdeen, which are within Grays Harbor County in Western Washington. A feasibility report and EIS were completed for this project in 1975, and the final EIS was filed with the Council on Environmental Quality on 20 November 1978. The feasibility report recommended a 4.7 mile levee and floodwall system to protect portions of the cities of Cosmopolis and Aberdeen from flooding from the Chehalis River. The purpose of the present investigation is to reaffirm the engineering, social, environmental, and economic viability of the plan proposed during feasibility investigations and to continue engineering planning which will provide a basis for construction. This phase or Corps of Engineers study is called Continued Planning and Engineering (CP&E). In addition, the DEIS supplement will address subjects not discussed in detail in the original EIS, particularly cultural resources, wetlands, and anadromous fish passage.

2. *Alternatives*

Viable alternatives to a levee project have not been identified. However, opportunities to minimize social and environmental project impacts will be investigated. Detailed design studies will be conducted to determine if the levee alinement can be altered to avoid impacts to wetlands and reduce project costs. Studies will also be conducted to optimize pumping and/or ponding facilities for interior drainage control and to minimize impacts to fish passage. An evaluation will be made of the potential for utilizing the project for recreation.

3. *Scoping Process*

a. *Public Involvement Program.* A coordination letter describing the study history, study purpose, exisiting flooding problems, project description, and potential project impacts was mailed to 29 agencies and groups on 30 April 1984. Sixteen similar project information letters were later mailed to Federal, state, and local elected officials. Additional public involvement will be scheduled throughout CP&E.

b. *Significant Concerns.* Several study concerns surfaced during the feasibility study, and these will continue to be addressed during CP&E. Some of the

most important concerns are the following:

(1) Provide adequate interior drainage and minimize impacts to fish passage.

(2) Develop a levee alinement that will avoid or minimize impacts to wetlands.

(3) Evaluate the potential for recreational use of the levee.

(4) Perform a cultural resources reconnaissance that will identify historic and prehistoric resources within the project area and prescribe necessary salvage or mitigation measures.

c. *Environmental Review and Consultation Requirements.* This project investigation is being coordinated with the U.S. Fish and Wildlife Service and will satisfy requirements of the Fish and Wildlife Coordination Act and section 7(c) of the Endangered Species Act. Section 404 of Pub. L. 92-500 requires an evaluation of the effects of activities on aquatic ecosystems involving the discharge of dredged or filled material in waters of the United States. A section 404b evaluation which discusses the project impacts on the aquatic ecosystem, will be developed.

4. *Availability of DEIS Supplement*

The DEIS supplement is presently scheduled to become available to the public in 1986.

Address

Additional information about the proposed action and DEIS supplement can be obtained by contacting the environmental coordinator:

Mr. Paul Cooke, Environmental Resources Section, Seattle District, Corps of Engineers, Post Office Box C-3755, Seattle, Washington 98124, Telephone (206) 764-3624 (FTS 399-3624).

Dated: May 29, 1984.

Roger F. Yankoupe,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 84-15318 Filed 6-6-84; 8:45 am]

BILLING CODE 3710-ER-M

DEPARTMENT OF ENERGY

Residential Conservation Service Program, Utility Waiver Petition

[Docket No. CAS-RM-81-130]

AGENCY: Department of Energy.

ACTION: Notice of Utility Waiver Petition.

SUMMARY: In accordance with the provisions of the National Energy Conservation Policy Act (NECPA), the Department of Energy (DOE) has received a petition from the Green Mountain Power Corporation for a waiver of the prohibitions against supplying or installing residential energy conservation measures. Granting the waiver would allow Green Mountain Power Corporation to sell water heater insulation blankets to its residential customers. DOE will consider written comments in reviewing the waiver petition.

DATE: Written comments must be received by July 9, 1984.

ADDRESS: Comments should be addressed to: Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Room 6B-025, Docket No. CAS-RM-81-130, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Gina Urso, CE-115, Office of Building Energy Research and Development, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-1650

Daniel Ruge, GC-33, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-95191

SUPPLEMENTARY INFORMATION: As part of the Residential Conservation Service (RCS) Program, section 216(a) of the National Energy Conservation Policy Act (NECPA) (42 U.S.C. 8217(a)) prohibits public utilities from supplying or installing any residential energy conservation or renewable resource measure for any residential customer. In accordance with the provisions of section 216(e) of NECPA (42 U.S.C. 8217(e)), the Secretary of Energy may waive these prohibitions upon petition of a public utility.

The Department of Energy (DOE) has received a petition for a waiver from the Green Mountain Power Corporation (GMP), a regulated public electric utility with corporate headquarters in South Burlington, Vermont. GMP is requesting a waiver to supply water heater insulation blankets, at cost, to its residential customers. This program is being instituted by GMP in response to a twenty-year plan developed by the Vermont Department of Public Service.

DOE will review the GMP petition in accordance with the requirements of section 216(e) of NECPA to determine if (1) the petition demonstrates that, in supplying the water heater insulation blankets, fair and reasonable prices and rates of interest will be charged and (2) after consultation with the Federal Trade Commission (FTC), the GMP program is not inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

Accordingly, a copy of the GMP petition is being sent to the FTC for review. In addition, DOE will receive public comments on the GMP petition as indicated in the "DATE" and "ADDRESS" sections of this notice. Copies of the GMP petition may be requested from Gina Urso at (202) 252-1650.

After reviewing the GMP petition, consulting with FTC and considerating any comments received within the comment period indicated in the "DATE" section of this notice, the Secretary of Energy will make a final determination.

Issued in Washington, D.C., June 1, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84-15302 Filed 6-6-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the Federal Register on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Thursday, May 17, 1984 (49 FR 20894).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy, Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 295-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., June 4, 1984.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-826	Electric Utility Company Monthly Statement.	Extension	Monthly	Mandatory	Utilities	150	3,600	EIA-826 collects information on sales of electricity by state and sector. Data are used as input to the Electric Power Annual, Electric Power Monthly, Monthly Energy Review, Short-Term Energy Outlook and the Annual Energy Review. Respondents are utilities with annual operating revenues of $100,000,000 or more.
EIA-176	Annual Report of Natural & Supplemental Gas Supply & Disposition.	Extension	Annual	Mandatory	Natural gas pipeline companies, distributions, Underground storage operators, SNG plant operators, field, well or processing plant operators.	1,806	22,936	Form EIA-176 collects data on natural gas supply and disposition and relevant costs, prices and related information at the State level. Data are used to determine the quantity of natural gas consumed by market sector.

[FR Doc. 84-15301 Filed 6-6-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA84-2-48-000]

ANR Pipeline Co.; Filing

June 1, 1984.

Take notice that on May 18, 1984, ANR Pipeline Company (ANR) tendered for filing the following pursuant to the Federal Energy Regulatory Commission's (Commission) April 30, 1984, order:

(1) A schedule which provides the contract numbers in connection with all Order 94 payments.

(2) A schedule which identifies the split of the Order 94 payments prior to March 7, 1983, and from March 7, 1983 forward.

(3) A copy of the Stipulation of Dismissal before the United States District Court for the Eastern District of Louisiana dated January 20, 1984 regarding the Marine Construction Antitrust Litigation.

(4) A copy of the Gas Payment Statements which set forth the details of the Order 94 payments made to producers.

ANR states that is is not filing any revised tariff sheets since there are no rate reductions in its PGA pipeline supplier rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 7, 1984. Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15287 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-365-000; Docket No. CP84-411-000]

Columbia Gas Transmission Corp., et al.; Requests Under Blanket Authorization

June 1, 1984.

Take notice that on April 24, 1984, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Ave., SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Ave., Houston, Texas 77027, filed in Docket No. CP84-365-000 and on May 14, 1984, Texas Gas Transmission Corporation

(Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84–411–000 a requests pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia Gas, Columbia Gulf and Texas Gas propose to transport natural gas on behalf of Chemetals Incorporated (Chemetals) under authorizations issued in Docket Nos. CP83–76–000, CP83–496–000 and CP82–407–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia Gas, Columbia Gulf, and Texas Gas propose to transport up to 1,460 million Btu equivalent of natural gas per day on behalf of Chemetals for a term of one year. It is explained that Columbia Gulf would receive the quantities at an existing point of receipt in Louisiana from Texas Gas and redeliver to Columbia Gas which would redeliver to Baltimore Gas and Electric Company, the distribution company serving Chemetals in Baltimore, Maryland.

It is indicated that Chemetals has purchased gas from Yankee Resources which gas would be used primarily for boiler fuel. Further, Columbia Gas states that it would charge its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas. Columbia Gas also states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Columbia Gulf states that it would charge its average system-wide unit onshore transmission costs, exclusive of company-use and unaccounted-for gas. The onshore transportation charge is currently 26.19 cents per dt. Columbia Gulf states that it would retain, for company-use and unaccounted-for gas, 2.58 percent of the total quantity of gas delivered onshore.

Texas Gas proposes to charge for its services the rate provided in its Rate Schedule T–SL/Z–SL on file with the Commission and which is currently 7.89 cents per Mcf. Texas Gas would also retain 0.32 percent of the volumes received as reimbursement for fuel gas.

Columbia Gas and Columbia Gulf state that the request is only for authorization to add a new source of gas and Columbia Gulf to the transportation arrangement on behalf of Chemetals and that no authorization for an increase in the quantity of gas authorized to be transported in Docket No. CP84–53–000 is being requested.

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 requests. 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 particular request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15288 Filed 6–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–395–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

June 1, 1984.

Take notice that on May 7, 1984, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP84–395–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant proposes to abandon the existing certificated sale for resale service to a right-of-way grantor and to initiate the delivery of natural gas to Southern Union Gas Company (SUG) for resale to the Country Club Estates through the utilization of the existing tap and valve assembly located in Luna County, New Mexico, under the authorization issued in Docket No. CP82–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that it proposes to abandon the sale for resale service to A.H. Putts, Applicant's right-of-way grantor. It is indicated that pursuant to a Commission order issued May 31, 1946, in Docket No. G–655, Applicant was authorized to construct and operate a 1-inch O.D. tap and valve assembly on Applicant's existing 26-inch and 30-inch O.D. California mainlines in Luna County, New Mexico, in order to provide natural gas service to A.H. Putts for domestic use and pumping purposes. According to Applicant, this service was provided through SUG, the distributor in the area; and deliveries to SUG at the A.H. Putts tap were made pursuant to the currently effective service agreement, dated September 1, 1959, which provides for the sale and delivery of natural gas to SUG at various tap locations on Applicant's interstate transmission pipeline system.

Applicant states that in a letter dated April 11, 1984, Applicant was advised by SUG that A.H. Putts is deceased and that his property has been sold and subdivided. Applicant therefore proposes to abandon the service to A.H. Putts and to initiate the delivery of natural gas to SUG for resale to the County Club Estates through the utilization of the existing 1-inch O.D. tap and valve assembly. Applicant states that it proposes to deliver an estimated maximum peak day requirement of 74 Mcf during the third calendar year of service which would be utilized for residential, small commercial space heating and irrigation requirements. It is indicated that SUG would pay Applicant the ABD–1–New Mexico rate of Applicant's FERC Gas Tariff, First Revised Volume No. 1. Applicant further indicates that the proposed sale for resale would not alter SUG's entitlements under Applicant's permanent allocation plan approved in Docket No. RP72–6, *et al.*, which was placed into operation on May 1, 1981. Applicant states that no new or additional facilities would be required by Applicant in order to serve SUG and therefore Applicant would not incur any costs for this proposal.

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. 84–15289 Filed 6–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6306-002]

Lawrence J. McMurtrey; Surrender of an Exemption From Licensing

June 4, 1984.

Take notice that Lawrence J. McMurtrey, Exemptee for the Black Creek Project No. 6306 has requested that its exemption be terminated. The Exemption from Licensing was issued on September 27, 1982. The project would have been located on Black Creek in Snohomish County, Washington.

Lawrence J. McMurtrey filed the request on March 16, 1984, and the surrender of the exemption for Project No. 6306 is deemed accepted as of March 16, 1984 and effective as of 30 days after the date of this notice.

Kenneth Plumb,

Secretary.

[FR Doc. 84-15290 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5199-002]

Mac Hydro-Power Co.; Surrender of Exemption

June 4, 1984.

Take notice that Mac Hydro-Power Company, Exemptee for the Ladies Canyon Creek Project No. 5199, has requested that its exemption be terminated. The Exemption for Project No. 5199 was issued on September 27, 1982. The project would have been located on Ladies Canyon Creek in Sierra Country, California.

Mac Hydro-Power Company filed the request on March 14, 1984, and the surrender of the Exemption for Project No. 5199 is deemed accepted as of March 14, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15291 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-298-000, ST82-287-000, ST82-397-000, ST84-703-000]

Mississippi Fuel Co.; Petition for Declaratory Order

June 1, 1984.

On April 18, 1984, Mississippi Fuel Company (MFC), a Mississippi corporation operating approximately 303 miles of gas facilities in the state of Mississippi, filed a petition for a declaratory order. MFC has previously made filings before the Commission as an intrastate pipeline. However, MFC now believes that it should be classified as a gatherer, given the physical configuration of its facilities. MFC seeks a determination that it is exempt as a gatherer under section 1(b) of the Natural Gas Act and the termination of all pending proceedings to set rates for its transportation service under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15292 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-421-000]

Mississippi River Transmission Corp.; Request Under Blanket Authorization

June 1, 1984.

Take notice that on May 18, 1984 Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP84-421-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that MRT proposes to i ncrease deliverability at an existing delivery point under the authorization issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to increase the maximum delivery pressure from 125 psig to 170 psig to allow for the delivery of increased volumes of natural gas to the City of Dupo, Illinois (Dupo), a municipal utility. MRT states that Dupo has requested the increased deliverability to serve Maclair Asphalt Company, a new industrial customer. It is further stated that the increased delivery pressure would permit greater volumes to be delivered on an hourly basis without increasing Dupo's total entitlement from MRT. It is asserted that the proposed increase in hourly deliveries would have no adverse impact on MRT's existing customers. MRT estimates the cost of modifying the delivery point at $4,000, which would be financed from funds on hand.

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. 84-15293 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-427-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

June 4, 1984.

Take notice that on May 21, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84-427-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest Central proposes to abandon and reclaim measuring, regulating and appurtenant facilities in Miami County, Kansas, and to abandon the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that the facilities were installed under budget-type authority in 1965 to make a direct sale to Scimitar Resources, Ltd. (Scimitar), for oil heating treatment. Scimitar has advised that gas is no longer needed, and it now desires to reclaim these facilities. The estimated cost to reclaim these facilities is $1,010, with an estimated salvage value of $30.

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. 84-15294 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-253-016]

Panhandle Eastern Pipe Line Co.; Petition To Amend

June 4, 1984.

Take notice that on May 7, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-253-016 a petition pursuant to section 7 of the Natural Gas Act to amend the order issued December 9, 1977, in Docket No. CP77-253, as amended, so as to authorize a decrease in the volumes of gas from 18,650,000 Mcf to 18,300,000 Mcf delivered by Panhandle to Michigan Consolidated Gas Company—Interstate Storage Division (Consolidated) for storage by Consolidated and the abandonment of service for the Citizens Gas Fuel Company (Citizens) under a storage and transportation agreement, 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 Panhandle delivers to Consolidated for storage and receives redelivery of up to 18,650,000 Mcf of gas for a period of either 7 or 14 years, pursuant to two separate gas storage agreements for up to 12,250,000 Mcf of gas for firm service and up to 6,400,000 Mcf of gas for off-peak service for 14 Panhandle customers.

Panhandle states that Citizens has cancelled its gas storage and transportation agreement with Panhandle causing Panhandle and Consolidated to amend the firm storage agreement to reduce the annual storage volume to 18,300,000 Mcf consisting of 11,900,000 Mcf of firm gas service and 6,400,000 Mcf of off-peak gas service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 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. 84-15295 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT84-24-000]

Panhandle Eastern Pipe Line Co.; Tariff Filing

June 1, 1984.

Take notice that on May 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Twenty-Third Revised Sheet No. 47.

The revised Index of Purchasers reflects two (2) new service agreements with The Gas Service Company (Gas Service) dated April 4, 1983. Gas Service is currently served by Panhandle pursuant to Panhandle's Rate Schedules G-2 and G-3 of its FERC Gas Tariff, Original Volume No. 1. The gas sales contracts replace the September 15, 1970 (rate Schedule G-2) and June 5, 1981 (Rate Schedule G-3) contracts with Gas Service. With the exception of changes in the delivery pressure the new service agreements do not change the contract demand Mcf volumes, delivery points or other conditions of sale.

Panhandle proposes that this revised tariff sheet become effective May 1, 1983 as this is the effective date of the commencement of the service to Gas Service pursuant to the new service agreements dated April 4, 1983. Panhandle requests waiver of § 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to its jurisdictional customers and respective state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15296 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT84-25-000]

Panhandle Eastern Pipe Line Co.; Filing of Gas Sales Contracts

June 1, 1984.

Take notice that on May 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing two (2) gas sales contracts with The Gas Service Company (Gas Service) dated April 4, 1983.

The sales contracts supersede the sales contracts between Panhandle and Gas Service dated September 15, 1970 for sales under Panhandle's Rate Schedule G-2; and June 5, 1981 for sales under Panhandle's Rate Schedule G-3. The Gas Service Company requested an increase in delivery pressure from Panhandle to maintain pressure conditions in their distribution systems. The two April 4, 1983 contracts reflect increases in the delivery pressure at the Dekalb, Kansas (Rate Schedule G-3); Palmyra #2 and Tipton, Missouri (Rate Schedule G-2) delivery points specified in Article 4 of the respective contracts. In all other respects, these contracts do not change Gas Service's total contract demand Mcf volumes, delivery points or other conditions of sale.

Panhandle proposes that these contracts become effective May 1, 1983 as this is the effective date of the commencement of the service to Gas Service pursuant to the new service agreements dated April 4, 1983. Panhandle requests waiver of § 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to The Gas Service

Company and respective state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15297 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-82-000]

Tarpon Transmission Co.; Proposed Changes in FERC Gas Tariff

June 1, 1984.

Take Notice that Tarpon Transmission Company (Tarpon) on May 25, 1984 tendered for filing Second Revised Sheet No. 29 to be incorporated in its FERC Gas Tariff, Volume No. 1, effective July 10, 1984.

The proposed change would decrease revenues from jurisdictional transportation services by approximately $116,000 annually based on actual deliveries for the twelve months ended December 31, 1983.

Tarpon states that the rate change is in compliance with a condition contained in its First Revised Sheet No. 29 accepted by the Commission in its letter order issued July 10, 1981.

Copies of the filing were served upon the company's sole jurisdictional customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15298 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-51-000]

Upper Peninsula Generating Co.; Application

June 1, 1984.

Take notice that on May 23, 1984, Upper Peninsula Generating Company filed an application seeking authority pursuant to section 204(a) of the Federal Power Act to issue up to $60 million in short-term promissory notes and bankers' acceptances to be issued on or before July 1, 1986, which would have a final maturity date no later than July 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest on or before June 22, 1984, with Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15299 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-283-000]

Zond Systems, Inc.; Application for Commission Certification of Qualifying Status of Small Power Production Facilities

June 4, 1984.

On April 18, 1984, Zond Systems, Inc., 112 South Curry Street, Tehachapi, California 93561, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. On May 23, 1984, supplementary information was filed regarding the facility. No determination has been made that the submittals constitute a complete application.

The application is made for six wind powered facilities to be located on contiguous properties near Tehachapi in Kern County, California. Each facility will be owned by a limited or general partnership and no partnership or individual partner will own more than 30 MW of power production capacity within any one-mile radius. Each facility will have an initial capacity of 1.3 MW and may be increased in size up to 30 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15300 Filed 6-6-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-95156A; TSH-FRL 2603-1]

Toxic and Hazardous Substances Control; 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 section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-47 and TME-84-48. The test marketing conditions are described below.

EFFECTIVE DATE: May 31, 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, DC. 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 whch casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–84–47 and TME–84–48. 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, numbers 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 84–47

Date of Receipt: May 1, 1984.
Notice of Receipt: May 11, 1984 (49 Fr 20060).
Applicant: Confidential.
Chemical: (G) Amine salt of a substituted organic acid.
Use: (G) Corrosion inhibitor.
Production Volume: 5000 kg.
Number of Customers: 1.
Worker Exposure: Confidential.
Test Marketing Period: 1 years.
Commencing on: May 31, 1984
Risk Assessment: Based on test data, the test market substance is a moderate eye and skin irritant. Workers are expected to wear appropriate protective equipment, including rubber gloves, aprons and safety glasses. If the chemical is used in metalworking fluids which contain, or to which are added, nitrites or other nitrosating agents, nitrosamines will be formed which will present carcinogenic risks for processors and users. Releases to the environment are expected to be insignificant.
Additional Restrictions. 1. If the substance is shipped, the applicant must maintain records of the date(s) of shipments(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.
2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

On January 23, 1984, review of PMNS P–83–1005 and P–83–1062 for two new chemicals substances identified generically as triethanolamine salt of tricarboxylic acid, and tricarboxylic acid, respectively, culminated in EPA proposing a rule under section 6(a) of TSCA, effectively immediately under section 5(f)(2), regulating those substances when they are or could be used as, or to produce, a metalworking fluid additive. The proposed rule, publishsed at 49 FR 2762 (January 23, 1984), protects against carcinogenic risks would result if nitrites or other nitrosating agents were added tothe P–83–1005 substances when used as a metalworking fluid additive.

As a result of the new information compiled in the review of P–83–1005 and P–83–1062, EPA believes that, if the time TME–84–47 substance were used as a corrosion inhibitor in metalworking fluids, it would present similar risks to human health. EPA informed the TME applicant of these concerns, and the applicant agreed to comply with the controls specified in the proposed rule for P–83–1005 and P–83–1062.

EPA therfore grants TME–84–47 subject to the substantive requirements of 40 CFR 747.200 (b), (c), (d) (1) and (2), and (f), as modified by the following: (1) The term "amine salt" is substitute for "triethanolamine salt of tricarboxylic acid"; (2) the term "T–84–47" is substituted for "P–83–1005"; (3) the term "and test marketing" is added to subsection (b)(1) after "small quantities solely for research and development"; (4) the letter specified in subsection (d)(1)(i) shall read: "The substance identified generically as an amine salt, contained in the product (insert distributor's trade name or other identifier for product containing the TM–84–47 substance) is regulated under the terms of a Test Marketing Exemption (TME) granted by the Environmental Protection Agency under section 5(h)(1) of the Toxic Substances Control Act. The TME prohibits the addition of any nitrosating agent, including nitrites, to the amine salt when the substance is or could be used in metalworking fluids. The addition of nitrites leads to the formation of a substance known to cause cancer in laboratory animals. The amine salt has been specifically designed to be used without nitrites. Consult the enclosed information sheet for further information."; (5) the term "the information sheet" is substituted for "this rule" in subsection (d)(1)(ii); and (6) the information sheet specified in subsections (d)(1) (i) and (ii) shall consist of 40 CFR 747.200 (b), (c), (d) (1) and (2), and (f) as modified by the above.

Public Comments: None.

TME 84–48

Date of Receipt: May 2, 1984.
Notice of Receipt: May 11, 1984 (49 FR 20060).
Applicant: Lilly Industrial Coatings, Inc.
Chemical: (G) Polymer of carbomonocyclic acid, carbomonocyclic anhydride, alkanediols and alkane dioic acid.
Use: (G) For use in industrial liquid paints.
Product Volume: 4,000 kg.
Number of Customers: 6.
Worker Exposure: Confidential.
Test Marketing Period: 2 months.
Commencing on: May 31, 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.

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: May 31, 1984.

Don R. Clay,

Director, Office of Toxic Substance.

[FR Doc. 84–15280 Filed 6–6–84; 8:45 am]
BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before July 23, 1984. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer

and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer: Margaret P. Ulmer, Administrative Management Services, Room 386, 2401 E Street NW., Washington, D.C. 20507; Telephone (202) 634–9726.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–6880.

Type of Request: Extension (No change)
Title: EEOC Lawyer Referral Service Application
Form Number: EEOC Form 325
Frequency of Report: On occasion.
Type of Respondents: Private attorneys who wish to participate in EEOC's lawyer referral program.
Responses: 1,000
Reporting Hours: 250
Federal Cost: $2,450
Number of Forms: 1

Abstract—Needs/Uses: The form serves as input to EEOC for use in preparing a referral list of attorneys willing to represent aggrieved parties with their EEO cases. Once on the referral list, the attorneys are provided with training materials on the conduct of litigation of EEO cases. The referral list is updated annually to include new attorneys not previously listed; exclude attorneys no longer handling such referrals; and to update office addresses and phone numbers. Updating is required to insure correct referral information is disseminated so that time limits imposed by United States District Courts are met.

Dated: June 1, 1984.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 84–15321 Filed 6–6–84; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Annual Report of Trust Assets (OMB No. 3064–0024).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system indentified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the current form used in the Annual Report of Trust Assets (OMB No. 3064–0024) from July 31, 1984 to December 31, 1984. The form, FFIEC 001, is currently being revised by an interagency committee of the Federal Financial Institutions Examination Council. The drafting committee will seek public comment on the revision before requesting OMB approval. Because this process of inviting and then reviewing industry and public comment may take some time, the revised reporting requirements are not expected to be submitted to OMB before September 30, 1984. FDIC regulation 12 CFR 304.3(*l*) requires all insured state nonmember commercial and savings banks operating trust companies or granted FDIC consent to exercise trust powers to submit the Annual Report of Trust Assets, Form FFIEC 001, no later than February 1 of each year. The reporting burden on the current Form FFIEC 001 is approximately 3.3 hours per report.

Dated: May 31, 1984.

Alan J. Kaplan,

Deputy Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 84–15268 Filed 6–6–84; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Uniform Application/Uniform Termination Notice for Municipal Securities Principal or Representative Associated with a Bank Municipal Securities Dealer (OMB No. 3064–0022).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Request for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the current form used in the Uniform Application/Uniform Termination Notice for Municipal Securities Principal or Representative Associated with a Bank Municipal Securities Dealer (OMB No. 3064–0022) from July 31, 1984 to July 31, 1987. The form, MSD–4/MSD–5, is filed by an insured state nonmember bank which is a municipal securities dealer to permit an employee to be associated with it as a municipal securities principal or representative. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board. The estimated reporting burden, which is one hour per report, remains unchanged.

Dated: May 31, 1984.

Alan J. Kaplan,

Deputy Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 84-15269 Filed 6-6-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-705-DR]

Kentucky; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the Commonwealth of Kentucky (FEMA-705-DR), dated May 15, 1984, and related determinations.

DATED: May 30, 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 Commonwealth of Kentucky dated May 15, 1984, 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 15, 1984:

Green, Lincoln, Marion, Lawrence and Taylor Counties as adjacent counties for Individual assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-15275 Filed 6-6-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-709-DR]

Oklahoma; 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 Oklahoma (FEMA-709-DR), dated May 31, 1984, and related determinations.

DATED: May 31, 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 May 31, 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 and flooding in certain areas of the State of Oklahoma beginning on May 26, 1984, is 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 Oklahoma.

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.

You are authorized to provide Individual Assistance in the affected areas. You are also authorized to provide necessary Public Assistance in the affected areas when these requirements are known and an acceptable State commitment for these purposes is provided. 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 area.

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. Robert D. Broussard 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 Oklahoma to have been affected adversely by this declared major disaster.

Tulsa County for Individual Assistance.
Rogers and Wagoner Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-15276 Filed 6-6-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-707-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the Commonwealth of Virginia (FEMA-707-DR), dated May 23, 1984, and related determinations.

DATED: May 29, 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 Commonwealth of Virginia dated May 15, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 23, 1984:

Washington County for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joseph F. Mealy,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-15272 Filed 6-6-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 26-27, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on March 26-27, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting indicates that growth in real GNP has accelerated markedly in the current quarter and suggests that demand for goods and services may remain relatively strong in the months

[1] The Record of policy actions of the Committee for the meeting of March 26-27, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

ahead. In January and February, industrial production rose at a considerably faster pace than in the fourth quarter, and gains in nonfarm payroll employment were large over the two-month period. The civilian unemployment rate declined 0.2 percentage point each month to 7.8 percent in February. Retail sales grew at an exceptional pace in January and changed little in February. Housing starts rose substantially in both months to the highest rate in several years. Information on outlays and spending plans generally suggests continuing strength in business fixed investment. Price rose somewhat faster in early 1984 than in the fourth quarter, with increases concentrated in the food sector. The index of average hourly earnings rose only slightly over the first two months of the year, although total compensation costs appear to have increased more rapidly.

The foreign exchange value of the dollar against a trade-weighted average of major foreign currencies declined considerably from the end of January through the first week of March, but part of that decline was retraced more recently. The merchandise trade deficit rose sharply in January, mainly because of larger non-oil imports.

Data available through mid-March indicate that M1 and M3 have expanded somewhat more rapidly than anticipated at the previous meeting; since the fourth quarter of 1983, M1 and M3 are tentatively estimated to have grown at rates close to the upper limits of the Committee's ranges for 1984. Growth in M2 appears to have been less rapid than previously expected and was estimated to be at a rate in the lower part of its longer-run range. In January and February, growth of total domestic nonfinancial debt apparently rose at a pace substantially above the Committee's monitoring range for the year, and bank credit continued to expand at a relatively rapid rate. Interest rates have risen considerably since late January.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. The Committee established growth ranges for the broader aggregates of 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The Committee also considered that a range of 4 to 8 percent for M1 would be appropriate for the same period, taking account of the possibility that, in the light of the changed composition of M1, its relationship to GNP over time may be shifting. Pending further experience, growth in that aggregate will need to be interpreted in the light of the growth in the other monetary aggregates, which for the time being would continue to receive substantial weight. The associated range for total domestic nonfinancial debt was set at 8 to 11 percent for the year 1984.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the short run the Committee seeks to maintain pressure on bank reserve positions judged to be consistent with growth in M1, M2, and M3 at annual rates of around 6½, 8, and 8½ percent, respectively, during the period from March to June. Greater reserve restraint would be acceptable in the event of more substantial growth of the monetary aggregates, while somewhat lesser restraint might be acceptable if growth of the monetary aggregates slowed significantly; in either case, such a change would be considered in the context of appraisals of the continuing strength of the business expansion, inflationary pressures, and the rate of credit growth.

The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 7½ to 11½ percent.

By order of the Federal Open Market Committee, June 1, 1984.

Stephen H. Axilrod,

Secretary.

[FR Doc. 84-15232 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on March 26–27, 1984, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on May 22, 1984.

On April 18, 1984, the Committee voted to approve an additional increase to $7 billion in the the intermeeting limit on changes in holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on May 22, 1984.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697.

By order of the Federal Open Market Committee, June 1, 1984.

Stephen H. Axilrod,

Secretary.

[FR Doc. 84-15233 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

Columbus Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 29, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Columbus Bancorp, Inc.*, Columbus, Indiana; to become a bank holding company by acquiring 90 percent or more of the voting shares of Columbus Corporation, Columbus, Indiana,

thereby indirectly acquiring Columbus Bank and Trust Co., Columbus, Indiana.

2. *M. G. Bancorporation, Inc.*, Chicago, Illinois; to acquire 51 percent or more of the voting shares of Worth Bancorp, Inc., Chicago, Illinois, thereby indirectly acquiring Worth Bank and Trust, Worth, Illinois.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Green River Bancorp, Inc.*, Morgantown, Kentucky; to become a bank holding company by acquiring at least 90 percent of the voting shares of Green River Bank, Morgantown, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Grant County Bancshares, Inc.*, Elbow Lake, Minnesota; to become a bank holding company by acquiring 95.60 percent of the voting shares of Bank of Elbow Lake, Elbow Lake, Minnesota, and 100 percent of the voting shares of State Bank of Wendell, Wendell, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Alice Bancshares, Inc.*, Alice, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Alice National Bank, Alice, Texas.

Board of Governors of the Federal Reserve System, June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15234 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under section 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under setion 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 29, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage through a national bank subsidiary, First Bank Colorado, N.A., Denver, Colorado, in deposit-taking and the making of consumer loans, including residential mortgage loans (1–4 family dwellings only). These activities would be conducted in the State of Colorado.

Board of Governors of the Federal Reserve System, June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15235 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(A) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 29, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage through a national bank subsidiary First Bank Missouri, N.A., Kansas City, Missouri, in deposit-taking and the making of consumer loans, including residential mortgage loans (1–4 family dwellings only). These activities would be conducted in the state of Missouri.

Board of Governors of the Federal Reserve System, June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15236 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accomplished by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 29, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage through a national bank subsidiary, First Trust Company of Arizona, N.A., Phoenix, Arizona, in deposit-taking and the making of consumer loans, including residential mortgage loans (1–4 family dwellings only). These activities would be conducted in the State of Arizona.

Board of Governors of the Federal Reserve System, June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15237 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Railroad & Banking Company of Georgia, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 29, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Georgia*, Augusta, Georgia; to acquire (through its wholly-owned subsidiary, CMC Group, Inc., Charlotte, North Carolina), Absher Finance Company, Inc., Wytheville, Virginia, and thereby engage in the activities of consumer finance; the sale of credit life, accident and health insurance related to extensions of credit; and the sale of money orders in Wytheville, Virginia. Comments on this application must be received not later than June 27, 1984.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire Hoiness-LaBar Insurance Company, Billings, Montana, and thereby engage in the sale of general insurance in Billings, Montana and the surrounding area, and Worland, Wyoming and the area surrounding that community.

Board of Governors of the Federal Resere System, June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15238 Filed 6-6-84; 8:45 am]

BILLING CODE 6210-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Thursday, June 28, 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 design 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 H. Atherton, Secretary,

Commission of Fine Arts, at the above address or call 566–1066.

Dated in Washington, D.C. May 30, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84–15223 Filed 6–6–84; 8:45 am]

BILLING CODE 6330–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GAS) plans to request the Office of Management and Budget (OMB) to review and approve three existing information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Acquisition Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION:

1. *Make or Buy Program.*

a. *Purpose.* This clause requires prospective contractors for Federal contracts that are over two million dollars and are not based on adequate competition to submit proposals for purchasing or producing component supplies or services. This information is used to ensure the lowest overall cost to the Government.

b. *Annual reporting burden.* This is estimated as follows: Respondents, responses and hours 1.

2. *Quality Assurance Requirements.*

a. *Purpose.* This clause requires firms providing supplies and services under Federal contracts to maintain records to ensure that the supplies and services conform to contract requirements.

b. *Annual reporting/recordkeeping burden.* This is estimated as follows: Respondents and responses 40, hours 10; recordkeepers, 5,000, and hours 2,510.

3. *Novation/Change of Name Requirements.*

a. *Purpose.* This clause requires firms performing under Government contracts that want the Government to recognize a successor in interest to the contracts or a name change to submit supporting documentation to justify the change.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 55, hours 27.

Obtaining copies of proposals. Requestors may obtain copies from the Directives and Reports Management Brand (ATRAI), Room 3007, GS Building, Washington, DC 20405, telephone 202–566–0666.

Dated: May 31, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–15316 Filed 6–6–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Blood Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on May 13, 1986, unless the Secretary formally determines that renewal is in the public interest.

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.

Dated: June 1, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–15249 Filed 6–6–84; 8:45 am]

BILLING CODE 4160–01–M

Anesthetic and Life Support Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Anesthetic and Life Support Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on May 1, 1986, unless the Secretary formally determines that renewal is in the public interest.

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.

Dated: June 1, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–15248 Filed 6–6–84; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use and Minor Changes

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use and Minor Changes.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the, "Earnings Recording and Self-Employment Income (Earnings Record) System, 09–60–0059." The proposed routine use will permit us to disclose information to the Office of Personnel Management (OPM) for the purpose of determing the amount of OPM annuity offsets of civil service annuitants with military service or the survivors of such individuals. We also are proposing minor revisios to the Earnings Record notice to reflect organizational changes. We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed, without further notice, on July 9, 1984, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3–F–1 Operations Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gasparotti, Chief, State and Federal Programs Interface Branch, Office of System Requirements, Social Security Administration, 6401 Security

Boulevard, Baltimore, Maryland 21235, telephone 301–594–6080.

SUPPLEMENTARY INFORMATION:

I. General

The Earnings Record system contains a record of any person who has been issued a Social Security number and who may or may not have earnings or self-employment income covered under the Social Security Act. Information in the system is used for a number of purposes, including, but not limited to, keeping a record of individuals' earnings and determining the amount of benefits. We are proposing to establish a routine use to permit SSA to disclose information derived from the system to OPM for use in the OPM civil service annuity program.

II. Discussion of Proposed Routine Use

Section 307 of Pub. L. (Pub. L.) 97–253, as amended by section 3(k) of Pub. L. 97–346, requires the Secretary, HHS (or her designee) to furnish OPM with such information as is necessary to compute civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals. The necessary information consists of Social Security benefit amounts and the actual offset amount as computed by SSA. Tax return information subject to section 6103 of the Internal Revenue Code (26 U.S.C. 6103) will not be disclosed.

Under provisions of section 307, the annuities of current civil service annuitants who were at least age 62 and receiving a civil service annuity as of October 1982 are to be recomputed to give them civil service credit for their military service. For civil service annuitants not yet age 62 who were receiving a civil service annuity as of October 1982, Social Security credit for military service will not be deducted from an annuity at age 62 and upon reaching age 62 (in the case of annuitants currently under age 62) the civil service annuity amount must be offset. Under the technical amendments to section 307, contained in Pub. L. 97–346, the annuities of civil service survivor annuitants, as well as individuals entitled to a deferred annuity as of October 1, 1982, and their survivors, are affected similarly.

Information concerning civil service annuitants who are Social Security beneficiaries will be disclosed from SSA's systems maintaining benefit information. We already have a routine use in effect for those systems which would permit disclosure of benefit information to OPM, as necessary, to assist in administering the civil service annuity program. That routine use, initially published at 44 FR 70571, December 7, 1979, in notices applicable to the Claim Folders (09–60–0089) and Master Beneficiary Record (09–60–0090) systems, permits us to disclose information to Federal, State or local agencies (or agents on their behalf) for administering cash or noncash income/health-maintenance programs. The OPM civil service annuity program is considered as an income-maintenance program for SSA disclosure purposes.

Information concerning civil service annuitants who are not Social Security beneficiaries will be derived from the Earnings Record system (09–60–0059). To comply with the technical requirements of the Privacy Act, we are proposing to establish the routine use below.

Information derived from this system may be disclosed to the Office of Personnel Management for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Pub. L. 97–253.

III. Compatibility of the Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) permit us to disclose information under a routine use when the information will be used for a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information under a routine use, as necessary, to administer our programs and assist other agencies in administering their programs which are similar to our programs, when the information concerns eligibility to benefits, benefit amounts or other matters of benefit status in a Social Security program and is relevant to determining the same matters in the other program. The regulation also permits us to disclose information under a routine use in situations in which a disclosure is required by Federal law. The proposed routine use meets these criteria and, therefore, is appropriate.

IV. Effect of the Proposed Routine Use on the Privacy Rights of Individuals

We will use the proposed routine use to disclose information only as provided in section 307 of Pub. L. 97–253; i.e., we will furnish to OPM only such information as is necessary for OPM to carry out the provisions of Pub. L. 97–253 related to the annuity offset of civil service annuitants with military service or the survivors of such individuals. Thus, we do not anticipate that any disclosure under the proposal would have any unwarranted effect on the privacy rights of individuals.

V. Minor Revisions to the Earnings Record Notice

The name section of SSA's notices of systems of records contains the acronyms of the SSA components which have primary responsibility for the individual systems. We have revised the name section of the Earnings Record notice to reflect the acronym (OSR—Office of System Requirements) of the component which now has responsibility for the system. We also have revised the system manager section of the notice to reflect that the Director, Office of Pre-Claims Requirements, is now the manager of the system and amended the contesting records procedures section to reflect that individuals contesting records must show how the record is incomplete, untimely, inaccurate or irrelevant.

The notice below contains the revisions discussed above.

Dated: May 31, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

09–60–0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of System, 6401 Security Boulevard, Baltimore, Maryland 21235

Social Security Administration, Office of Systems Requirements, 6401 Security Boulevard, Baltimore, Maryland 21235

Social Security Administration, Office of Central Operations, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, Maryland 21201

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number and who may or may not have earnings under Social Security or self-employment income; or any person requesting, reporting, or changing earnings information and/or inquiring about some aspect of the Social Security Act; or any person

having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of all Social Security number holders, their name, date of birth, sex, and race; a summary of their yearly earnings, and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under the Social Security Act); correspondence received from individuals pertaining to the above mentioned items; as well as copies of the replies to such correspondence, employer pension plan identification numbers and pension plan information (i.e., nature and form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act, the Federal Records Act of 1950 (64 Stat. 583), and the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406).

PURPOSE(S):

This system is used for the following purposes:

- As a primary working record file of all Social Security number holders;
- As a quarterly record detail file to provide full in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the latest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;
- For identification of individuals entitled to additional benefits;
- To provide information to employers and former employers for correcting or reconstructing earnings records and for Social Security tax purposes;
- To provide worker and self-employed individuals with earnings statements or quarters of coverage statements;
- To provide information to the HHS Audit Agency for auditing benefit payments under Social Security programs;
- To provide information to the National Institute of Occupational Health and Safety for epidemiological research studies required by the Occupational Health and Safety Act of 1974;
- To assist SSA correspondents in responding to general inquiries about Social Security, including their earnings or adjustments to earnings and in preparing responses to subsequent inquiries; and
- To store minister waivers, thus preventing an erroneous payment of Social Security benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security Administrators, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code.

3. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when the Social Security Administration contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for their study of low-level radiation exposure.

7. To a Congressional Office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Social Security Act in Foreign countries through services and facilities of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through services and facilities of that agency.

10. To the Veterans Administration, Philippines Regional Office, for administering the Social Security Act in the Philippines through services and facilities of that agency.

11. To the Department of the Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State Audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To the Department of Justice in the event of litigation where the defendant is:

(a) The Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity;

(b) The United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) Any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to this agreement.

16. To Federal, State or local agencies (or agents on their behalf) for the purpose of validating social security numbers used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Social Security Act).

17. Information pertaining to wages and self-employment income may be disclosed in response to requests from State welfare agencies under sections 402(a) (29) and 411 of the Social Security Act for determining an individual's eligibility for aid or services under State plans for Aid to Families with Dependent Children and the amount of such aid or services.

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments

of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon request, to officers and employees of the Department of Agriculture for purposes of, and to the extent necessary in,

(a) Determining an individual's eligibility for benefits, or

(b) The amount of benefits,

under the food stamp program established under the Food Stamp Act of 1977.

19. Tax return information (e.g., information with respect to net earnings form self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to officers and employees of a State food stamp agency for purposes of, and to the extent necessary in,

(a) Determining an individual's eligibility for benefits, or

(b) The amount of benefits,

under the food stamp program established under the Food Stamp Act of 1977.

20. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency for purposes of, and to the extent necessary in,

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals, under a progam established under title IV–D of the Social Security Act (42 U.S.C. 651ff).

21. The fact that a veteran is or is not eligible for Retirement Insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management for its use in determining that veteran's eligibility for a civil service retirement annunity and the amount of such annuity.

22. Employee and employer name and address information may be disclosed to the Department of Justice (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

23. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relation to this systems of records.

24. *Information derived from this system may be disclosed to the Office of Personnel Management for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Pub. L. 97–253.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and disks with on-line access tape files.

RETRIEVABILITY:

Records in this system are indexed by Social Security number, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP System Security." This includes maintaining the magnetic tapes and disks within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which are issued ony to authorized personnel. For computerized records, electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminals users.

Retention and disposal: All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified, then they are destroyed by shredding. All tapes, disks, and microfilm files are updated. The out-of-date magnetic pates and disks are erased. The out-of-date microfilm is shredded.

SSA retains correspondence 1 year when it concerns documents returned to individuals, denials of confidential information, release of confidential information to an authorized third party and undeliverable material, for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations, or when the statute of limitations is involved, and permanently any material which affects future claims development especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Office of Pre-Claims Requirements,* 6401 Security Boulevard, Baltimore, Maryland 21235

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him or her by providing his or her name, Social Security number, signature, or other personal identification and referring to this system to the address shown under system manager above. (Furnishing the Social Security number is voluntary, but it will make searching for an individual's record easier and avoid delay.)

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification *showing how the record is incomplete, untimely, inaccurate or incomplete.* These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

Social Security number applicants, employers, self-employed individuals; the Department of Justice (Immigration and Naturalization Service); the Department of Treasury (Internal Revenue Service); an existing system of records maintained by SSA, the Master Beneficiary Record (09–60–0090); correspondence, replies to correspondence, and earnings

modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FORM CERTAIN PROVISONS OF THE ACT:

None.

[FR Doc. 84-15314 Filed 6-6-84; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[S 1588, R 2232, R 3344]

California; Termination of Classifications of Public Lands for Multiple Use Management

May 29, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action provides notice of the termination in their entirety of three classifications of public lands for multiple use management, affecting a total of approximately 135,646 acres in Inyo, Mono, Monterey, and San Diego Counties within the Bakersfield and California Desert Districts.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety:

Bakersfield District

R 2232

35 FR 15851 ((Oct. 8, 1970) FR Doc. 70-13459).

The lands described in the above referenced document aggregate approximately 38,535 acres in Mono and Inyo Counties in the Benton/Owens Planning Units.

S 1588

33 FR 15350 ((Oct. 16, 1968) FR Doc. 68-12562).

The lands described in the above referenced document aggregate approximately 51,466 acres in Monterey County, in the Fresno-San Benito and Monterey Planning Units.

California Desert

R 3344

35 FR 18335 ((Dec. 2, 1970) FR Doc. 70-16086).

The lands described in the above referenced document aggregate approximately 45,645 acres in San Diego County, in the Southern California Metropolitan Project Area (formerly Escondido Project Area) and in the Eastern San Diego County Planning Unit.

1. Land descriptions of each classification are available at the California State Office in Sacramento and respective District Offices.

2. The classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), but not from mining and mineral leasing.

3. At 10:00 a.m. on July 11, 1984, the segregative effect imposed by the classifications will terminate.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Ed Hastey,

State Director.

[FR Doc. 84-15239 Filed 6-6-84; 8:45 am]
BILLING CODE 4310-40-M

Utah; Classification Decision for Utah State Indemnity Selection

1. The following described lands (U-53964, SS No. 4272) have been examined and found suitable for transfer to the State of Utah.

They are hereby classified for indemnity selection pursuant to Sections 2275 and 2276 of the Revised Statutes as amended (43 U.S.C. 851, 852), and the regulations thereunder (43 CFR Part 2621).

Tract No. 1—(Daggett County—Vernal District Office)

T. 2., N., R. 25 E., SLM, Utah,
Sec. 3, lots 1-4, S½N½, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 4, lots 1, 2, S½NE¼, SE¼,
T. 3 N., R. 25 E., SLM, Utah,
Sec. 26, lots 2-4, N½SW¼, NW¼SE¼;
Sec. 33, SE¼SE¼;
Sec. 34, S½S½;
Sec. 35, lots 1-4, SW¼NE¼, NW¼NW¼, SE¼NW¼, SW¼, W½SE¼.

Containing 1,842.71 acres (Surface and Minerals).

Track No. 2—(Carbon—Moab District Office)

T. 12 S., R 11 E., SLM, Utah,
Sec. 32, all (Coal only);
Sec. 33, 34, all (Minerals only);
Sec. 35, SE¼SW¼;
Sec. 35, N½SW¼, SW¼SW¼, SE¼ (Minerals only).
T. 13 S., R. 11 E., SLM, Utah,
Sec. 1, all (Coal only);
Sec. 3, lots 1, 2, 3, 8 (Minerals only);
Sec. 3, lot 4 (Coal only);
Sec. 4, all (Coal only);
Sec. 9, E½SW¼, S½SE¼;
Sec. 9, NW¼NE¼, N½NW¼, SW¼NW¼ (Coal only);
Sec. 10, E½E½, SW¼SW¼ (Coal only);
Secs. 11 12, all (Coal only);
Sec. 13, W½ (Coal only);
Sec. 13 E½;
Sec. 14, N½ (Coal only);
Sec. 15, E½NE¼ (Coal only).
T. 12 S., R. 12 E., SLM, Utah,
Sec. 31, lot 4, NW¼NE¼, S½NE¼, SE¼NW¼, SE¼ (Minerals only);
T. 13 S., R. 12 E., SLM, Utah,
Secs. 3, 4, 5, 6, all (Coal only);
Sec. 7, S½SE¼;
Sec. 7, lots 1-4, NE¼, E½W½, N½SE¼ (Coal only);
Secs. 8, 9, 10, 11, 14, 15, 17, all (Coal only);
Sec. 18, lot 1, NE¼, NE¼NW¼;
Sec. 20, NW¼;
Sec. 20, NE¼ (Coal only);
Sec. 21, NE¼, N½NW¼;
Sec. 22, N½, N½S½;
Sec. 23, W½NW¼

Containing 1,804.00 acres (Surface and Minerals); 2,073.26 acres (Minerals only; 10,386.19 acres (Coal only); Grand Total 14,263.45 acres.

Track No. 3—(Carbon County—Moab District Office)

T. 13 S., R. 13 E., SLM, Utah,
Sec. 13, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 14, N½SE¼, SE¼SE¼;
Sec. 14, SW¼SE¼ (Minerals only);
Sec. 23, lots 1-3;
Sec. 23, lot 4 (Surface, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only;
Sec. 24, NW¼NE¼;
Sec. 24, E½E½, SW¼NE¼, E½NW¼, S½SW¼, NW¼SE¼ (Minerals only);
Sec. 24, lot 3, NE¼SW¼ (Coal only);
Sec. 24, lots 1, 2, SW¼SE¼ (Surface, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only);
Sec. 25, S¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, SE¼ (Minerals only);
Sec. 25, W½SW¼ (Coal only);
Sec. 25, N½NE¼, SE¼NE¼, SW¼NW¼ (Surface, coal, phospate, nitrogen, potassium, oil and gas, asphaltic materials only);
Sec. 35, NW¼NE¼;
Sec. 35, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼ (Minerals only);
Sec. 35, E½NE¼ (Coal only).
T. 13 S., R. 14 E., SLM, Utah
Sec. 1, lots 1-4, S½S½;
Sec. 3, lots 1, 2, S½S½;
Sec. 4, SW¼SE¼;
Sec. 4, lot 4 (Minerals only);
Sec. 5, lot 4, SW¼SW¼;
Sec. 5, lots 1-3, SE¼SW¼, S½SE¼ (Minerals only);
Sec. 6, lots 1, 2, 4, SE¼SE¼;
Sec. 7, NE¼NE¼, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼;

Sec. 7, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼ (Minerals only);
Sec. 8, NW¼NW¼, S½N½, S½ (Minerals only);
Sec. 9, N½, NE¼SW¼, NW¼SE¼;
Sec. 9, NE¼SW¼, SE¼SW¼, NE¼SE¼, S½SE¼ (Minerals only);
Sec. 9, SW¼SW¼ (Coal only);
Sec. 10, N½SE¼;
Sec. 10, SW¼ (Minerals only);
Sec. 11, NE¼NE¼, N½NW¼, S½N½, S½;
Sec. 11, NW¼NE¼ (Coal only);
Sec. 12, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 13, SW¼NE¼, S½NW¼, SW¼;
Sec. 14, S½NE¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 14, NW¼NW¼ (Coal only);
Sec. 15, N½SW¼, SW¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 15, W½NE¼, SE¼NE¼, NW¼ (Minerals only);
Sec. 15, NE¼NE¼, SE¼SW¼ (Coal only);
Sec. 17, SW¼NE¼, NE¼NW¼, S½SW¼, NE¼SE¼;
Sec. 17, N½NE¼, SE¼NE¼, S½SE¼ (Minerals only);
Sec. 18, lot 4, W½NE¼, NE¼SW¼, SE¼;
Sec. 18, lot 2, E½NW¼ (Minerals only);
Sec. 18, lot 3, SE¼SW¼ (Surface, oil and gas, potassium, phosphate nitrogen, asphaltic materials only;
Sec. 19, lots 1–4, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼;
Sec. 19, E½NE¼, SE¼SW¼ (Minerals only);
Sec. 19, NE¼SE¼ (Surface, oil and gas, potassium, phosphate, nitrogen and asphaltic materials only);
Sec. 20, NE¼NE¼, S½NE¼, NW¼, E½SW¼, SW¼SW¼, SE¼ (Minerals only);
Sec. 20, NW¼NE¼ (Coal only);
Sec. 20, NW¼SW¼ (Surface, oil and gas, potassium, phosphate, nitrogen, asphaltic materials only);
Sec. 21, E½NE¼, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, NE¼SE¼, W½SE¼;
Sec. 21, NW¼NE¼, NW¼NW¼, SE¼SE¼ (Coal only);
Sec. 22, all;
Sec. 23, NE¼, W½, NW¼SE¼;
Sec. 24, NW¼NW¼;
Sec. 26, W½, NW¼SE¼;
Sec. 27, N½NE¼, NW¼, E½SW¼;
Sec. 27, S½NE¼, SE¼ (Minerals only);
Sec. 27, W½SW¼ (Coal only);
Sec. 28, NE¼NE¼, N½NW¼, S½N½, S½;
Sec. 28, NW¼NE¼ (Coal only);
Sec. 29, SW¼NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 29, N½NE¼, SE¼NE¼, SW¼NW¼, NW¼SW¼, SE¼SW¼ (Minerals only);
Sec. 29, NE¼NW¼ (Surface, oil and gas, potassium, phosphate, nitrogen and asphaltic materials);
Sec. 30, lot 1, N½NE¼, NE¼NW¼, S½SE¼ (Minerals only);
Sec. 30, lots 2, 3, 4, SE¼SW¼ (Surface, oil and gas, potassium, phosphate nitrogen, asphaltic materials);
Sec. 31, lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 33, N½,NE¼SW, N½SE¼, SE¼SE¼;
Sec. 33, W½SW¼ (Minerals only);
Sec. 34, W½NW¼, N½SW¼;
Sec. 34, NE¼, E½NW¼, N½SE¼ (Mineral only).

T. 14 S., R. 14 E., SLM, Utah,
Sec. 4, lot 4, SW¼NW¼, W½SW¼ (Minerals only);
Sec. 5, lot 1–4;
Sec. 5, E½SW¼, E½SE¼, SW¼SE¼ (Minerals only);
Sec. 8, N½NE¼, SE¼NE¼ (Minerals only);
Sec. 9, NW¼NE¼, N½NW¼, S½N½, S½ (Minerals only);

Containing Surface and Minerals, 10,483.69 acres, Minerals, 6,519.26 acres, Coal, 713.43 acres, Surface, misc.minerals, 677.85 acres, Grand total, 18,394.23 acres.

Tract No. 4 (Uintah County—Vernal District Office)

T. 12 S., R. 24 E., SLM, Utah,
Sec. 25, all;
Sec. 26, E½.
T. 12 S., R. 25 E., SLM, Utah,
Sec. 29, E½;
Sec. 31, E½.

Containing 1,600 acres (Surface and Minerals).

Tract No. 5—(Sanpete County— Richfield District Office)

T. 18 S., R. 1 E., SLM, Utah,
Sec. 31, lot 8, SE¼NE¼, SE¼SW¼, E½SE¼, SW¼SE¼.
T. 19 S., R. 1 E., SLM, Utah,
Secs. 3, 4, all;
Sec. 5, lots 1–4, S½N½, N½SW¼, SW¼SW¼, SE¼;
Sec. 6, lots 1–3, 5, S½NE¼, SE¼SW¼, E½SE¼, SW¼Se¼;
Sec. 7, E½, E½W½;
Sec. 8, N½NE¼, SW¼NE¼, N½NW¼ SE¼NE¼, SW¼NW¼SE¼NE¼, W½ W½SW¼SE¼NE¼, E½SE¼NE¼, W½, N½SE¼;
Sec. 9, N½NE¼, SW¼NE¼, NW¼, N½ SE¼SE¼;
Sec. 10, NE¼,E½NW¼,NW¼NW¼, N½SE¼,SE¼SE¼;
Sec. 11, NE¼NE¼, W½E½, W½;
Sec. 14, NW¼, W½SW¼;
Sec. 15, NE¼NE¼, S½NW¼, E½SW¼, SW¼SW¼, W½SE¼, S½NE¼SE¼, SE¼SE¼;
Sec. 15, N½NE¼SE¼ (Oil and gas, oil shale, potash, sodium, geothermal);
Sec. 17, NW¼NW¼;
Sec. 18, NE¼, E½NW¼, N½SE¼;
Sec. 22, N½NE¼, SE¼NE¼;
Sec. 23, W½NW¼.

Containing Surface and Minerals, 5,919.93 acres; Oil and Gas, 20.00 acres; Grand Total, 5,939.93 acres.

Tract No. 6—(Sevier County—Richfield District Office)

T. 24 S., R. 1 E., SLM, Utah,
Sec. 19, lots 1–4, NE¼, NW¼;
Sec. 30, lot 1;
Sec. 30, E½SE¼ (Minerals only);
Sec. 31, lots 1, 2, E½NW¼ (Minerals only);
T. 24 S., R. 1 W., SLM, Utah,
Sec. 1, lots 1–8;
Sec. 3, lots 1–8;
Sec. 10–15, 22–26, all;
Sec. 27, E½, NW¼NW¼, N½SE¼NW¼, E½SW¼NW¼, E½NW¼SW¼SE¼ NW¼, SE¼SE¼NW¼, W½SW¼, SE¼ SW¼;
Sec. 27, SW¼SW¼SE¼NW¼, W½NW¼ SW¼SE¼NW¼ (Oil and Gas only);
Sec. 34, lots 1–10, N½;
Sec. 35, all (Minerals only);

Containing Surface and Minerals, 9,233.28 acres; Minerals Only, 878.30 acres; Oil and Gas only, 3.75 acres; Grand Total 10,115.33 acres.

Tract No. 7—(Sevier County—Richfield District Office)

T. 23 S., R. 5 E., SLM, Utah,
Secs. 24, W½.

Containing 320 acres Surface and Minerals.

Tract No. 8—(Iron County—Cedar City District Office)

T. 31 S., R. 6 W., SLM, Utah,
Secs. 8, 9, 14, all;
Sec. 15, N½N½, SE¼NE¼, SW¼, SW¼SE¼;
Secs. 17, 21, 22, 23, all.

Containing 4,880 acres Surface and Minerals.

Tract No. 9—(Grand and San Juan Counties—Moab District Office)

T. 26 S., R. 25 E., SLM, Utah,
Secs. 28, W½W½.
T. 26 S., R. 26 E., SLM, Utah,
Sec. 31, lots 1–4.

Containing 301.32 acres (Surface and Minerals).

Grand total of acres classified: Surface and Minerals, 36,384.93; Minerals Only, 9,470.82; Coal Only, 11,099.62; Surface and Misc. Minerals, 701.60 Grant Total, 57,656.97.

Because of adjudicative concerns which are unresolved at this time, the Bureau of Land Management is not in a position to classify for or against selection by the State for the following described lands:

T. 3 S., R. 4 E., SLM, Utah,
Secs. 1, lots 1–4, S½N½, W½SW¼, NE¼SW¼, N½SW¼, SE¼SE¼.
T. 13 S., R. 14 E., SLM, Utah,
Sec. 12, SE¼SE¼;
Sec. 13, N½N½;
Sec. 14, N½NE¼,E½NW¼, SW½NW¼;
Sec. 15, NE¼SE¼, SW¼SE¼.
T. 40 S., R 22 E., SLM, Utah,
Sec. 29, lots 3, 4, 6;
Sec. 30, lots 3, 4, 5.
T. 29 S., R. 9 W., SLM, Utah,
Sec. 36, SE¼NW¼, NE¼SW¼.

2. All of the above acreages are being classified, or held for classification at a later date, under State Selection application U–53964 for selection by the State. This application will complete the State's entitlement to any outstanding "lieu" rights (except indemnity for natural deficiencies). As the Supreme Court of the United States ruling No. 784522, May 19, 1980, decreed there can be no grossly disparate of values, some of the lands may not issue to the State because of the disparity of values. The subject classification will be considered vacated and the nontransferred lands restored to their former status, upon

determination of equal values and issuance of a clear list to the State.

3. On lands where no adverse comments are received, it will be held that these lands are classified 60 days from date of publication of this notice in the Federal Register and this classificaion action will become the final determination of the Department of the Interior. Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and Section 7 of the Act of June 28, 1934.

4. For a period of 60 days from the date of publication of this notice in the Federal Register, any persons who wish to submit comments on the above classification may present their views in writing for consideration to the State Director (U-942), Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. Comments should address a specific parcel within a specific tract (Example—Tract No. 1, Sec. 1, Lot 1, T. 23 S., R. 5 E.) as opposed to commenting generally on the entire classification.

5. Public meetings to discuss this classification decision have been scheduled by the appropriate BLM District Managers for the dates that follow:

June 25, 1984—Utah State Office
June 26, 1984—Cedar City District Office
June 27, 1984—Richfield District Office
June 28, 1984—Moab District Office
June 29, 1984—Vernal District Office.

6. If and when selections are approved and certified to the State, the selected lands will be subject to all valid existing rights. Furthermore, any land encumbered with a mineral lease or permit are subject to a reservation to the United States of all oil and gas, and coal, with the right of the lessee to utilize as much of the surface as is necessary for proper mining operations, until the lease or permit is terminated. Should an entire mineral lease or permit be encompassed by the area of the selection, the State of Utah will succeed to the position of the United States.

7. Any existing grazing use authorized by license or permit from the Bureau of Land Management will be terminated if the lands are transferred out of Federal Ownership. The State shall honor all leases, permits, contracts, and terms and conditions of user agreements on United States' lands.

Those lands which are encumbered by mining claims cannot be transferred to the State of Utah until the mining claims are relinquished.

8. Detailed information concerning the indemnity selection and proposed transfer to the State of Utah is available for review at the Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111 (801-524-4245).Q04

Dated: June 1, 1984.

Roland G. Robinson,

State Director.

[FR Doc. 84-15224 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-DQ-M

[A-18968]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action—exchange, public lands in Mohave County, Arizona.

SUMMARY: The following described public lands are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 18, lots 1 and 2, E½NW¼, and NE¼;
Sec. 20, S½;
Sec. 32, N½.
T. 24 N., R. 16 W.,
Sec. 30, lots 1 to 16, inclusive, and E½.
Comprising 1979.34 acres, more or less.

In exchange for these lands, the federal government would acquire approximately 12,393 acres from the Gordon Bell Realty and Development Corporation of Scottsdale, Arizona. The private offered lands contain highly diversified wildlife habitat and exhibit potential for recreational development in the Aquarius Mountains southeast of Kingman, Arizona.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the public lands while the preparation of an environmental assessment is ongoing. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and any reservations of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including a list of the offered lands is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 31, 1984.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 84-15242 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-32-M

Montrose District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and CFR Part 1780, that a meeting of the Montrose District Advisory Council will be held July 17, 18 and 24, 1984.

DATE: Requests to present oral comments must be received by July 13, 1984. Meetings are scheduled July 17, 18 and 24, 1984.

ADDRESS: Submit requests to comment or requests for further information to: District Manager, Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, (303) 249-7791.

SUPPLEMENTARY INFORMATION: All meetings of the Advisory Council are open to the public. Interested persons may file written statements prior to the meeting, or make oral statements to the Council between 10:00 and 11:00 a.m. July 18, 1984. Anyone wishing to make an oral statement must notify the District Manager by July 13, 1984.

The meeting will address issues in the San Juan and San Miguel Draft Resource Management Plan and Environmental Impact Statement, and the Wilderness Technical Supplement. A tour of the San Juan Resource Area will leave from the Montrose District Office at 7:30 a.m. on July 17, 1984. (Members of the public must supply their own transportation.) The following day, the meeting will reconvene at 8:30 a.m. in the Grace Speck Room at the Cortez City Hall, 210 East Main, Cortez, Colorado. After

discussions and the comment period, the Advisory Council will provide recommendations to the District Manager. The Council will confirm or cancel the meeting scheduled for 10:00 a.m. on July 24, 1984, in the Montrose District Office, depending on the need for further discussion of the issues.

Dated: June 1, 1984.

Paul W. Arrasmith,

District Manager.

[FR Doc. 84-15240 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-JB-M

Wisconsin; Intent To Prepare a Planning Analysis

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Management Planning.

SUMMARY: The Milwaukee District Office, Bureau of Land Management, is initiating a plan in the State of Wisconsin to determine the eventual disposition of Bureau-administered public lands and to delineate areas and objectives for management of Federal mineral estate. The plan will be prepared under the provisions of 43 CFR 1610.8(b) and other applicable regulations.

Key Dates and Public Reviews

Notice and Request for Comments—May 1984
Second Request for Comments—August 1984
Proposed Plan Released—September 1984
Final Decision—November 1984

SUPPLEMENTARY INFORMATION: Federal public lands administered by the Bureau in Wisconsin consist of nearly 830 tracts ranging in size from less than half an acre to more than 250 acres. They are predominantly small tracts and islands widely scattered throughout 59 counties. Total acreage is approximately 4,200 acres. Most tracts are under application by the State of Wisconsin for Recreation and Public Purposes. There are a number of authorized use and title conflict cases which must be resolved prior to any other action; however, for planning purposes all tracts will be dealt with as if the Bureau had clear ownership.

Approximately 148,000 acres of Federal minerals underlie state, county and private surface ownership in 67 Wisconsin counties. The Bureau administers approximately 1.2 million acres of Federal minerals under other Federal agencies' surface. Planning documents will discuss the mineral potential underlying these lands and outline the policies of the Bureau as they relate to the prescribed resource allocations of these agencies.

Planning will decide whether to retain or dispose (through sale, interagency transfer, R&PP lease or other means) of surface tracts. Planning will also delineate minerals management areas and objectives based on development potential and the sensitivity of surface resources. Planning decisions will be prepared by the Milwaukee District Manager and approved by the Eastern States Director, Bureau of Land Management, Alexandria, Virginia.

In the past, the Eastern States Office of the BLM has not had an active management posture with regard to public domain lands in Wisconsin. This situation has led to ownership conflicts and unauthorized uses. To help alleviate these problems, a concerted effort towards acurate and well-maintained lands records has been initiated with the assistance of the State, local governments and the general public.

Mineral ownership in Wisconsin is located on tracts administered by the Bureau of Land Management, other Federal agencies, the state and private parties. In order to facilitate minerals actions, every effort will be made to coordinate with these entities and maintain accurate minerals records.

This planning effort is the culmination of an effort begun in 1981 as the Wisconsin Multiple-Use Plan (MUP), under procedures which are now obsolete. The plan will be completed as a Category I Planning Analysis, which means that an environmental assessment (EA) will be prepared as an integral part of the process.

The environmental assessment to be prepared during this planning effort will evaluate and compare the probable effects of the proposed plan, a "no action" alternative (meaning no change from current management), and reasonable lands and minerals subalternatives.

Planning team members will include a natural resource specialist, a cultural resource specialist, a realty specialist, two geologists and an environmental scientist.

Persons wishing to comment and to be kept informed on this effort should contact the team leader at the address or telephone number listed below. Please request to be placed on the mailing list for the Wisconsin plan.

FOR FURTHER INFORMATION CONTACT: Dennis Falck, Chief, Planning and Environmental Assistance, U.S. Bureau of Land Management, P.O. Box 631, Milwaukee Wisconsin 53201-0631. Telephone (414) 291-4413, FTS 362-4413.

Dated: June 1, 1984.

Chuck Steele,

Milwaukee District Manager.

[FR Doc. 84-15241 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-GT-M

Oregon and Washington; Use Fee for Commercial Recreation Activities

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Oregon and Washington; Revised Special Recreation Permit Fees.

SUMMARY: The document establishes a revised fee for permitted commercial recreation related activities which occur on public lands managed by the Bureau of Land Management in Oregon and Washington.

DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Ken White, Outdoor Recreation Planner, Bureau of Land Management, (503) 231-2113.

SUPPLEMENTARY INFORMATION: The fee schedule which appeared in the **Federal Register** on October 27, 1983 (FR Doc. 83-23791) established fees based on a two year phase of an escalating rate table where fees are determined by categories of adjusted daily charges collected by the permittee from each participant. The Bureau of Land Management's Final Special Recreation Permit Policy which appeared in the **Federal Register** on February 10, 1984 (FR Doc. 84-3892) established the same commercial permit fee schedule based on a three year phase-in beginning in 1984 and reaching its full level in 1986. In order to be consistent with national Bureau of Land Management Policy, the October 27, 1983 fee schedule is revised based on a three year phase-in period. The required fee for 1984 remains as announced on October 27, 1983 with the fee reaching its full level in 1986.

Accordingly, a Special Recreation Permit fee schedule for commercial recreation activities on public lands managed by the Bureau of Land Management in Oregon and Washington is established at $100.00 minimum for the term of the permit or the amount from the following revised table, whichever is greater:

Adjusted daily charge collected by permittee from each participant	Fee paid to the bureau per user day	1984	
		1985	1986
$8.00 or less	0.25	0.25	0.25
$8.01 to $20.00	.25	.35	.40

Adjusted daily charge collected by permittee from each participant	Fee paid to the bureau per user day	1984	
		1985	1986
$20.01 to $35.00	.40	.60	.80
$35.01 to $50.00	.65	.95	1.30
$50.01 to $75.00	.95	1.35	1.90
$75.01 to $100.00	1.30	1.80	2.60
$100.01 to $125.00	1.70	2.35	3.40
$125.01 to $150.00	2.05	2.80	4.10
$150.01 to $175.00	2.45	3.30	4.90
$175.01 to $200.00	2.80	3.80	5.60
$200.01 to $250.00	3.40	4.55	6.75
$250.01 to $300.00	4.15	5.55	8.25
Over $300.00	(1)	(2)	(3)

[1] 1½ pct of adjusted daily charge per participant.
[2] 2 pct of adjusted daily charge per participant.
[3] 2 pct of adjusted daily charge per participant.

For purposes of this fee schedule, adjusted daily charges are revised to refer to the daily charge per participant less any long distance, off-set transportation and lodging expenses either before or after the associated permitted use, or fees paid to others for services off public lands.

Dated: May 31, 1984.

Paul M. Vetterick,

Associated State Director.

[FR Doc. 84-15244 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-33-M

State of California; Realty Action; Noncompetitive Sale of Public Lands in San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Noncompetitive Sale of Public Lands in San Bernardino County.

SUMMARY: The following described land has been examined and identified for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value.

Case No.	Legal Description		Acres	Direct sale (last name)
CA-15674	T. 30 S., R. 41 E., MDM, Sec. 6	Lot 82	.258	Miller, Harold.
		Lot 115	.254	Do.
		Lot 117	.677	Do.
		Lot 119	.312	Do.
		Lot 120	.457	Do.
		Lot 121	.883	Do.
CA-15675		Lot 77	.312	Miller, Thomas.
		Lot 78	.439	Do.
		Lot 83	.398	Do.
CA-15676		Lot 123	.424	Claussen.
		Lot 125	.414	Do.
CA-15677		Lot 76	.244	Blair.
		Lot 118	.641	Do.
CA-15678	T. 30 S., R. 41 E., MDM, Sec. 6	Lot 91	.577	Blake.
		Lot 137	.549	Do.
CA-15679		Lot 86	.307	Franich.
CA-15680		Lot 109	.794	Huss.
		Lot 113	.267	Do.
CA-15681		Lot 128	.419	Molihan.
		Lot 129	1.029	Do.
		Lot 131	.314	Do.
CA-15682		Lot 105	.823	Anderson.
		Lot 106	.846	Do.
CA-15683		Lot 132	.560	McManis.
		Lot 133	.415	Do.
CA-15684		Lot 134	.511	Smith.
CA-15685		Lot 138	1.061	Bird.
CA-15686		Lot 114	.521	Sinsel.
CA-15687		Lot 79	.534	Archer.
CA-15688		Lot 101	1.090	Adams.
CA-15689		Lot 88	.254	Campbell.
CA-15690		Lot 92	.447	Robinson.
CA-15691		Lot 139	.406	Brown.
CA-15692		Lot 81	.227	Cote.
CA-15693		Lot 100	.252	Pyle.
CA-15694		Lot 141	.480	Clark.
CA-15695		Lot 73	.374	Biscoe.
CA-15696		Lot 140	.349	Morse.
CA-15697	T. 30 S., R. 41 E., MDM, Sec. 6	Lot 89	.362	Felli.
CA-15698		Lot 98	.472	Derrickson.
CA-15699		Lot 102	.969	Katila & Paesel.
CA-15700		Lot 122	.551	Clair.
CA-15701		Lot 97	.429	Garrett.
CA-15702		Lot 103	.616	Loncaric.
CA-15703		Lot 95	.371	Fitzgerald.
CA-15704		Lot 110	.476	Stevens.
CA-15705		Lot 130	.449	Reed.
CA-15706		Lot 135	.343	Kennedy.
CA-15707		Lot 72	.503	Hoerauf.
CA-15708		Lot 93	.391	Groen.
CA-15709		Lot 126	.451	Greene.
CA-15710		Lot 111	.189	Miller, Lawrence.
CA-15711		Lot 104	.490	Cepes.
CA-15712	T. 30 S., R. 41 E., MDM, Sec. 7	Lot 23	1.108	Pointer.
CA-15713	T. 30 S., R. 41 E., MDM, Sec. 6	Lot 80	.963	Graham.
CA-15714		Lot 124	.231	Gillard.
CA-15715		Lot 94	.322	Bales.
CA-15716		Lot 99	.543	Delight.
CA-15717		Lot 96	.349	Long & Dillard.
CA-15718		Lot 75	.388	Etters.
CA-15719		Lot 70	.671	Edwards.
CA-15720		Lot 85	.369	Edwards.
CA-15721		Lot 74	.482	Curtis.
CA-15722		Lot 84	.246	Tuehsen.
CA-15723		Lot 107	.504	Piotrowski.

The land described aggregates 32.377 acres in San Bernardino County.

Land appraisals will be available prior to sale.

The sales are based on historic use of the lands. The sales will serve important public objectives, including but not limited to expansion of communities.

The proposed sale is consistent with the Bureau's planning for the lands involved and the public interest would be served by offering the lands at direct sale to the persons described above.

The Title to the lands will be transferred by a land patent. A copy of the patent language containing all provisions, reservations and exceptions is incorporated into and made a part of this notice.

Land Patent

Recitals

1. ———— (hereinafter called the "Purchaser") has offered to purchase pursuant to section 203 of the Federal Land Policy and Management Act of 1976, Pub. L. 94–579, 90 Stat. 2743, 43 U.S.C. 1713, the following described land:

containing approximately —— acres (hereinafter called the "Property").

Conveyance of Rights

The United States hereby quit claims and conveys to Purchaser all the right, title and interest of the United States to the Property. This deed is intended to include any after acquired title of grantor.

Excluded from this conveyance are those rights which are expressly reserved below to the United States. This conveyance is further subject to those rights, set forth below, which have been granted to or acquired by third parties. The United States, by executing and issuing this Land Patent, makes no representation as to whether any rights are conveyed by it or as to the nature or extent of any rights that may be conveyed by it. It is the intent of the United States, by this Land Patent, to dispose of whatever interest, if any, the United States presently has in the Property, except to the extent rights are expressly reserved below to the United States.

Reservation to the United States

There are hereby excepted from this Land Patent and reserved to the United States the following:

1. A right-of-way on the Property for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals in the Property, including the right of the United States or persons authorized by it to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

Rights of the Third Parties

The conveyance made by this Land Patent is subject to all valid existing rights, including the following:

1. (For Lots 6, 14, 24, 25, 38, 46, 52 and 67 of section 6) Those rights for water pipeline purposes as have been granted to the Randsburg Water Company by permit No. LA 0164135 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959;

2. (For Lots 6, 14, 15, 23, 24, 25, 28, 36, 38, 44, 46 and 52 of section 6) Those rights for pipeline purposes as have been granted to the Rand Communities County Water District by permit No. R 4754 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959;

3. (For Lot 25 of section 6) Those rights for pipeline purposes as have been granted to Pacific Gas and Electric Company by permit No. LA 0139393, under section 28 of the Mineral Leasing Act, 30 U.S.C. 185;

4. (For Lots 44 and 46 of section 6) The right-of-way for construction, placement, use and maintenance of a telephone line as has been granted to the Continental Telephone Company of California by permit No. CA 12472, under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761;

5. (For Lots 5 and 6 of section 7) The right-of-way for a railroad line as has been granted to Randsburg Railway Co. by permit No. LA 03172, under the Act of March 3, 1875, 43 U.S.C. 934–939.

Purchaser, by accepting this Land Patent, acknowledges that the Property is encumbered by certain mining claims filed pursuant to the mining laws of the United States, 30 U.S.C. 21 *et seq.* The conveyance of the Property by this Land Patent is made subject to those claims and to any and all rights that the holders thereof may have pursuant to the laws of the United States and the State of California.

Purchaser, by accepting this Land Patent, further acknowledges that the rights of the holder of said mining claims may include the right to use both the surface and sub-surface of the Property and, upon compliance with the applicable laws of the United States and the State of California, to fee title to the Property. The United States of America by this conveyance does not intend to preclude the grantee herein from challenging the validity of any mining claim or other encumbrance located on the land conveyed.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the land report and environmental assessment report, is available for review at the California Desert District Office at 1695 Spurce Street, Riverside, California 92507.

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, Federal Office Building, 2800 Cottage Way, Rm E–2841, 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.

SUPPLEMENTARY INFORMATION: The land will not be offered for sale for at least 60 days after the date of this notice.

Dated: May 30, 1984.

Gerald E. Hillier,

District Manager, California Desert District.

[FR Doc. 84–15243 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–40–M

Public Land Sale; Competitive and Modified Competitive Sales of Public Land in Bonneville County, Idaho

Correction

In FR Doc. 84–11255, beginning on page 18047, in the issue of Thursday, April 26, 1984, make the following corrections:

1. On page 18047, in the third column, in the table, in entry "I–20366", the second line under "Legal description" should read "E½SW¼NE¼SE¼SE¼".

2. On page 18048, in the first column, in the second table, in entry "I–20628", the second line under "Legal description" should read "NE¼NE¼ SW¼SE¼, E½NW¼N".

BILLING CODE 1505–01–M

Public Land Sale; Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I–20706, Direct Sale of Public Land in Owyhee County, Idaho.

SUMMARY: The following described land has been examined, and through land use planning, has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than fair market value.

Boise Meridian, Idaho

T. 9 S., R. 6 W
Sec. 11, SE¼SW¼NE¼.
Containing 10 acres.

The patent, when issued, will contain the following reservations to the United States:

1. Ditches and canals.
2. All valid, existing rights and reservations of record.

The land is hereby segregated from all appropriation under the public land laws including the mining laws until sold or February 19, 1985.

These lands are being offered by direct sales to Charles G. Dougal, the existing user, who has placed improvements on the land and is the adjacent landowner.

The offer to purchase will include a $50 nonreturnable filing fee for processing the conveyance of mineral interests of no known value.

DATES AND ADDRESSES: The sale offering will be held on August 21, 1984, at 10:00 a.m., in the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale terms and conditions and other details can be obtained by contacting Blackie Bruegman at the above address, or by calling (208) 334–1582.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address.

Dated: May 30, 1984.

Martin J. Zimmer,

District Manager.

[FR Doc. 84–15245 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–GG–M

Public Land Sale; Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I–20707, Competitive Sale of Public Land in Owyhee County, Idaho.

SUMMARY: The following described land has been examined, and through land use planning, has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date. Sealed bids only will be accepted.

Boise Meridian, Idaho

T. 9 S., R. 6 W.
Sec. 13, SW¼NE¼, SE¼NW¼.
Containing 80 acres.

The patent, when issued, will be subject to the following reservations to the United States:

1. Ditches and canals.
2. BLM road right-of-way I–20862.
3. All valid, existing rights and reservations of record.

The sale of the land will be subject to the temporary continued use of an existing grazing privilege.

The land is hereby segregated from all appropriation under the public land laws including the mining laws until sold or February 19, 1985.

Sealed bids must be received in this office no later than August 20, 1984. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A $50 nonreturnable filing fee for processing such conveyance, along with one-fifth of the full bid price, must accompany each bid. We will offer any unsold parcel the first and third Tueday of each month until sold or until February 19, 1985.

DATE AND ADDRESS: The sale offering will be held on August 21, 1984, at 10:00 a.m. in the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale terms and conditions, bidding procedures, and other details can be obtained by contacting Blackie Bruegman at the above address, or by calling (208) 334–1582.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address.

Dated: May 30, 1984.

Martin J. Zimmer,

District Manager.

[FR Doc. 84–15246 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–GG–M

[C–0124534]

Proposed Withdrawal Continuation; Fort Carson, Colorado

June 1, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers proposes that the land withdrawals made for the Fort Carson Military Reservation be modified and continued for 25 years. These public lands will remain closed to surface entry and mining and will continue to be open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be sent to State Director, Colorado State Office, 1037—20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–844–2592.

SUPPLEMENTARY INFORMATION: The Department of the Army Corps of Engineers proposes that the existing land withdrawals made by Executive Order 8957, as amended by Executive Order 9526 and public land order 1683; and public land order 3731, which withdrew public lands and reserved them for use as a military reservation be modified and continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

These orders withdrew 3,133.02 acres of public lands located south of Colorado Springs, Colorado, in Tps. 15, 17, and 18 S., R. 66 W.; Tps. 16, 17, and 18 S., R. 67 W.; T. 18 S., R. 68 W., Sixth Principal Meridian.

The purpose of these withdrawals is to protect the Fort Carson Military Reservation. The withdrawal segregates the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of these withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the

Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 84-15247 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-JB-M

Alaska; Alaska Native Claims Selection

[AA-6709-A]

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance to Ounalashka Corporation, notice of which was published in the **Federal Register** on February 13, 1984, is amended as to page 49 FR 5386. The decision is amended by adding a reserved easement.

Any party, known or unknown, who may claim a property interest which is adversely affected by the decision shall have until July 9, 1984, to file an appeal on the issue in the amended decision. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management office identified below, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4 Subpart E, as revised, shall be deemed to have waived their rights.

Copies of the amended decision 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 amended, the decision (notice of which was given February 13, 1984) is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-15286 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-JA-M

[W-88876]

Wyoming; Invitation for Coal Exploration License

Texas Energy Services, Inc. hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 48 N., R. 70 W., 6th P.M.,
Sec. 6: Lots, 3, 4, 5, SE¼NW¼.
T. 48 N., R. 71 W., 6th P.M.,
Sec. 6: Lot 3;
Sec. 7: NE¼NW¼.
Containing 232.50 acres.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (Under Serial Number W-88876): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, 951 Rancho Rd., Casper, Wyoming 82601.

This notice of invitation will be published in the newspaper once each week for two consecutive weeks beginning the week of June 11, 1984, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Texas Energy Services, Inc. no later than thirty days after publication of this invitation in the **Federal Register.** The written notices should be sent to the following addresses: Texas Energy Service, Inc., P.O. Box 1507, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Attention: Branch of Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing notice is published in the **Federal Register** pursuant to Title 43 of the Code of Federal Regulations, § 3410.21(c)(1).

Robert A. Bennett,

Chief, Branch of Solid Minerals.

[FR Doc. 84-15319 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-22-M

Oregon; Intent to Supplement the Josephine and Jackson-Klamath Final Timber Management Environmental Impact Statements

The Department of the Interior, Bureau of Land Management, Medford District Office, will be preparing supplements to the Final Timber Management Environmental Impact Statements for the Josephine and Jackson-Klamath Sustained Yield Units on public land in the Medford District of southwestern Oregon. The Josephine and Jackson-Klamath Final EISs describe timber harverst techniques for the Medford District and were released in October, 1978, and November, 1979, respectively.

Public controversy has developed because of perceived differences between existing harvest practices and those described in the EISs. While the BLM believes that existing harvest practices in the Medford District have not significantly changed from those analyzed in these Environmental Impact Statements, it has been decided to address any concern which may exist and to further the purposes of the National Environmental Policy Act by supplementing the Josephine and Jackson-Klamath Final Environmental Impact Statements.

The supplementary analysis will examine the environmental impacts of existing timber harvest practices, which some citizen groups have alleged in recent timber sale appeals are a change from the harvest practices analyzed in the Josephine and Jackson-Klamath Final Environmental Impact Statement. It will analyze the environmental impacts of a proposed increase in the amount of clearcutting and of a proposed increase in basal area removed during the first entry of shelterwood systems. Because of the limited nature of the matters to be addressed by the Supplement, no other issues will be considered.

In accordance with regulations of the Council on Environmental Quality (40 CFR Part 1500), the public will be given an opportunity to comment on the draft supplementary analysis to be released in October, 1984.

FOR FURTHER INFORMATION CONTACT: Joe Ross, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, Phone (503) 776-4174.

Dated: May 31, 1984

Hugh R. Shera

District Manager.

[FR Doc. 84-15320 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Company, U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces the Exxon Company, U.S.A., Unit Operator of the West Delta Block 73, F-45, A, Federal Unit Agreement No. 14-08-0001-11674, submitted on May 18, 1984, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the West Delta Block 73, F-45, A, Federal unit.

The purpose of this notice is to inform the public, pursuant to Section 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 29, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–15225 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Gulf Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1260, Block 177, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on May 31, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 31, 1984.

John L. Rankin,

Regional Manager Gulf of Mexico Region.

[FR Doc. 84–15317 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 22, 1984, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159, (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda will include a discussion of the proposed river management plan, administrative procedures for the Council, discussion of the river carrying capacity study and discussion of the general guidelines for land and water use control.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12754–0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: May 31, 1984.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 84–15339 Filed 6–6–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice OP3–379]

Motor Carriers; Decision Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal & I.C.C. Register*. Failure seaonably to oppose will be construed as a waiver of

opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regualtory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectivenss of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: May 30, 1984.

By the Commission, Review Board Members, Carleton, Joyce and Parker.

James H. Bayne,

Secretary.

MC–F–15753, filed May 4, 1984, J & M TANK LINES, INC. (J & M) (RTE 1, BOX 5, AMERICUS, GA 31709)—PURCHASE—GLADYS LEE ABBOTT DOING BUSINESS AS HOBO EXPRESS (HOBO) (P.O. BOX 246, BLOOMINGDALE, GA 31302). Representative: Kim G. Meyer, P.O. Box 56282, Atlanta, GA 30343.

J & M seeks to purchase all of the interstate operating rights of Hobo. Harold Sumerford, Sr., who controls J & M, seeks authority to acquire control of said rights through the transaction. The interstate operating rights being purchased are contained in Certificate No. MC–163824 issued June 15, 1983, authorizing the transportation of general commodities (with the usual exceptions), between points in AL, FL, GA, KY, LA, MS, NC, SC, TN, and VA.

J & M holds motor common and contract carrier authority in docket No. MC–148903 and subs thereunder.

Note.—Hobo is presently operating as an agent for a regulated carrier and therefore is not operating under the authority on this date.

[FR Doc. 84–15331 Filed 6–6–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30458]

Rail Carriers; Chicago and North Western Transportation Co. Abandonment Exemption in Polk County, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by the Chicago and North Western Transportation Company of its 3.8-mile line of railroad between Highland Park and Des Moines, IA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 9, 1984. Petitions to stay must be filed by June 18, 1984, and petitions for reconsideration must be filed by June 27, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30458 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Anne E. Keating, One North Western Center, Chicago, IL 60606

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (DC Metropolitan area) or tool free (800) 424–5403.

Decided: May 30, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84–15330 Filed 6–6–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30490]

Rail Carriers; Kyle Railroad Co.; Notice of Modified Certificate of Public Convenience and Necessity

May 29, 1984.

On May 24, 1984, a notice was filed by the Kyle Railroad Company for a modified certificate of public convenience and necessity under 49 CFR Part 1150 Subpart C. The line to be operated is the former line of the Chicago, Rock Island and Pacific Railroad Company between (1) Mahaska, KS (milepost 170.0) and Belleville, KS (milepost 187.0); (2) Clay Center, KS (milepost 178.37) and Belleville, KS (milepost 225.34); and (3) Belleville, KS (milepost 187.0) and Limon, CO (milepost 530.70).

The line is embraced within an order of abandonment issued by the United States District Court for the Northern District of Illinois, Eastern Division, in a reorganization proceeding brought under 11 U.S.C. 205. Thereafter, the line was acquired by MID-States Port Authority (MSPA), a 14-county joint port authority created as a public body corporate and politic under the laws of Kansas. Kyle will operate the line pursuant to a service agreement with MSPA.

This notice shall be served upon the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-15329 Filed 6-6-84; 8:45 am]

BILLING CODE 7035-01-M

[OP2-298-MCF-15748]

Motor Carriers; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commisssion's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal and ICC Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2 A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisons of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: June 1, 1984.

By the Commisssion, Review Board Members Carleton, Fortier, and Dowell.

James H. Bayne,

Secretary.

MC-F-15748, filed April 27, 1984. ROBERT J. GREEVES (71 NEW HOOK ACCESS RD. BAYONNE, NJ 07702)—CONTINUANCE IN CONTROL—DOMENICO BUS SERVICE, INC., AND STATEN ISLAND COMMUTER SERVICE, INC. (address same as applicant). Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ. Robert J. Greeves (Greeves), the President of Domenico Bus Service, Inc. (Domenico), and the sole stockholder of Staten Island Commuter Service, Inc. (Staten Island), seeks authority to continue in control of Domenico and Staten Island upon institution of operations by the latter, in interstate and foreign commerce as a motor common carrier. Greeves controls through management, Domenico Bus Service, Inc., a motor common carrier under a certificate issued in MC-118848 and sub-numbers which authorizes generally the transportation of passengers over regular and irregular routes, in special operations, between certain points in New York and New Jersey.

Notes.—Staten Island filed its initial common carrier application in No. MC-169823, which was published in the **Federal Register** on August 29, 1983, for authority to transport passengers, over regular routes, between Staten Island and Manhattan, extending generally from Staten Island over the Goethels Bridge to Elizabeth, NJ, then north over the New Jersey Turnpike to Union City, NJ, and then through the Lincoln Tunnel to Manhattan; and (2) As a condition to a grant of that authority, Greeves was required to file this continuance in control application, submit an affidavit indicating why such approval is unnecessary, or file a petition seeking exemption under 49 U.S.C. 11343(e).

[FR Doc. 84-15328 Filed 6-6-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 11-84]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Bureau of Prisons (BOP) proposes to modify a system of records entitled "Inmate Central Records System, JUSTICE/BOP-005." The system notice, which was most recently published in the **Federal Register** on February 4, 1983 (48 FR 5332), is now being modified to further clarify the "Routine Uses * * *" section through editorial changes and to add four new routine uses as follows:

(g) To provide victims and/or witnesses, pursuant to victim/witness federal legislation and policy, information relating to an inmate's furlough, parole (including appearance before the Parole Commission), transfer to a community treatment facility, mandatory release, expiration of sentence, escape (including apprehension), death, and other such release-related information.

(h) To proivide state agencies or authorities, pursuant to Pub. L. 98-135, identifying data of BOP inmates for the purpose of matching the data against state records to review the eligibility of these inmates for unemployment compensation; the requesting state is to erase the BOP data after this determination has been made. (The Bureau of Prisons has made the determinations required of it by the Office oif Management and /Budget (OMB) guidelines on the conduct of matching programs.)

(k) To provide information from an inmate record to an employee, former employee, or his or her designated representative when such information is included in the employee's or former employee's adverse or disciplinary personnel action file with respect to proposed adverse or disciplinary personnel action against that employee or former employee; or former

employee's adverse or disciplinary personnel action file is covered by a government-wide system of records published by the Office of Personnel Management (OPM) entitled "Adverse Action Records, OPOM/GOVT–3;" to protect the privacy of the inmate, information transferred to the employee's or former employee's adverse or disciplinary personnel action file will be sanitized as warranted and/or appropriate protective orders may be requested to prevent further dissemination.

(l) To provide an employee former employee, or his or her designated representative information from an inmate record pursuant to regulations or order of any body properly trying the merits of an adverse or disciplinary personnel action, including an administrative agency, arbitrator, or court of competent jurisdiction; to protect the privacy of the inmate, information provided the employee, former employee, or his or her designated representative will be sanitized as warranted and/or appropriate protective orders may be requested to prevent further dissemination.

Title 5 U.S.C. 552a(e) (4) and (11) provides that the public be given a 30-day period in which to comment. Comments should be addressed to Vincent A. Lobisco, Assistant Director, Administrative Service Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, NW., Washington, D.C. 20530. If no comments are received by July 9, 1984, the new routine uses will be implemented without further notice in the **Federal Register**.

Since these routine uses are compatible with the purpose for which the system is maintained, these changes do not meet the reporting criteria of OMB Circular No. A–108. Therefore, no report has been filed with OMB and the Congress.

The amended system is reprinted below in its entirety.

Dated: May 24, 1984.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/BOP–005

SYSTEM NAME:

Inmate Central Records System.

SYSTEM LOCATION:

Records may be retained at any of the Bureau's facilities, the Regional Offices and the Central Office. All requests for records may be made to the Central Office: U.S. Bureau of Prisons (BOP), 320 First Street, N.W., Washington, D.C. 20534.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates under the custody of the Attorney General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Computation of sentence and supporting documentation; (2) Correspondence concerning pending charges, and wanted status, including warrants; (3) Requests from other federal and non-federal law enforcement agencies for notification prior to release; (4) Records of the allowance, forfeiture, withholding and restoration of good time; (5) Information concerning present offense, prior criminal background, sentence and parole from the U.S. Attorneys, the Federal courts, and federal prosecuting agencies; (6) Identification data, physical description, photograph and fingerprints; (7) Order of designation of institution of original commitment; (8) Records and reports of work and housing assignments; (9) Program selection, assignment and performance adjustment/progress reports; (10) Conduct Records; (11) Social background; (12) Educational data; (13) Physical and mental health data; (14) Parole Board orders actions and related forms; (15) Correspondence regarding release planning, adjustment and violations; (16) Transfer orders; (17) Mail and visit records; (18) Personal property records; (19) Safety reports and rules; (20) Release processing forms and certificates; (21) Interview request forms from inmates; (22) General correspondence; (23) Copies of inmate court petitions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under authority of 18 U.S.C. 4003, 4042, 4082.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system contains records of the classification, care, subsistence, protection, discipline, and programs, and other information relating to persons committed to the custody of the Attorney General. The routine uses of this system are (a) to provide an information source to officers and employees of the Department of Justice who have a need for the information in the performance of their duties; (b) to provide an information source to law enforcement officials for investigations, criminal prosecutions, civil court actions, or regulatory proceedings; (c) to provide an information source for disclosure of information on matters solely of general public record, such as name, offense, sentence data, and release date; (d) to disclose information to contracting or consulting or correctional agencies that provide correctional services for federal inmates; (e) to provide an information source for responding to inquiries from federal inmates involved or congressional inquiries; (f) to provide information relating to federal offenders to the courts, including court officials and probation officers; (g) to provide victims and/or witnesses, pursuant to victim/witness federal legislation and policy, information relating to an inmate's furlough, parole (including appearance before the Parole Commission), transfer to a community treatment facility, mandatory release, expiration of sentence, escape (including apprehension), death, and other such release-related information; (h) to provide state agencies or authorities, pursuant to Pub. L. 98–135, identifying data of BOP inmates for the purpose of matching the data against state records to review the eligibility of these inmates for unemployment compensation; the requesting state is to erase the BOP data after this determination has been made; (i) to provide the Social Security Administration (SSA), pursuant to Pub. L. 96–473, identifying data of BOP inmates for the purpose of matching the data against SSA records to enable the SSA to determine the eligibility of BOP inmates to receive benefits under the Social Security Act; SSA is to erase the BOP data after the match has been made; (j) to provide the Veterans Administration (VA), pursuant to Pub. L. 96–385, identifying data of BOP inmates for the purpose of matching the data against VA records to determine the eligibility of BOP inmates to receive veterans' benefits; the VA is to erase the BOP data after the match has been made; (k) to provide information from an inmate record to an employee, former employee, or his or her designated representative when such information is included in the employee's or former employee's adverse or disciplinary personnel action file with respect to proposed adverse or disciplinary personnel action against that employee or former employee; the employee's or former employee's adverse or disciplinary personnel action file is covered by a government-wide system of records published by the Office of Personnel Management (OPM) entitled "Adverse Action Records, OPM/GOVT-3;" to protect the privacy of the inmate, information transferred to the

employee's or former employee's adverse or disciplinary personnel action file will be sanitized as warranted and/or appropriate protective orders may be requested to prevent further dissemination; and (l) to provide an employee, former employee, or his or her designated representative information from an inmate record pursuant to regulations or order of any body properly trying the merits of an adverse or disciplinary personnel action, including an administrative agency, arbitrator, or court of competent jurisdiction; to protect the privacy of the inmate, information provided the employee, former employee, or his or her designated representative will be sanitized as warranted and/or appropriate protective orders may be requested to prevent further dissemination.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information which may be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless its determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored on documents, magnetic tape, magnetic disk, tab cards, and microfilm.

RETRIEVABILITY:

(1) Documents, Tab Cards and Microfilm—Information is indexed by name and/or register number. (2) Magnetic Tape and Disk—Information is indexed by Name, Register Number, Social Security Number, and FBI Number.

SAFEGUARDS:

Information is safeguard in accordance with Bureau of Prisons rule governing access and release.

RETENTION AND DISPOSAL:

Records *of a sentenced inmate are* retained for a period of thirty (30) years after expiration of sentence, then destroyed by shredding. *Records of an unsentenced inmate are retained for a period of ten (10) years after the inmate's release from confinement, then destroyed by shredding.*

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management and Information Systems Group; U.S. Bureau of Prisons; 320 First Street, NW.; Washington, D.C. 20534.

NOTIFICATION PROCEDURE:

Address inquiries to: Director, Bureau of Prisons; 320 First Street, NW.; Washington, D.C. 20534. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURE:

The major part of this system is exempt from the requirements of 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

(1) Individual inmate: (2) Federal law enforcement agencies and personnel; (3) State and federal probation services; (4) Non-federal law enforcement agencies; (5) Educational institutions; (6) Hospital or medical sources; (7) Relatives, friends and other interested individuals or groups in the community; (8) Former or future employers; (9) Evaluations, observations, reports, and findings of institution supervisors, counselors, boards and committees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4)(H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 84-15258 Filed 6-6-84; 8:45 am]

BILLING CODE 4410-05-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Smithkline Chemicals; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 10, 1984, Smithkline Chemicals, Division Smithkline Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I.
Amphetamine (1100)	II.
Phenylacetone (8501)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, 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 field no later than July 9, 1984.

Dated: May 30, 1984.

Gene R. Haislip,

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

[FR Doc. 84-15304 Filed 6-6-84; 8:45 am]

BILLING CODE 4410-09-M

MARINE MAMMAL COMMISSION

Privacy Act of 1974; Amendment to Systems of Records

AGENCY: Marine Mammal Commission.

ACTION: Amendment to Notice of Systems of Records.

SUMMARY: This document amends the Marine Mammal Commission's Privacy

Act Notice of Systems of Records (41 FR 39731) to provide updated information concerning the location of agency records.

DATE: Effective June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Donald C. Baur, General Counsel, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006 (202/653-6237).

SUPPLEMENTARY INFORMATION: On September 15, 1976, the Marine Mammal Commission published a notice at 41 FR 39731 containing information on the agency's Privacy Act systems of records. That notice provides the information required by 5 U.S.C. 552a(e)(4), including the name and location of Commission systems, the categories of individuals on whom records are maintained, routine uses of the records, and the policies and practices of the Commission regarding storage, retrieval, access, and disposal of the records.

As a result of changes in the membership of the Commission and the Committee of Scientific Advisors on Marine Mammals, the filing locations listed in the 1976 notice for systems MMC-1 and MMC-3 have changed. This notice designates the current location of the records maintained in those systems. In addition, notice is provided of changes in the location of systems MMC-2 and MMC-5. Personnel records maintained in MMC-2 are now located at the General Services Administration, Region 3, as well as at Commission Offices. The general financial records included in MMC-5 are filed at the Region 6 Office of the General Services Administration, rather than at Region 3 as indicated in the 1976 notice.

Accordingly, the Marine Mammal Commission amends its Privacy Act Notice of Systems of Records to read as follows:

MMC-1

* * * * *

SYSTEM LOCATION:

Commission Offices, 1625 I Street, NW., Room 307, Washington, D.C. 20006; Commission Members' Offices, presently:

Dr. William E. Evans, Chairman, Hubbs-Sea World Research Institute, 1700 South Shores Road, Mission Bay, San Diego, California 92109

Dr. Donald K. MacCallum, Department of Anatomy, 4812 Medical Science II Building, University of Michigan, Ann Arbor, Michigan 48109

Dr. Robert B. Weeden, Division of Life Sciences, University of Alaska, Bunnell Building, Room 203, Fairbanks, Alaska 99701

Committee of Scientific Advisors Members' Offices, presently:

Dr. David G. Ainley, Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, California 94970

Dr. Douglas G. Chapman, Chairman, Center for Quantitative Science in Forestry, Fisheries and Wildlife, University of Washington, HR-20, Seattle, Washington 98195

Dr. Paul K. Dayton (A-001), Scripps Institution of Oceanography, La Jolla, California 92093

Dr. Douglas P. DeMaster, National Marine Fisheries Service, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038

Dr. Daryl P. Domning, Department of Anatomy, College of Medicine, Howard University, Washington, D.C. 20059

Dr. William W. Fox, Jr., Biology and Living Resources and Cooperative Institute of Marine and Atmospheric Studies, University of Miami, 4600 Rickenbacker Causeway, Miami, Florida 33149

Dr. Bruce R. Mate, Marine Science Center, Oregon State University, Marine Science Drive, Newport, Oregon 97365

Dr. James G. Mead, Curator of Mammals, National Museum of Natural History, Washington, D.C. 20560

Dr. William Medway, School of Veterinary Medicine, University of Pennsylvania, 3800 Spruce Street, Room 4035, Philadelphia, Pennsylvania 19104

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MMC-2

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SYSTEM LOCATION:

Commission Offices, 1625 I Street, NW., Room 307, Washington, D.C. 20006; General Services Administration, Region 3, Office of Personnel, 7th & D Streets, SW., Room 1007, Washington, D.C. 20407.

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MMC-3

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SYSTEM LOCATION:

Commission Offices, 1625 I Street, NW., Room 307, Washington, D.C. 20006; Commission Members' Offices, presently: Same as MMC-1.

Committee of Scientific Advisors Members' Offices, presently: Same as MMC-1.

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MMC-5

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SYSTEM LOCATION:

Commission Offices, 1625 I Street, NW., Room 307, Washington, D.C. 20006; General Services Administration, Region 3, 1500 East Bannister Road, Kansas City, Missouri 64131.

* * * * *

Dated: May 29, 1984.

John R. Twiss, Jr.,

Executive Director, Marine Mammal Commission.

[FR Doc. 84-15259 Filed 6-6-84; 8:45 am]

BILLING CODE 6820-31-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 22-24, 1984, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on June 24 from 9:00 a.m.-5:30 p.m. to discuss Guidelines, Multi-Year Plan and FY 85-86 Budget.

The remaining sessions of this meeting on June 22-23 from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-15180 Filed 6-6-84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Baltimore Gas & Electric Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 93 and 74 to Facility Operating License Nos. DPR-53 and DPR-69, issued to Baltimore Gas and Electric Company (the licensee), which revised the Technical Specifications for operation of Calvert Cliffs Units 1 and 2 (the facility) located in Calvert County, Maryland. The amendments were effective as of the date of their issuance.

The amendments revise the provisions in the Technical Specifications (TS) relating to the operability of the air recirculation and cooling units. The proposed revision to TS 3.6.2.2., "Containment Cooling System," allow consideration of the operability status of the containment spray system in determining remedial action should elements of the air recirculation and cooling units become inoperable.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on April 16, 1984 (49 FR 15030). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to the action see (1) the application for amendments dated September 20, 1983 as supplemented by letter dated January 18, 1984, (2) Amendment Nos. 93 and 74 to License Nos. DPR-53 and DPR-69, 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., and at the Calvert County Library, Prince Frederick, Maryland. 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 31st day of May, 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 84-15322 Filed 6-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41 issued to Florida Power Company (the licensee), for operation of the Turkey Point Plant, Units 3 and 4, located in Dade County, Florida.

The amendments would allow spent fuel pool storage capacity expansion from 621 to 1404 spaces for each spent fuel pool. The proposed expansion is to be achieved by reracking each spent fuel pool with two discrete regions, within each pool. These amendments were requested in the licensee's application for amendments dated March 14, 1984.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards considerations is centered on three standards: (1) Does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? Reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed; (2) does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? With respect to Turkey Point Plant Units 3 and 4, the staff has not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. The proposed reracking does not create the possibility of a new or different kind of accident previously evaluated for the spent fuel pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the evaluations cited in the safety evaluation reports supporting each amendment; and (3) does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? The staff has not identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperature by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relative minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (K_{eff}). However, after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The techniques utilized to calculate K_{eff} have been bench-marked against experimental data and are considered very reliable. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies.

In summary, replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies is considered not likely to involve significant hazards considerations if several conditions are

met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the K_{eff} of the pool is maintained less than or equal to 0.95. Reracking to allow closer spacing satisfies these criteria.

The licensee's submittal of March 14, 1984 included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Pertinent portions of the licensee's discussion, addressing each of the three standards, is provided herein.

The licensee's evaluation references specific sections of the Safety Analysis Report (SAR) included in their submittal dated March 14, 1984. The analysis of the proposed reracking was accomplished using currently acceptable codes and standards as specified in Section 4.2 of the SAR. The results of the licensee's analysis in relation to the three standards is as follows:

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis Florida Power and Light Company (FPL) has identified the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.
5. A construction accident.

The probability of any of the first four accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these accidents. As for the construction accident, FPL does not intend to carry any rack directly over the stored spent fuel assemblies. All work in the spent fuel pool area will be controlled and performed in strict accordance with specific written procedures. The spent fuel cask crane which will be used to access the spent fuel pool area has been addressed in FPL's response to the NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants". This response demonstrated Turkey Point Plant's compliance with Phase 1 of the NUREG–0612 criteria. In addition, the temporary construction crane which will be used to move racks within the spent fuel pool will meet the design and operation requirements of Section 5.1.1 of NUREG–0612. By letter dated November 1, 1983, the NRC concluded that the control of heavy loads program (Phase 1) at the Turkey Point Plant was in compliance with the requirements of NUREG–0612. This program provides for the safe handling of heavy loads in the vicinity of the Spent Fuel Pool.

Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The consequences of (1) A spent fuel assembly drop in the spent fuel pool are discussed in the licensee's Safety Analysis Report. For this accident condition, the criticality acceptance criterion is not violated. The radiological consequences of a fuel assembly drop are not changed from that described in Chapter 14 of the Turkey Point Updated FSAR. The NRC also conducted an evaluation (as described in the Turkey Point SER dated 3/15/72) of the potential consequences of a fuel handling accident and found the calculated doses to be less than Part 100 guidelines. Thus, the consequences of this type accident will not be significantly increased from previously evaluated spent fuel assembly drops, and have been found acceptable by the NRC.

The consequences of (2) Loss of spent fuel pool cooling system flow, have been evaluated and are described in Section 3.0 of the Safety Analysis Report. The structural integrity of the spent fuel pool will be maintained and no new means of losing cooling water or flow have been identified. As indicated in Section 3.0, there is sufficient time to provide an alternate means for cooling (i.e., the 100% capacity spare pump) in the event of a failure in the cooling system. Thus, the consequences of this type accident will not be significantly increased from previously evaluated loss of cooling system flow accidents. Additionally, the NRC has previously accepted this system design in the SER for the last rerack (dated 3/17/77).

The consequences of (3) A seismic event, have been evaluated and are described in Section 4.0 of the Safety Analysis Report. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and publised standards listed in Section 4.2 of the Safety Analysis Report. The method of support of the new racks remains the same as for the existing racks which are freestanding on embedments in the pool floor and able to transfer normal and shear loads to the Spent Fuel Building. The new racks are designed so that the floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the Spent Fuel Building. Therefore the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. The Spent Fuel Building and pool structure have been designed in accordance with the criteria outlined in Section 5.2.2 and Appendix 5A of the Turkey Point Updated FSAR and previously accepted by the NRC. Thus, the consequences of a seismic event will not significantly increase from previously evaluated events.

The consequences of (4) A spent fuel cask drop have been evaluated as described in Sections 3.0 and 5.0 of the Safety Analysis Report. By limiting the decay time for all fuel by an area defined by a potential impact arc in the pool to 1525 hours, the radiological consequences of the cask drop will be well within the guidelines of 10 CFR Part 100 and will be less than the consequences of the previous Accident Analysis. The Analysis also demonstrates that K_{eff} will always be less than the NRC acceptance criteria. Thus, the consequences of a cask drop accident will not be significantly increased from previously evaluated accident analysis.

The consequences of (5) A construction accident are enveloped by the spent fuel cask drop analysis described in Sections 3.0 and 5.0 of the Safety Analysis Report. In addition, all movements of heavy loads handled during the rerack operation will comply with the NRC guidelines presented in NUREG–0612, "Control of Heavy Loads at the Nuclear Power Plants", as described in FPL's previous responses to the NRC, and as supplemented in Sections 3.0 and 4.0 of the Safety Analysis Report. Thus, the consequences of a construction accident will not be significantly increased from previously evaluated accident analysis.

Therefore, it is concluded that the proposed amendments to rerack the spent fuel pools will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reracking has been evaluated in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate Industry Codes and Standards as listed in Section 4.2 of the Safety Analysis Report. In addition,

several previous NRC safety evaluation reports for rerack applications similar to this proposal have been reviewed. Neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. As a result of this evaluation and these reviews, the proposed reracking does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the Turkey Point Spent Fuel Storage Facilities.

Third Standard

Involve a significant reduction in a margin of safety.

The NRC staff safety evaluation review process has established that the issue of margin of safety, when applied to a rereacking modification, will need to address the following areas:

1. Nuclear criticality considerations.
2. Thermal-Hydraulic considerations.
3. Mechanical, material and structural considerations.

The established accepted criteria for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design as discussed in Section 3.0 of the Safety Analysis Report.

The methods to be used in the criticality analysis conform with the applicable portions of the codes, standards, and specifications listed in Section 4.2 of the Safety Analysis Report. In meeting the acceptance criteria for criticality in the spent fuel pool, such that K_{eff} is always less than 0.95, including uncertainties of a 95/95 probability confidence level, the proposed amendment to rerack the spent fuel pools will not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods are used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation uses the methods described in Section 3.0 of the Safety Analysis Report in demonstrating the temperature margins of safety are maintained. The proposed reracking will allow an increase to the heat load in the spent fuel pool. The evaluation in Section 3.0 of the Safety Analysis Report shows that the existing spent fuel cooling system will maintain the pool temperature margins of safety for the calculated increase in pool heat load. Thus, there is no significant reduction in the margin of safety for termal-hydraulic or spent fuel cooling concern.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loadings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural considerations of the proposed rerack are described in Section 4.0 of the Safety Analysis Report. The proposed racks are to be designed in accordance with applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.8.4; and the Turkey Point Updated FSAR Appendix 5A. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. As previously stated, neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. Thus, the margins of safety are not significantly reduced by the proposed rerack.

The licensee's request to expand the Turkey Point Plant's spent fuel storage pool capacities satisfies the following conditions: (1) The storage expansion method consists of replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies; (2) the storage expansion method does not involve rod consolidation or double tiering; (3) the K_{eff} of the pool is maintained less than or equal to 0.95; and (4) no new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion. Consequently, the request does not involve significant hazards consideration in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a requests for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By July 9, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy," preceded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of Section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR Part 2 procedures apply.

(At this time, the Commission does not have effective regulations implementing Section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54,499 (December 5, 1983).)

Subject to the above requirements, and any limitations in the order granting leave to intervene those permitted to intervene become parties to the proceeding, have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrod, 1025 Connecticut Avenue, NW., Suite 1224, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 31st day of May 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84–15323 Filed 6–6–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Facility Operating License No. DPR–36, issued to the Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station (the facility), located in Lincoln County, Maine.

The amendment, as proposed by the licensee, modified the Maine Yankee Technical Specifications, Section 5, concerning administrative controls in its entirety. It also added a new specification to Section 2 regarding safety limits. The licensee's application for the amendment was dated April 8, 1983. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 23, 1983 (48 FR 38382). All of the requested changes

were granted, except the requests to allow extension of the audit intervals as proposed in Section 5.5.B.9 and to allow approval of temporary changes of installation and testing instructions as proposed in Section 5.8.4.

Notice of issuance of Amendment No. 77 will be published in the Commission's next regular monthly Federal Register notice.

The portion of the application which requested allowing extension of audit intervals as proposed in Section 5.5.B.9 and allowing approval of temporary changes of installation and testing instructions as proposed in Section 5.8.4 was denied.

The request to allow extension of audit intervals was found not to be consistent with Standard Technical Specifications. The request to allow approval of temporary changes of installation and testing instructions was found unacceptable because it did not assure review by a person with detailed knowledge of the plant.

The licensee was notified of the Commission's denial of this request by letter dated May 30, 1984.

By July 9, 1984, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated April 8, 1983, and (2) the Commission's letter to Maine Yankee Atomic Power Company dated May 30, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Wiscasset Public Library, High Street, Wiscasset, Maine. A copy of Item (2) 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 30th day of May, 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR. Doc. 84-15324 Filed 6-6-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13973; (812-4481)]

Kemper Income and Capital Preservation Fund, Inc., et al.; Application

May 31, 1984.

Notice is hereby given that Kemper Income and Capital Preservation Fund, Inc. ("Income Fund"), Kemper High Yield Fund, Inc. ("High Yield Fund"), Kemper Municipal Bond Fund, Inc. ("Municipal Fund"), and Kemper Fund for Government Guaranteed Securities, Inc. ("Government Fund," collectively, the "Fund Applicants") each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Kemper Financial Services, Inc. ("Kemper"), investment manager for the Fund Applicants (hereinafter, the Fund Applicants and Kemper are referred to as "Applicants"), 120 South LaSalle Street, Chicago, IL, filed an application on March 16, 1984, requesting an order amending a prior order of the Commission, (Investment Company Act Release No. 11375, September 26, 1980). The order, as amended, would exempt Applicants from the provisions of section 22(d) of the Act to the extent necessary to permit the sale of shares of the Fund Applicants and such other registered open-end, management investment companies with portfolios consisting primarily of fixed income securities that Kemper may serve as investment manager and principal underwriter in the future (collectively with the Fund Applicants, the "Funds") at net asset value, without imposition of normal sales charges and without regard to minimum initial investment requirements, to participants in reinvestment programs proposed to be offered to unitholders of Kemper Tax-Exempt Income Trust, Kemper Income Trust, Kemper Trust for Government Guaranteed Securities and other unit investment trusts sponsored by Kemper or any affiliated company in the future (collectively, "Trusts"). 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 text of the Act for its relevant provisions.

According to the application, Income Fund seeks to provide as high a level of current income as is consistent with stability of captial by investing in corporate debt securities rated "A" or better by Standard & Poors Corporation or Moody's Investment Services, Inc., United States Government obligations, certificates of deposit, and prime commercial paper; High Yield Fund seeks the highest level of current income, consistent with reasonable risk, obtainable from a professionally managed, diversified portfolio of fixed income securities; Municipal Fund seeks the highest level of current interest income exempt from federal income taxation as is consistent with preservation of capital through a professionally managed portfolio of municipal bonds rated "A" or better at the time of purchase; and Government Fund seeks high current income, liquidity and security of principal by investing in obligations issued or guaranteed by the United States Government or its agencies. The Trusts are unit investment trusts which are or will be registered under the Act, whose portfolios are or will be invested in one of various types of fixed income securities.

Applicants propose to permit unitholders of each Trust to invest monthly distributions of principal (including capital gains, if any), interest, or both, in shares of one of the Funds which invests in securities similar to those in which that Trust invests ("Reinvestment Fund"), without a sales charge and without regard to minimum investment requirements, pursuant to a reinvestment program ("Program"). Each of the Trusts will disclose the availability of the Program and details concerning how a unitholder can become a participant in the Program ("Participant"). The application states that the expenses of offering the Program will be borne by Kemper. The application further states that, upon request, each unitholder of the Trusts will be furnished with a prospectus of the appropriate Reinvestment Fund and a form by which the unitholder may elect to invest monthly distributions in shares of the Reinvestment Fund. Investors Fiduciary Trust Company, a limited purpose trust which is a joint venture of Kemper and DST, Inc. ("DST"), is or will be the trustee for each of the Trusts, and will serve as program agent for the Programs ("Program Agent").

Applicants state that upon the dates distributions of the Trusts are made,

distributions with respect to a Participant's units which have been designated by the Participant to be invested will automatically be forwarded by the Program Agent to DST, transfer agent for the Funds, for the purchase of shares of the appropriate Reinvestment Fund at the net asset value next determined. Where a Participant has elected to invest distributions of principal, the proceeds of redemption, or payment at maturity, of securities held by the Trust, they will be invested in shares of the appropriate Reinvestment Fund pursuant to the Program. Any redemption of units of a Trust initiated by a Participant will result in payment of redemption proceeds directly to that Participant. Applicants state that DST will mail confirmations of purchases of shares of the Funds to Participants setting forth the total amount of each distribution made by a Trust on the units held by that Participant and the portions thereof attributable to interest and principal. According to the application, by notifying the Program Agent in writing, Participants will be able to terminate their participation in the Program as to: (1) All Trust distributions; (2) Trust principal and capital gains distributions; or (3) Trust interest distributions. Notification of termination must be received by the Program Agency at least 10 days prior to the record day of distribution in order to be effective with respect to that distribution.

Applicants state that participation in the Programs will not interfere with the rights of unitholders to redeem their units as set forth in the Trusts' prospectuses. They represent that the interests of Participants as shareholders of the Funds will be identical to the interests of other shareholders of the Fund and will include the right of redemption and the right to reinvest Fund distributions in additional Fund shares at net asset value as set forth in each Fund's prospectus. Participants will be provided with annual updated prospectuses of the appropriate Reinvestment Fund. The Funds' normal sales charges and minimum investment requirements will apply to purchases of Fund shares by Participants other than through the Programs.

Applicants assert that granting the requested exemption would be beneficial to the Fund and to unitholders of the Trusts. Applicants assert that the major portion of the cost of selling investment company shares is incurred in identifying potential investors and ascertaining their financial requirements. In this respect, Applicants state that unitholders of the Trusts have already been identified as having objectives identical to those of the Fund in which their distributions would be invested because the applicable Reinvestment Fund will be investing in securities similar to those in which each unitholder's Trust has invested. Applicants further assert that little or no additional sales cost need be allocated to the purchase of shares of the Funds through the Programs and, therefore, submit that Participants should receive the benefit of the reduced selling expenses associated with the Programs through the investment of distributions made by the Trusts at net asset value without the payment of a sales charge. Applicants submit that the Funds will benefit from the proposed transactions because: (1) The investments in the Funds through the Programs will produce larger asset bases and steady cash flows which should assist the Funds in meeting redemption requests without liquidating portfolio securities; and (2) to the extent that the Funds' operating expenses do not increase in direct proportion to increases in assets, increases in asset bases attributable to the Programs will reduce the costs of operations on a per share basis. The Funds and DST have agreed that the transfer agency fees attributable to Participants' accounts in the Funds will not exceed, as a percentage of assets, the fees paid by the Funds with respect to other shareholder accounts. Applicants further submit that the Trusts also will benefit from the Programs to the extent that they will be able to provide unitholders with the opportunity to invest their distributions in open-end investment companies which are similar to the Trusts.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 22, 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 Applicants 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. 84-15208 Filed 6-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23319; (70-6985)]

Middle South Utilities, Inc., et al.; Proposed Transactions Related to Additional Financing Capability of Electric Generating Subsidiary and Change in Construction Schedule of Nuclear-Fueled Generating Station

June 1, 1984.

In the matter of: Middle South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana 70112;

Middle South Energy, Inc., P.O. Box 61000, New Orleans, Louisiana 70161;

Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas;

Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39205;

Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; and

New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Middle South Utilities, Inc. ("MSU"), a registered holding company, its electric generating subsidary, Middle South Energy, Inc. ("MSE"), and MSU's electric utility subsidiaries, Arkansas Power & Light Company, Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI"), have filed a declaration with this Commission pursuant to sections 6(a), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act"). The declaration concerns the proposal of MSE to amend its revolving bank loan agreements, Mortgage and Deed of Trust, Availability Agreement, and Power Purchase Advance Payment Agreement for the purpose of increasing its financing capacity and extending the completion date for Grand Gulf Unit No. 1 now specified in various agreements.

MSE was incorporated in 1974 to own and finance certain future generating capacity of the Middle South system. All of its common stock is owned by MSU. MSE is in the final stages of completing and placing in commercial operation the first unit of the Grand Gulf Project ("Unit No. 1"), a two-unit, nuclear-fueled generating station located near Natchez, Mississippi. Work on the second unit of the Grand Gulf Project has been reduced pending commercial operation of Unit

No. 1. MSE owns 90% of the Grand Gulf Project, and South Mississippi Electric Power Association, Inc., an association of Mississippi electric power cooperatives, owns the remaining 10%. Unit No. 1 had been scheduled to be placed in commercial operation in the fourth quarter of 1984 at a cost to MSE for its 90% interest of $2.9 billion. However, delays in obtaining a full power operating license from the Nuclear Regulatory Commission have caused commercial operation to be deferred until the first quarter of 1985 and the cost to MSE for its 90% interest to increase to $3.065 billion.

To provide for the announced change in the construction schedule for Unit No. 1 and to provide MSE with additional financing capability, the declarants propose the following changes to various MSE-related documents:

A. *Domestic Bank Loan Agreement*

1. *Revolving Period:* Extend from June 30, 1984, to June 30, 1985.

2. *$100 million prepayment due December 31, 1984:* Postpone to December 31, 1986.

3. *Co-agent:* Citibank, N.A. will become co-agent with Manufacturers Hanover Trust Company.

B. *Foreign Bank Loan Agreement*

1. *Revolving period:* Extend from June 30, 1984, to June 30, 1985.

2. *$42 million prepayment due February 5, 1985:* Postpone to February 5, 1989.

C. *Mortgage*

1. *Specified completion date for Unit No. 1 of December 31, 1984:* Move to December 31, 1985.

D. *Availability Agreement*

1. *Start-up date for payments in respect of Unit No. 1:* Move from December 31, 1984, to December 31, 1985.

E. *Power Purchase Advance Payment Agreement*

1. *Monthly payments of $12.5 million by LP&L, MP&L, and NOPSI to MSE:* Continue past present termination date of December 31, 1984, to December 31, 1985.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are diputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15338 Filed 6-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21008, (SR-CBOE-80-16)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

June 1, 1984.

I. Introduction

On June 9, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), LaSalle at Jackson, Chicago, IL 60604, filed with the Commission, pursuant to the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to modify its operations and procedures relating to options market makers. Among other things, the proposed rule change created a single class of market makers by eliminating supplemental appointments, increased the number of options classes in which market makers were permitted to have appointments, and established a new Exchange committee responsible for evaluating the performance of and taking disciplinary action against market makers. The proposed rule change also prescribed minimum requirements concerning the extent to which a market maker's trading activity must be conducted in person.[1] The rule change was approved by the Commission on February 12, 1981,[2] but the 1981 Approval Order was vacated on April 5, 1982, by the United States Court of Appeals for the Seventh Circuit in *Clement* v. *Securities and Exchange Commission*, an action challenging principally the minimum requirement for in-person market maker transactions, and the matter was remanded to the Commission.[3]

On May 11, 1982, the Commission reviewed the rule filing and approved, on a summary basis and for a 90-day period, those portions of the proposed rule change not in contention in the judicial proceeding.[4] That approval was extended for an additional 90 days on August 16, 1982, in anticipation of an amendment to the proposed rule change.[5] CBOE filed a substantive amendment to the proposed rule change on October 19, 1982. To permit the Commission to review this amendment, the Commission, on November 1, 1982, extended its temporary approval for an additional 60 days from that date.[6]

The amended proposed rule change requires, among other things, that for each month in a quarter and except in unusual circumstances, 75 percent of a market maker's total options contract volume must be in his appointed options classes and 25 percent of his total options transactions must be executed in person.

On December 13, 1982, the Commission received a letter of comment concerning the proposed rule from the Chicago Board of Trade ("CBT") asserting that the rule would have anticompetitive and discriminatory effects, particularly as applied to CBT members who are also CBOE members.[7] The CBT also requested that the Commission extend the comment period on the proposed rule change. In addition, six comment letters of dual CBOE/CBT members were submitted to the CBOE, which fowarded them to the Commission.[8] On December 30, 1982,

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[1] Notice of the proposed rule change was published in Securities Exchange Act Release No. 16919 (June 24, 1980), 45 FR 43914 (1980). Subsequently, on June 9, 1980, the CBOE filed an amendment to the proposed rule change excluding certain closing transactions from the calculations of transactions required to be executed in person by market makers and requiring the recording of additional information on market maker orders. Notice of the amendment to the proposed rule change was published in Securities Exchange Act Release No. 17012 (July 25, 1980), 45 FR 51325 (1980).

[2] Securities Exchange Act Release No. 17535 (February 12, 1981), 46 FR 13055 (1981) ("1981 Approval Order").

[3] *Clement* v. *Securities and Exchange Commission*, 674 F.2d 641 (7th Cir. 1982).

[4] *See* Securities Exchange Act Release No. 18727 (May 11, 1982), 47 FR 21169 (1982).

[5] Securities Exchange Act Release No. 18963 (August 16, 1982), 47 FR 37020 (1982).

[6] Securities Exchange Act Release No. 19203 (November 1, 1982), 47 FR 50790 (1982).

[7] Letter from Thomas R. Donovan, Chairman, CBT, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, December 10, 1982. The CBT also submitted a comment letter to the Commission in connection with its initial consideration of filing SR-CBOE-80-16 in 1980. There it claimed a denial of the rights of joint CBOE/CBT members under CBOE's Articles of Incorporation. Letter of August 13, 1980 from Robert K. Wilmouth, President, CBT, to George A. Fitzsimmons. Copies of all the correspondence received with respect to the proposed rule change have been placed in the public file. *See* File No. SR-CBOE-80-16.

[8] *See* File No. SR-CBOE-80-16.

the Commission extended the public comment period to January 31, 1983, and extended its summary and temporary approval until March 30, 1983.[9] On February 2, 1983, the Commission received a comment letter from the attorneys for Charles B. Clement, the plaintiff in *Clement* v. *Securities and Exchange Commission*, contending that an in-person requirement was unfair to dual CBT/CBOE members, and that it was anticompetitive. The letter further argued than an in-person rule would prevent many CBT members from functioning as CBOE market makers and thus reduce liquidity and price continuity in options traded on the CBOE. Moreover, Clement argued that the market maker orders placed with floor brokers ("remote orders") increased liquidity because they were generally market orders.[10]

On March 29, 1983, the Commission again extended the public comment period and its temporary approval of those portions of the proposed rule change not at issue in *Clement* v. *Securities and Exchange Commission*.[11] The Commission received no additional public comment in this extended period but did receive a letter from CBOE [12] ("CBOE letter") which, among other things, requested that the proposed rule change be implemented on a one-year pilot basis and stated that the change in the proposed in-person requirement from 75 percent of options contract *volume* to 25 percent of *transactions* would aim the rule more directly at the goal of encouraging market maker presence on the CBOE floor. The CBOE letter asserted that theoretically a test focusing solely on volume might allow persons to avoid being present at the trading post by effecting a limited number of large transactions. The CBOE letter also addressed the "fairness" argument raised by opponents of the proposed in-person requirement and argued that the new rule would modify an existing advantage enjoyed by dual CBT/CBOE members rather than impose a special hardship upon them. While reviewing the CBOE's submission, the Commission extended several more times its temporary and partial approval of the rule change proposal.[13]

The Commission today approves the uncontroverted portions of CBOE's rule change proposals on a permanent basis and approves the proposed in-person requirement on a one-year pilot basis.

II. Discussion

Section 19(b)(2) of the act requires the Commission to approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with the requirements of sections 6(b)(1), 6(b)(5), 6(b)(8) and 11(b) of the Act, and Rule 11b–1 under the Act.[14] As discussed in further detail below, the Commission believes that the proposed rule change, including those portions permanently approved and those portions approved on a pilot basis, will improve the quality of the markets made on the CBOE and assure access on a reasonably fair and equitable basis to the margin requirement exemptions ("exempt credit") enjoyed by exchange specialists.[15]

By requiring that a percentage of market makers' transactions be effected in person (and by continuing the requirement that a substantial percentage of market makers' transactions be effected in their appointed classes), the proposal will improve CBOE market maker capabilities. These requirements will assure to a significant extent that market makers will be physically present in their appointed classes to respond to public orders and to improve the price and size of the markets made on the CBOE floor. In addition, the CBOE proposal would have the effect of reducing the extent to which CBOE market makers could effectively function as privileged investors by entering the CBOE floor only long enough to drop off orders with a floor broker, without ever actually making competitive quotations or otherwise affirmatively functioning as market makers. Thus, the Commission believes the CBOE proposal would serve to improve the mechanism of a free and open market, to maintain a fair and orderly market and generally to promote the protection of investors and the public interest.[16]

As noted in *Clement*, in considering whether to approve proposed rule changes of a national securities exchange, the Commission also is required to determine that the rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]," [17] and that "the rules of the exchange [as amended] are not designed to permit unfair discrimination between customers, issuers, brokers or dealers . . . . " [18] The Clement court, without reaching the substantive merits of the plaintiff's claim, vacated the Commission's 1981 Approval Order on the grounds that the Commission did not adequately consider these competition and discrimination issues with respect to an in-person dealing requirement.[19]

Commentators on the CBOE refiling raised essentially the same objections that the court considered in *Clement*, that the rule is anticompetitive and discriminatory. These commentators assert that the in-person requirement in the proposed rule would diminish

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[9] Securities Exchange Act Release No. 19386 (December 30, 1982), 48 FR 915 (1983).

[10] Letter from Coffield, Ungaretti, Harris & Slavin to George A. Fitzsimmons, January 31, 1983. A market order is an order to buy or sell, not at any particular price, but at the best price available at the time the order is brought to the floor.

[11] Securities Exchange Act Release No. 19641 (March 29, 1983), 48 FR 14795 (1983). Extension of the temporary approval was requested by CBOE in a letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Thomas G. Lovett, Division of Market Regulation, SEC, March 25, 1983. File No. SR–CBOE–80–16.

[12] *See* letter from Anne Taylor, Assistant General Counsel, CBOE, to Richard Chase, Division of Market Regulation, SEC, May 10, 1983. File No. SR–CBOE–80–16.

[13] Securities Exchange Act Release Nos. 19923 (June 28, 1983), 48 FR 31133 (July 6, 1983); 20228 (September 23, 1983), 48 FR 44962 (September 30, 1983); 20363 (November 10, 1983), 48 FR 52529 (November 18, 1983); and 20475 (December 13, 1983), 48 FR 56291 (December 20, 1983); 20552 (January 12, 1984), 49 FR 21776 (January 18, 1984); 20637 (February 9, 1984, 49 FR 6062 (February 16, 1984); 20754 (March 14, 1984), 49 FR 10605 (March 21, 1984); 20858 (April 13, 1984), 49 FR 16913 (April 20, 1984). In the course of these extensions, the Commission received two additional letters from the CBT restating its opposition to the proposed in-person requirement. *See* letters of July 28, 1983, and January 10, 1984 to George A. Fitzsimmons, Secretary, SEC, from Thomas R. Donovan, CBT President ("CBT July 1983 letter"). File No. SR–CBOE–80–16.

[14] These sections require that an exchange have the capacity to carry out the purposes of the Act (section 6(b)(1)), that its rules promote just and equitable principles of trade and be designed to perfect the mechanism of a free and open market, protect investors and the public interest, and not permit unfair discrimination (section 6(b)(5)), and authorize exchanges to register specialists who must do business in conformity with Commission requirements (section 11(b) and Rule 11b–1).

[15] Among other things, under CBOE Rule 12.3(b)(E)(2) and § 220.12(b)(3) of Regulation T, 12 CFR 220.12(b)(3), market makers (who are deemed "specialists" for purposes of Regulation T) are entitled to "exempt credit" or "good faith" margin for any options positions established on the floor of the CBOE. This enables CBOE market makers to establish and maintain positions in CBOE options for a smaller cash outlay than public investors.

[16] The Commission also notes, with respect to those portions of the proposed rule change previously approved on a temporary basis, that the Commission has been unable to ascertain any evidence to suggest that its provisional finding regarding those other provisions of the rule change was unsound.

[17] *See* section 6(b)(8) of the Act.

[18] *See* section 6(b)(5) of the Act.

[19] 674 F.2d at 845–47.

market quality and would be unfair to joint CBOE/CBT members.[20]

The Commission has determined, for the reasons hereinafter discussed, that any possible burden on competition that adoption of CBOE's proposal might entail would be appropriate in light of the improvements in market making, including an increase in competition among market makers, likely to result from the increased physical presence of market makers in trading crowds. Moreover, this proposal would also furnish a more equitable basis for access to exempt credit, thus promoting the goals of section 6(b)(5), Section 11(b) and Rule 11b–1 thereunder, all of which must also be weighed against any possible anticompetitive effect. The Commission has further determined that, while the proposed rule may very well pose difficulties for CBOE members having business interests that take them off the CBOE floor during CBOE business hours, it is nonetheless equitable and nondiscriminatory in that its provisions apply equally to all market maker members. It has been claimed that frequent presence in CBOE trading crowds is impractical for many joint CBOE/CBT members. As noted below,[21] this assertion is not supported by the CBOE's experience from March 1981 to March 1982. And the claim may be reexamined in light of experience under the proposed pilot program. In any case, however, the Commission finds that CBOE is not under an obligation to grant special consideration to CBOE members who have other interests off the CBOE floor that may conflict with their activities and responsibilities as CBOE members. In this regard, the Commission finds that the CBOE is not required to grant special consideration to CBOE members who are also CBT members.

A. Burden on Competition Concerns

For a number of reasons, the proposed rule does not impose burdens on competition not necessary or appropriate under the Act. To the contrary, the Commission believes that the proposal will promote the level of market maker competition on the CBOE floor envisioned by the Act. First, as a general matter, competition among "market makers" can only be enhanced insofar as traders are actually functioning in what may properly be described as a market maker capacity.

In meeting its responsibilities in the scheme of national securities regulation, each national securities exchange has employed as a fundamental instrument the imposition of affirmative and negative obligations on market makers trading on that exchange. Consistent with Rule 11b–1 under the Act,[22] these obligations generally require market makers to trade only where their activity promotes liquidity and price continuity in the subject security. In return for assuming these obligations to the marketplace, market makers are permitted to trade on the floor of the exchange, thus being provided significant "time and place" as well as margin credit ("exempt credit") advantages over other market participants.[23]

As a practical matter, these fundamental market maker obligations (at least the "affirmative" obligations), can only be effective if persons subject to them spend a significant amount of time on the floor of the exchange.[24] A trader who does most of his business off-floor is simply not available to absorb imbalances in supply and demand and otherwise assure market liquidity during times of market stress. Indeed, as noted in the discussion below of the absentee market maker's competitive impact, such a trader's off-floor orders may even exacerbate imbalances in supply and demand. To provide such a trader the advantages enjoyed by true market makers would be unfair to continuous on-floor market makers on the floor of the COBE, as well as to other options market participants.

Under the scheme of regulation contemplated under the federal securities laws,[25] exchange market makers, unlike public customers, do not simply buy and sell from time to time as their prospects for profit may dictate. The market maker has a special obligation to deal in a manner reasonably calculated to contribute to the maintenance of a fair and orderly market.[26] He has responsibilities to correct temporary disparities in supply and demand and helps to insure that the market provides reasonable and competitive bid/ask spreads.

However, the member who is present on the trading floor only long enough to hand his orders to a broker contributes no more to competition or market liquidity on the CBOE floor than does any public customer submitting a similar order. He is not available to respond to or better the changing bids, offers or sizes of other market makers, or otherwise to respond to public orders in an active and dynamic marketplace. Indeed, there is no reason to believe that his remote order will not be on the same

[20] An objection was made to an earlier version of the rule proposal on the ground that it discriminated against small market makers by allowing the in-person requirement to be met by a volume of 20,000 contracts traded in person, regardless of what proportion of a market maker's trading this amount represented. A determination that the Commission had failed to address this concern was a basis of *Clement's* concern of the Commission's handling of the discrimination issue. 674 F.2d at 646. The 20,000 contract alternative, however, has been eliminated from the rule proposal.

In their comment letter, Clement's attorneys also object that the amended rule proposal's reduction of the in-person percentage minimum from 75 percent to 25 percent is evidence that the figure is arbitrary. The change, however, was meant to accommodate the change in the basis of the figure from contract volume to number of transactions. As discussed *infra*, the one-year pilot program will provide the Commission and the CBOE with experience necessary to evaluate whether a 25 percent standard is sufficient.

[21] *See* note 28.

[22] Rule 11b–1 permits national securities exchanges to register members as specialists and dealers. For purposes of Section 11(b) and this rule, the CBOE's market makers are specialists. Rule 11b–1(a)(2) (ii) and (iii) provide that an exchange that permits members to register as specialists and to act as dealers include requirements "that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market, . . ." and "provisions restricting his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market. . . ."

[23] *See generally*, Securities and Exchange Commission, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).

[24] The Pacific Stock Exchange, Inc. ("PSE") is the only other options exchange operating a competitive market maker system like CBOE's. The PSE has recognized in its Options Floor Procedure Advice B–5 (April 9, 1976, amended July 8, 1980) that "it is obvious that neither [market maker] obligations . . ., nor the requirements of the Exchange in the conduct of a continuous fair and orderly auction market, can be met unless an adequate number of market makers are available through the trading session." Advice B–5 requires market makers to be at their primary post during at least 50 percent of the trading days in a quarter and for at least 50 percent of the opening rotations. In addition, Order Book Officials are required to maintain records indicating continual or significant absence of individual market makers. These records are made available for use in the determination of market maker appointments, suspensions and terminations.

The other three national securities exchanges that trade options employ a specialist system, in which one floor member (the specialist) is assigned primary market maker responsibility for his specialty securities. Since the specialist is required to be in attendance at his post continuously throughout the trading day, no separate in-person requirement is imposed.

[25] *See* section 11(b) of the Act and Rule 11b–1 thereunder which is described in note 22, *supra*.

[26] *See* CBOE Rules 8.1 and 8.7. All market maker orders are subject to the market maker's general obligation to deal in a manner reasonably calculated to contribute to the maintenance of a fair and orderly market. The Commission believes that the physical presence of market makers in the trading crowd helps insure the satisfaction of this obligation. An in-person requirement would provide useful additional support for the overall market quality objectives the general market maker obligation serves. The CBOE has previously adopted other specific rules designed to further this general objective. *See, e.g.*, CBOE Rule 8.7(b), which subjects transactions by a market maker in his appointed classes to various specific limitations on price range.

side of the market as the preponderance of public customer orders, bringing it into competition with public customers and actually impairing the depth of the CBOE market for those customers.[27]

In determining whether to approve the proposed rule change, the Commission has considered whether a requirement that encourages market makers to remain physically present in trading crowds, where they can function genuinely as market makers and not simply as privileged investors, could be outweighed by the possible effects of (1) reducing remote orders from traders making markets in some other crowd on the CBOE floor, thereby reducing liquidity without improving market making; or (2) driving CBT members, as Clement argues, or other CBOE market makers out of the CBOE market altogether, thus assuring that they will never be on the floor as market makers; and possibly damaging liquidity simply through the loss of their order flow.

The first concern is limited by the fact that the in-person requirement is relatively low, while the latter prospect is at variance with CBOE's experience under its earlier in-person rule prior to its invalidation by *Clement*.[28] Moreover, CBT members are in no way being deprived of other means of access to the CBOE floor. Like any other CBOE member, they will continue to be permitted to route off-floor orders to a floor broker on the exchange for execution. In so doing, they would be permitted to enter orders in the same manner, and would be subject to the same margin requirements, as public customers. Hence, this procedure provides CBT members unwilling to meet the "in-person" requirement with a feasible means of effecting transactions off the floor of the CBOE.

The rule, as proposed, would require market makers to effect only 25 percent of their transactions in person.[29] A market maker might still use floor brokers to effect the remaining 75 percent of his transactions. The Commission believes that this 25 percent requirement is an acceptable starting point to encourage in-person dealing; it will require members to spend a minimal amount of time furnishing to the public, through direct, personal market making, a ready market in their appointed market maker classes, and at the same time allow market makers who are active in more than one crowd to adjust their positions in one options class while they are making a market in another options class traded on a different part of the floor. The Commission, however, is approving the proposal only for a one year pilot period. This should be a sufficient time period to assess whether it would be appropriate to increase further the 25 percent minimum.[30]

The Commission does not believe there will be a negative effect on market liquidity. Encouraging market maker availability on the floor to offset imbalances in supply and demand should affirmatively enhance liquidity and price continuity. Moreover, no adverse effects on liquidity were apparent during the period in 1981 and 1982 when an in-person rule was in effect.[31] The question can be more conclusively answered, however, on the basis of additional practical experience. During the pilot period, the CBOE has indicated a willingness to study and report to the Commission the net effects of the proposed rule change on liquidity, specifically studying positive effects on liquidity resulting from increased presence in their appointed trading crowds by market makers, and any decrease in liquidity resulting from CBT/CBOE market makers abandoning market making and ceasing to trade for their own accounts.

Quarter	Trading volume of 24 CBT/CBOE market makers
4th Q., 1980	70,367 contracts.
1st Q., 1981*	109,994.
2nd Q., 1981*	8,512.
3rd Q., 1981*	64,145.
4th Q., 1981*	135,778.
1st Q., 1982*	112,061.
2nd Q., 1982*	101,962.
3rd Q., 1982	114,452.

*Quarters in which previous in-person rule was in effect.

To the extent there is any adverse competitive impact on CBT members, the Commission believes that it will be outweighed by the positive benefits obtained from this proposed rule, including the enhancement of price continuity and market liquidity and increased fair competition among on-floor traders and between on-floor and off-floor participants.[32] The Commission therefore believes that the net effect of the proposed rule change will be to improve the market available to the investing public. Accordingly, the Commission finds the proposed rule does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition to this finding, the Commission also finds, as appears below, that the rule proposal, is not discriminatory, and affirmatively serves the goals of the Act in providing a fair basis for accesss to exempt credit. In this respect as well, no burden on competition is imposed that is not necessary or appropriate in furtherance of the purposes of the Act.

B. Fairness Concerns

Commentators also argue that the proposed rule change is unfair to CBT members. On its face, the proposed in-person rule applies to all members equally. The fact that some members may have undertaken outside business obligations (*e.g.*, CBT membership) that call them away from the CBOE floor does not make a compelling case of discrimination. Any CBOE market maker could conceivably have or acquire business interests which he

[27] Clement's attorneys state that all Mr. Clement's orders are market orders. *See* letter from Coffield, Ungaretti, Harris & Slavin to George A. Fitzsimmons, Secretary, SEC, January 31, 1983, p. 6. File No. SR–CBOE–80–16. Such an order must be executed promptly and is perhaps as likely to be filled by another market maker as it is to be filled by a customer limit order or public order on the other side of the market. Clement may thus be as much a market user (like the public customer) as a market maker.

[28] *See* Note 31, *infra*.

[29] The Commission believes, for the reasons discussed in CBOE's filing, that a transaction-based requirement is reasonably related to the goal of insuring minimum presence of all market makers.

[30] One concern raised by a transaction based in-person requirement is that a market maker could meet the 25 percent requirement simply by splitting up a single large options order into a number of separate orders for 1 or 2 contracts which it then would seek to execute simultaneously. The CBOE has indicated that it will group such smaller orders together for purposes of determining compliance with the in-person requirement. *See* File No. SR–CBOE–80–16, Amendment No. 7.

[31] A sampling of the volume of CBT/CBOE members' market maker trades submitted by CBOE shows no sustained decline in volume during that period. The total market maker volume done by the sample of 24 CBT/CBOE members, beginning with the fourth quarter of 1980 (the last quarter before the subsequently invalidated in-person rule was approved by the Commission) and ending in the third quarter of 1982 (the quarter after the Court of Appeals vacated the Commission approval) was as follows for each quarter:

Moreover, other information submitted by CBOE shows that from October 1980 to September 1982 the number of CBT/CBOE members did not shrink as the result of an in-person rule but instead increased steadily from 300 to 331.

While these statistics are not conclusive, they certainly offer no support to the predictions of the in-person rule's opponents. Information gathered under the proposed pilot program is expected to assist the CBOE in establishing a permanent figure for the in-person requirement. The CBOE has committed itself to perform an analysis of the proposed rule's effects during the pilot year.

See letter of Anne Taylor, Secretary and Associate General Counsel, CBOE, to Kevin Fogarty, Division of Market Regulation, September 22, 1983 ("September 1983 CBOE letter"). File No. SR–CBOE–80–16.

[32] The CBT July 1983 letter argues that no price continuity or other market quality problem is cited to justify the proposed in-person requirement. The Commission, of course, need not identify a "problem" of any specific magnitude to conclude that the net effect of the proposal will be beneficial or improving. As noted above, the Commission finds that the proposed rule change will improve the CBOE's market and accordingly finds that any competitive burden is "appropriate" in furtherance of the purposes of the Act.

might wish to pursue by absenting himself from the CBOE floor during trading hours.

Commentators argue, however, that the proposed rule is not written upon a clean slate. They point to the CBT's historical role in assisting in the organization of the CBOE,[33] and they seem to contend that the right granted CBT members, at the time of CBOE's formation, to become CBOE members implied a perpetual guarantee that CBOE would make no rules impairing the profitability of dual membership. This interpretation is not supported in the CBOE's Certificate of Incorporation where the Exchange's commitment to CBT members appears. CBT members are assured there that they will "be vested with all rights and privileges and *subject to all obligations of membership* . . . (emphasis added)" [34] Neither CBT/CBOE members nor any other CBOE members are guaranteed that the obligations of membership will always comfortably comport with members' outside business interests.

Both the Act and the CBOE constitution contemplate an ability in the Exchange to adopt rules and impose obligations on its members to the extent such requirements are consistent with the Act. Certainly, it cannot be maintained that CBOE is forever tied to its rules as they existed when the first CBT member exercised his right to enjoy CBOE membership status, notwithstanding a determination by the CBOE that a rule change is warranted in order for the Exchange to carry out its responsibilities under the Act.[35] The CBOE's execution of its regulatory responsibilities, particularly its responsibility to maintain or improve the quality of its market, should not be, and is not, contingent upon the absense of any possibility of conflicting business interests for CBT members.

[33] Current CBT members, of course, did not necessarily paticipate in this effort. Mr. Clement, for example, did not join the CBT until 1974, the year after the CBOE was organized, and did not acquire full CBT membership, including the right to take CBOE membership, until 1979. *See* Brief for Petitioner C.B. Clement in *Clement* v. *SEC*, 674 F. 2d 841 (7th Cir. 1981).

[34] CBOE Certificate of Incorporation, Article Fifth, paragraph (b).

[35] Likewise, the Commission does not consider that its initial approval of CBOE's rules when that exchange first registered as a national securities exchange precludes the Commission from ever approving any deviation from those rules or any new interpretation of them on the theory that once the have been found fair any amendment is *ipso facto* unfair. The comment letter submitted by Clement's attorneys seems to suggest this argument. The Commission rejects it as inconsistent with the healthy evolution of exchange rules in light of experience and changing circumstances.

III. Conclusion

The Commission views the "in-person" requirement contained in the proposed rule change as conducive to the CBOE's meeting its responsibilities as an exchange under the Act. The public interest, in the Commission's view, supports the adoption of the proposed rule change. The Commission finds that imposition of this requirement is consistent with the CBOE constitution. The Commission further finds that the proposed rule change imposes no burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In summary, the Commission finds that the proposed rule change is consistent with the requirements of the Act an the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of sections 6 and 11 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-referenced proposed rule change be, and hereby is, approved, provided that those provisions which require that market makers effect 25 percent of their total transactions in person are hereby approved on a one-year pilot basis, and the CBOE is instructed to report to the Commission [one year from date of order] as provided in this Order.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15334 Filed 6-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20997; File No. SR-NASD-84-11]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

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 May 24, 1984, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposed to amend Article V, Section 1 of the Rules of Fair Practice by increasing to $15,000 the maximum fine which may be imposed in disciplinary actions. The present maximum fine is $5,000.

II. Self-Regulatory Organization's Statement Regarding the Proposed 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. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association proposes to amend Article V, Section 1 of the Rules of Fair Practice by increasing to $15,000 the maximum fine which may be imposed in disciplinary actions. The proposed amendment is the result of a conclusion by the District Business Conduct Committees, the National Business Conduct Committee, and the Board of Governors, that the present $5,000 limitation inhibits their ability in some cases to redress adequately violations of the Rules of Fair Practice. The present maximum of $5,000 was imposed as a result of a 1969 amendment to the Rules of Fair Practice. In the fifteen years since its adoption, however, the impact of a fine up to $5,000 has been eroded significantly by inflation.

The proposed amendment to the Rules of Fair Practice is designed to fulfill the responsibility of the Association under 15A(b)(2) of the Securities Exchange Act of 1934, as amended, "to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Association."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendment will not result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The proposed amendment was approved by a majority vote of the

Association's members voting. No other 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** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisons of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization located at 1735 K Street, NW., Washington, D.C. 20006. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

May 25, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15335 Filed 6-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21014; File No. SR-NASD-84-9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change by

June 1, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, DC 20006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend a stated policy ("Policy")[1] with respect to the enforcement of NASD By-Laws Article IV, Section 2, Schedule E.[2] The Policy provides a temporary exemption from Schedule E for certain "special purpose broker-dealers," *i.e.*, broker-dealers that: (i) Sell public offerings of securities issued by an affiliate; (ii) formerly were registered with the Commission as SECO broker-dealers and were not NASD members; (iii) qualified for, and relied on, paragraph (c)(3) of former Rule 15b10-9 under the Act for an exemption from certain other SECO rules, immediately prior to becoming NASD members. The Policy currently provides that only those special purpose broker-dealers that became NASD members after November 18, 1983 would be exempt from Schedule E. The proposed rule change would delete this date from the Policy and, accordingly, would broaden the scope of the exemption.

The NASD states that when it filed the Policy with the Commission, it had assumed that those special purpose broker-dealers that had become NASD members before November 18, 1983 were operating in compliance with Schedule E. The NASD states, however, that this assumption was incorrect. The NASD believes that there may be several special purpose broker-dealer firms that joined the NASD before November 18, 1983 that have not complied with Schedule E. Accordingly, the NASD believes that the Policy should be amended to grant a similar exemption to these special purpose broker-dealers. The NASD believes that the proposed rule change is consistent with the requirements of section 15A(b)(2) of the Act because the proposal, among other things, will further the NASD's ability to carry out the purposes of the Act and to comply and to enforce compliance by NASD members with the Act, Commission rules, and the NASD's rules. In addition, the NASD believes that the proposal is consistent with section 15A(b)(6) of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-84-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15337 Filed 6-6-84; 8:45 am]

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[1] The Commission approved the Policy, which the NASD submitted as a proposed rule change, SR-NASD-83-25, in Securities Exchange Act Release No. 20447, (December 6, 1983), 48 FR 55374 (December 12, 1983). The NASD adopted the Policy as part of its effort to accept former SECO broker-dealers as NASD members. Congress abolished the SECO program, effective December 6, 1983. Pub. L. No. 98-38, 97 Stat. 205.

[2] NASD Manual (CCH), ¶1402 (hereinafter referred to as "Schedule E").

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 1, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Central Louisiana Electric Company, Inc.
Common Stock, $4 Par Value (File No. 7–7505)
Central Vermont Public Service Corp.
Common Stock, $6 Par Value (File No. 7–7506)
Chemed Corporation
Common Stock, $1 Par Value (File No. 7–7507)
Lear Petroleum Corporation
Common Stock, $0.10 Par Value (File No. 7–7508)
Sea-Land Corporation
Common Stock, No Par Value (File No. 7–7509)
Sierra Pacific Power Company
Common Stock, $3.75 Par Value (File No. 7–7510)
United Illuminating Company
Common Stock, No Par Value (File No. 7–7511)
Citadel Holding Corporation
Common Stock, $0.01 Par Value (File No. 7–7512)
Crystal Oil Company (Louisiana)
Common Stock, $1 Par Value (File No. 7–7513)
IRT Property Company
Common Stock, $1 Par Value (File No. 7–7514)
Texas American Energy Corporation
Common Stock, $0.10 Par Value (File No. 7–7515)
Western Digital Corporation
Common Stock, $0.10 Par Value (File No. 7–7516)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 22, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–15336 Filed 6–6–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB May 8–May 22, 1984

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period May 8–May 22, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M–34 Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–1887 or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragrpah set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from May 8–May 22, 1984:

DOT No: 2432

OMB No: 2120–0025
By: Federal Aviation Administration
Title: Crewmember Certificate Application
Forms: FAA Form 8060–6
Frequency: On Occasion
Respondents: International Flight Crewmembers of U.S. Aircarriers
Need/Use: Federal Aviation Administration Act of 1958, Section 602

authorizes issuance of airman certificates which are used instead of passports in a limited number of foreign countries. 14 CFR Part 121 prescribes requirements for crewmember certification. Information collected is used to determine applicant eligibility for the I.C.A.D. certification.

DOT No: 2433

OMB No: 2120–0512
By: Federal Aviation Administration
Title: Automated Flight Service Station Questionnaire
Forms: None
Frequency: One-time survey
Respondents: Pilots

Need/Use: The FAA is presently consolidating its 317 flight service stations into 61 automated stations. In order to evaluate the effectiveness of the programs and the level of safety to pilots, it is necessary to query a sampling of those pilots currently using the system.

DOT No: 2434

OMB No: New
By: U.S. Coast Guard
Title: Regulations, Certificates of Adequacy For Reception Facilities
Forms: None
Frequency: On Occasion
Respondents: Operators of ports and terminals

Need/Use: This reporting requirement is needed and used by the Coast Guard to: (1) Certify the adequacy of Reception Facilities, (2) to provide a waiver for small ports where only limited reception facilities are necessary, (3) to publish a list of ports and terminals holding valid certificates, and (4) to evaluate appeals.

DOT No: 2435

OMB No: New
By: U.S. Coast Guard
Title: Advance Notice of Need For Reception Facilities
Forms: None
Frequency: On Occasion
Respondents: Oceangoing Ships of 400 tons or more

Need/Use: The Port Authority and the reception facilities need advance notification in order to have mobile facilities (tank trunks and tank barges) available for ships to discharge wastes which may not be discharged at sea. Such facilities are termed "Reception Facilities" by the ports.

DOT No: 2436

OMB No: 2120–0020
By: Federal Aviation Administration
Title: Maintenance, Preventive Maintenance, Rebuilding and Alteration—FAR 43 (On Aircraft)
Forms: FAA Form 337
Frequency: On Occasion
Respondents: Mechanics, Repair Stations, Manufacturers (Aircraft)

Need/Use: FAR 43 (14 CFR Part 43) prescribes rules governing maintenance, rebuilding and alteration of aircraft and aircraft components, and is necessary to ensure the work is performed by qualified persons and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform maintenance. Records must be kept of changes or overhaul of a major component as an aid to air operations safety.

DOT No: 2437

OMB No: New
By: National Highway Traffic Safety Administration
Title: Occupant Crash Protection
Forms: None
Frequency: On Occasion
Respondents: Motor Vehicle Manufacturers

Need/Use: To determine motor vehicle manufacturer compliance with the automatic occupant protection requirements, manufacturers would be required to submit 3 reports to NHTSA on 3/1/85, 9/1/85 and 9/1/86. NHTSA will review the reports which would include descriptions of manufacturers' plans and schedules for compliance and updates, and would initiate corrective action, if necessary.

DOT No: 2438

OMB No:2127–0012
By: National Highway Traffic Safety Administration
Title: General Requirements of the Federal Motor Vehicle Safety Standards (Imports)
Forms: HS–Form 189
Frequency: On occasion
Respondents: Manufacturers of motor vehicles and individuals

Need/Use: To ensure that imported vehicles conform with pollution requirements and safety standards prescribed for automobiles, multipurpose vehicles, trucks, buses and trailers manufactured in the United States.

DOT No: 2439

OMB No: 2115–0006
By: U.S. Coast Guard
Title: Application for License as Officer, Operator or Staff Officer
Forms: CG–866
Frequency: On occasion
Respondents: Merchant Seamen

Need/Use: This information collection requirement is needed to determine an applicant's overall qualification for an original, or upgrade, license or Certificate of Registry. The Coast Guard uses the information to: (1) Maintain records required by 46 USC 7319; (2) provide information to the Maritime Administration for use in developing personnel forecasts which are used to develop budgets; (3) develop information requested by Congressional committees; (4) plan for billet assignments at the Coast Guard examination centers; and, (5) to provide information to law enforcement agencies.

DOT No: 2440

OMB No: 2115–0504
By: U.S. Coast Guard
Title: Tank Vessel Examination Letter (CG–840s–1 & –2), Certificate of Compliance, Boiler/pv Repairs, Cargo Loading Gear Records and Shipping Papers
Forms: CG–840s–1, CG–840s–2
Frequency: On occasion
Respondents: Owners/operators of large merchant vesels and all foreign-flag tankers calling on U.S. ports

Need/Use: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46, U.S. Code. If these requirements were no longer permitted, many items critical to the safety of personnel, their vessels and our ports, as well as the marine environment, would be jeopardized.

DOT No: 2441

OMB No: New
By: Federal Highway Administration
Title: Application for Bridges on Dam Projects
Forms: None
Frequency: On occasion
Respondents: State and Local Governments

Need/Use: Necessary in order to ensure that bridges across Federal dams are built in conformance with current highway design and safety standards and that the construction employs the most economical construction alternative.

DOT No: 2442

OMB No: 2133–0004
By: Maritime Administration
Title: Manual of General Procedures for Determining Operating-Differential Subsidy (DOS) Rates
Forms: MA–344, MA–421, MA–422, MA–790
Frequency: On occasion
Respondents: Ship Operators

Need/Use: DOS payments made to ship operators are based upon subsidy rates developed from these reports along with guidance from the manual.

DOT No: 2443

OMB No: New
By: National Highway Traffic Safety Administration
Title: Administrative Evaluation of NHTSA's Occupant Protection Program
Forms: None
Frequency: Semi-annually
Respondents: Small businesses or organizations

Need/Use: The administrative evaluation of the Occupant Protection Program is designed to assess the program's effectiveness in increasing public awareness of safety belts. The survey will be administered to organizations participating in the program. The results of the evaluation will be used to revise the program and NHTSA's educational materials.

DOT No: 2444

OMB No: New
By: Federal Highway Administration
Title: FHWA Technology Transfer for Local Transportation Agencies
Forms: None
Frequency: Quarterly/Biennially
Respondents: State highway agencies

Need/Use: For FHWA to determine if program objectives are being accomplished in providing technical assistance for rural agencies with transportation responsibilities.

DOT No: 2445

OMB No: 2120–0043
By: Federal Aviation Administration
Title: Recording of Aircraft Conveyances and Security Documents (Liens)
Forms: AC 8050–41
Frequency: On occasion
Respondents: All lien-holders at time of aircraft or component sale

Need/Use: FAA is required to record from the original document, all security conveyences, such as mortgages (Liens), submitted by the public for recording against aircraft, or major components (engines, propellers and spare parts).

Issued in Washington, D.C., on May 31, 1984.

Jon H. Seymour,
Deputy Assistant Secretary for Administration.

[FR Doc. 84–15270 Filed 6–6–84; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supp. to Dept. Circ.; Public Debt Series—No. 16–84]

Notes; Series J–1989

Washington, May 31, 1984.

The Secretary announced on May 30, 1984, that the interest rate on the notes designated Series J–1989, described in Department Circular—Public Debt Series—No. 16–84 dated May 23, 1984, will be 13⅞ percent. Interest on the notes will be payable at the rate of 13⅞ percent per annum.

Gerald Murphy,
Acting for Fiscal Assistant Secretary.

[FR Doc. 84–15260 Filed 6–6–84; 8:45 am]
Billing Code 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 111
Thursday, June 7, 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

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 12, 1984, 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

This is to add three agenda items to the announcement issued by EEOC on May 31:

7. Freedom of Information Act Appeal No. 84-3-FOIA-43-BA, concerning a request for contents of a charge file.

8. Freedom of Information Act Appeal No. 84-3-FOIA-55-MM, concerning a request for an investigator's memorandum and MGR Equal Pay/Age Assignments.

9. Proposed Certification of the Jacksonville EEOC 706 Agency.

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: June 5, 1984.

Treva McCall,

Executive Secretary to the Commission.

This Notice Issued June 5, 1984.

[FR Doc. 84-15413 Filed 6-5-84; 1:36 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, June 11, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Heritage Thrift and Loan Association, an operating noninsured industrial bank located at 1050 East Imperial Highway, Brea, California.

First Summit Industrial Bank, an operating noninsured industrial bank located at 131 Artic Placer, Silverthorne, Colorado.

Application for consent to merge and establish one branch:

Far West Bank, Provo, Utah, an insured State nonmember bank, for consent to merge, under its charter and title, with State Bank of Wayne, Lea, Utah, and for consent to establish the sole office of State Bank of Wayne as a branch of the resultant bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary for the Corporation, at (202) 389-4425.

Dated: June 4, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-15382 Filed 6-5-84; 11:29 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 11, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for reconsideration of a previous denial of an application for consent to establish a branch:

Marine State Bank, Tallahassee, Florida, for reconsideration of its application to establish a branch at the intersection of U.S. Highway 27 North and Talpeco Road, Tallahassee, Florida.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the

"Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 4, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84–15381 Filed 6–5–84; 11:29 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:55 p.m. on Friday, June 1, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Garden Grove Community Bank, Garden Grove, California, which was closed by the Superintendent of Banks for the State of California on Friday, June 1, 1984; (2) accept the bid for the transaction submitted by Capital Bank, Downey, California, an insured State nonmember bank; (3) approve the application of Capital Bank, Downey, California, for consent to purchase certain assets of and to assume the liability to pay deposits made in Garden Grove Community Bank, Garden Grove, California, and for consent to establish the sole office of Garden Grove Community Bank as a branch of Capital Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 4, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84–15380 Filed 6–5–84; 11:29 am]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 4, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), concurred in by Director Irvine H. Sprague (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,955–L (Amended)—Franklin National Bank, New York, New York

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: June 4, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84–15425 Filed 6–5–84; 3:43 pm]

BILLING CODE 6714–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 4, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Tri-State Bank of East Dubuque, East Dubuque, Illinois, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in State Bank of Scales Mound, Scales Mound, Illinois, and to establish the sole office of State Bank of Scales Mound as a branch.

Memorandum regarding an enforcement matter involving a financial institution: Name and location of institution authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 4, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84–15426 Filed 6–5–84; 3:43 pm]

BILLING CODE 6714–01–M

7

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 12, 1984, 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE: Thursday, June 14, 1984, 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes

Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984–9, David R. Harbarger, on behalf of Northeast Ohio Republican Federal Campaign Committee
Draft Advisory Opinion #1984–23, Charles E. Hawkins III, on behalf of Associated Builders and Contractors, Inc.
Notice of proposed rulemaking on administrative termination
Finance Committee report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–15345 Filed 6–5–84; 10:18 am]

BILLING CODE 6715–01–M

8

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: June 7, 1984, 2:30 p.m.

PLACE: 1776 G Street, NW., Washington, D.C., Conference Room 4–G.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789–4763.

MATTERS TO BE CONSIDERED:

Open—Cost of Funds ARMs
Open—Interest Rate Capped ARMs
Closed—Minutes of April 30, 1984 Board of Directors' Meeting
Closed—President's Report
Closed—Financial Report

Dated: June 4, 1984.

Maud Mater,

Corporate Secretary.

[FR Doc. 84–15327 Filed 6–4–84; 8:45 am]

BILLING CODE 6720–02–M

9

NATIONAL SCIENCE BOARD

DATE AND TIME:

June 21, 1934, 9:00 a.m., Open Session
June 22, 1984, 8:00 a.m., Closed Session; 9:00 a.m., Open Session

PLACE: The Rand Corporation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public. Please note that space in the meeting room is limited.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS:

Thursday, June 21, 1984—9:00 a.m.

1. Discussion of Research Related to Biotechnology—approximately 9:00 a.m.—12:00 noon
2. Discussion of Academic Science and Engineering: Physical Infrastructure—approximately 1:00–4:00 p.m.

Friday, June 22, 1984—9:00 a.m.

4. Grants, Contracts, and Programs
1. Completion of Biotechnology Discussion—approximately 9:30–11:00 a.m.
2. Completion of Infrastructure Discussion—approximately 11:00 a.m.—12:30 p.m.
5. Other Business

MATTERS TO BE CONSIDERED AT THE CLOSING SESSION:

Friday, June 22, 1984—8:00 a.m.

3. NSB and NSF Staff Nominees

Margaret L. Windus,

Executive Officer.

[FR Doc. 84–15427 Filed 6–5–84; 3:59 pm]

BILLING CODE 7555–01–M

10

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1331]

TIME AND DATE: 10:15 a.m. (EDT), Monday, June 11, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEMS: Approval of minutes of meeting held on May 17, 1984.

Discussion Item

1. TVA's research and development needs—A look forward.

Action Items

B—Purchase Award

B1. Amendment to contract No. 81K31–179371 with Gesellschaft Fur Kohle Technologie to close out the engineering and license agreement for Koppers/Totzek process for the north Alabama coal-to-methanol project.

C—Power Items

C1. Supplement to cooperative research agreement with the University of Tennessee at Knoxville for coal feeding and fluidization studies in the fluidized bed.

C2. Letter agreement with Southern Company Services, Inc., and the Operating Companies of the Southern Company, supplementing interchange arrangements with TVA.

C3.[1] Amendment to letter agreement with Big Rivers Electric Corporation providing for an increase in the amount of power which TVA wheels to Big Rivers.

D—Personnel Item

D1. Personal services contract with Bartlett Nuclear Inc., Plymouth, Massachusetts, to provide services of qualified health physics technicians during refueling outages at TVA nuclear plants, requested by the Office of Power.

E—Real Property Transactions

E1. Resolution designating 0.58 acre of land located across the Holston River from the Phipps Bend Nuclear Plant site in Hawkins County, Tennessee, as surplus and for sale at public auction—Tract No. XPBG–2.

E2. Modification of deed affecting approximately 0.5 acre of Wheeler Reservoir land located in Limestone County, Alabama, to permit construction of habitable structures—Tract No. XWR–222.

E3. Modification of deed to Homer D. Beatty affecting a tract of Chickamauga Reservoir land in Rhea County, Tennessee, to permit construction of habitable structure—Tract No. XCR–170.

F—Unclassified

F1. Agreement with Nally-Hamilton Enterprises, Inc. to permit the auger mining of a portion of TVA's Red Bird coal reserve located in Clay County, Kentucky.

F. Original agreement and supplement No. 1 to agreement with Tennessee State University, Nashville State Technical Institute, and the State of Tennessee Board of Regents for construction, operational, and training expenses at the Industrial Training Center at Cockrill Bend.

F3. Revised TVA code relating to procurement of services and personal property.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: June 4, 1984.

W. F. Willis,

General Manager.

[FR Doc. 84–15411 Filed 6–5–84; 1:11 pm]

BILLING CODE 8120–01–M

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Thursday
June 7, 1984

Part II

Environmental Protection Agency

Final General NPDES Permits for Oil and Gas Operations on the Outer Continental Shelf (OCS) and in State Waters of Alaska; Bering Sea and Beaufort Sea; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2601-8]

Final General NPDES Permits for Oil and Gas Operations on the Outer Continental Shelf (OCS) and in State Waters of Alaska; Bering Sea and Beaufort Sea

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final General NPDES Permits.

SUMMARY: The Regional Administrator, Region 10, is today issuing two final general National Pollutant Discharge Elimination System (NPDES) permits for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf and in offshore waters of the State of Alaska. These general permits establish effluent limitations, standards, prohibitions, and other conditions on discharges from these facilities. The Bering Sea general permit authorizes discharges in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sales 70 (St. George Basin) and 83 (Navarin Basin). The Beaufort Sea general permit authorizes discharges in all areas offered for lease by: (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 36, 39, 43 and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore State lease sales, except for the area generally known as the Stefansson Sound Boulder Patch. The Beaufort Sea general permit was originally called the Beaufort/Chukchi Seas general permit. However, the U.S. Department of Interior recently changed the boundary of Sale 87 such that this general permit is now more appropriately called the Beaufort Sea general permit. A general NPDES permit (48 FR 54881), now in effect for the area described under (3), expires June 30, 1984. Facilities operating under the expiring general permit will be authorized to discharge under the new general permit for the same area; however, they must first submit another request to be covered and receive a permit number from EPA.

These final general permits are based on the administrative record which includes the support document "Environmental Assessment: Drilling Fluids and Cuttings Released onto the OCS." On March 14, 1984, Region 10 of the Environmental Protection Agency published in 49 FR 9610 a notice of two draft general permits which are being issued as final permits today. Today's notice briefly reviews the conditions and requirements in these general permits. Copies of the permits and the Agency's response to comments received are reprinted below. Changes in the final permits and the justification for the changes from the draft permits are presented in the Agency's response to comments. EPA regulations and these permits contain a procedure which allows the owner or operator of a point source discharge to obtain an individual permit.

DATES: Written request for authorization to discharge under a general permit shall be provided, as described in Part I.A. of the permits, to the Regional Administrator at least sixty (60) days prior to initiation of discharges. The 60-day notification requirement may be waived for these permittees who notified EPA during the public comment period for the draft permits. Authorization to discharge under a general permit requires written notification from EPA that coverage has been granted. The permits also require permittees to notify EPA prior to the commencement of operations at a new site.

ADDRESS: Notifications and requests should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101.

Administrative Record

The administrative records for these permits are available for public review at: (1) EPA, Region 10, Room 10B, at the address listed above, and (2) Environmental Protection Agency, Alaska Operations Offices, Room E 556, Federal Building, Anchorage, Alaska 99573 and 3200 Hospital Drive, Suite 101, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Janis Hastings, Region 10, at the address listed above or telephone (206) 442-4181. Copies of the final general permits; today's notice; the fact sheet, which accompanied the draft permits; and summaries of the Ocean Discharge Criteria Evaluations will be provided upon request.

SUPPLEMENTARY INFORMATION:

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR Part 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources: (1) Involve the same or substantially similar types of operations, (2) discharge the same types of wastes, (3) require the same effluent limitations or operating conditions, (4) require similar monitoring requirements, and (5) in the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations (40 CFR Part 122.28(c)), the Regional Adminstrator is required to issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. Discharge conditions reflecting special environmental concerns are reflected in these two final permits.

The Regional Administrator of Region 10 has determined that oil and gas facilities operating in the areas described in these general NPDES permits are more appropriately controlled by a general permit than by individual permits. The decision of the Regional Administrator is based on an evaluation of the 403(c) Ocean Discharge Criteria (45 FR 65942), and the Agency's recent permit decisions in other OCS areas.

Any owner and/or operator authoried to discharge under a general permit may request to be excluded from coverage under these general permits by applying for an individual permit as provided by 40 CFR Part 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Regional Administrator. A source located within a general permit area, excluded from coverage under the permit solely because it already has a current individual permit (i.e., a permit that has not been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of general permits are provided by 40 CFR 122.62-122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Nature of Discharge and Covered Facilities.

The final general permits issued today authorize the discharge of drilling muds and cuttings and associated operational wastewaters from exploratory operations only. Exploratory operations are defined as those operations involving drilling to determine the nature of potential hydrocarbon reserves and do not include drilling of wells once a hydrocarbon reserve has been defined. Under these permits they are further limited to a maximum of five wells at a single site. Exploration facilities are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435). Development and production operations are not covered by these general permits. The general permits do not authorize discharges into any wetlands adjacent to the territorial waters of the State of Alaska or from facilities in the Onshore and Coastal Subcategories as defined in 40 CFR Part 435.

The general permits authorize the following discharges: Drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalinization unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; test fluids; and mud, cuttings, and cement at the seafloor. Drilling muds and cuttings are the major pollutant source discharged from exploratory drilling operations.

III. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into ocean waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The final 403(c) Ocean Discharge Criteria guidelines published on October 3, 1980, set forth specific criteria for a determination of unreasonable degradation that must be addressed prior to the issuance of an NPDES permit. The application of these criteria for the discharges covered by these general permits is referred to as an Ocean Discharge Criteria Evaluation (ODCE). The ODCEs contain extensive listings of supporting references used to develop effluent limitations, operating conditions, and monitoring programs in the permits. Except for State Lease Sale 43A, each lease sale area has been evaluated in an ODCE, which is part of the administrative record for each permit. Although the area included in State Lease Sale 43A was not directly covered by an ODCE document, the immediately adjacent Lease Sales 39 (offshore and to the east) and 43 (to the west) were evaluated using these criteria. After considering information in the State of Alaska, Department of Natural Resources' "Preliminary Analysis of the Director Regarding Oil and Gas Lease Sale 43 (Beaufort Sea) and Oil and Gas Lease Sale 43A (Colville River Delta/Prudhoe Bay Uplands)," EPA has determined that the conditions and limitations in the general permit are appropriate for State Sale 43A.

The Regional Administrator has concluded that oil and gas facilities operating under the effluent limitations and conditions in the Bering Sea and the Beaufort Sea general permit areas will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. Four areas included in the Beaufort Sea general permit region are of particular concern. These involve discharges to stable ice between the shoreline and the 2-m isobath, to shallow water (from the 2 to 5 m isobath), to within 1000m of a unique biological community or habitat, and under ice. The Regional Administrator has determined that controlled discharges to these areas, in accordance with 40 CFR Part 125.123(a) and the limitations and conditions in the general permit, will not cause unreasonable degradation of the marine environment. Monitoring is required to verify that the discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation (see Part IV.C.).

Principal concerns center around the environmental fate and effects of drilling muds in the marine environment. The Agency has prepared an extensive analysis (available in the administrative records) of the available information on the environmental fate and effects of drilling muds and cuttings discharged from oil and gas facilities. In general, drilling muds exhibit low toxicity. Available data indicated that EPA-approved muds, after dilution and dispersion beyond the mixing zone, will not have a significant adverse effect on marine organisms. Futhermore, discharges from exploratory drilling operations will be intermittent and limited to a relatively small number of sites.

IV Conditions in the General NPDES Permits

A. Technology-Based Effluent Limitations

1. BPT Effluent Limitations

The Clean Water Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA, based on proven treatment technology. EPA promulgated effluent limitations requiring Best Practicable Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435) on April 13, 1979 (44 FR 22069).

BPT guidelines require a "no discharge of free oil" limitation for discharges associated with exploratory drilling operations. This limitation requires that a discharge shall not cause a firm or sheen upon or a discoloration on the surface of the water of adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR Part 435). The BPT limitation for sanitary waste requires that the concentration of chlorine be maintained as close to 1 mg/l as possible in sanitary waste discharges from oil and gas facilities housing ten or more persons. BPT limitations on oil and grease in produced water allow a daily maximum of 72 mg/l and monthly average of 48 mg/l.

The above limitations relating to the control of conventional pollutants have been re-evaluated in developing the Best Professional Judgement (PBJ) determination of Best Conventional Pollutant Control Technology (BCT) required by section 301(b)(2) of the Act (see Parts IV.A. 2. and 3., below).

2. PBJ/BAT Effluent Limitations

By July 1, 1984, all permits are required by section 301(b)(2) of the Act to contain effluent limitations which control toxic pollutants (40 CFR Part 401.15) by means of Best Available Technology Economonically Achievable (BAT) for all categories and classes of points sources. BAT guidelines are currently under development and have not been proposed for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

In the absence of effluent guidelines, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR Parts 122.43 and 122.44). Region 10 has, therefore, used BPJ procedures to derive discharge

limitations which reflect a BAT treatment level for the purposes of controlling toxic pollutants. The permit conditions and limitations are based principally on information provided by EPA's Effluent Guidelines Division (EGD), including discussions on alternative approaches and the results of recent EGD studies and various contractor reports. The following is a discussion of BPJ/BAT effluent limitations incorporated in the permits. Many of these limitations are incorporated as a result of determinations under section 403(c). Where appropriate, a discussion of the justification for such limitations under section 403(c) is also included.

a. *Toxicity of drilling muds.* Over the past several years, EPA has developed a list of eight general drilling mud types (the "generic muds"), that encompass nearly all water-based drilling mud compositions (exclusive of specialty additives) used in offshore drilling operations. Discharges of toxic substances in drilling fluids are minimized through the use of the generic muds and a list of approved additives, for which acceptable bioassay data are available. These limits on mud discharges satisfy section 403(c) criteria. In addition, they are justified as BAT effluent limitations. Therefore, the permits include the generic muds list (Table 1) and the approved additives list from the existing general permits for Norton Sound and the BF Lease Sale area (Table 2). The permittee is required to certify in advance of discharge that only generic drilling muds and approved additives will be discharged.

Permittees may request approval of additives not listed in Table 2 of the permits by submitting appropriate information, including bioassay data, to Region 10 in advance of discharge. The Region requires up to 60 days to evaluate such requests. These permits require bioassay testing and reporting of results in accordance with the Standard Drilling Fluids Toxicity Test or other procedures approved in advance by Region 10. In evaluating additives, Region 10 will determine whether their use is likely to result in a mixture which is more toxic than the most toxic of the eight generic muds (Mud No. 1 for which the lower 95% confidence limit of the 96-hour LC_{50} is 0.3% [3000 ppm] by volume of the whole mud using a suspended particulate phase test). The technology basis for complying with this requirement is product substitution—Less toxic additives and components may be substituted for those that cause the toxicity of a mud system to exceed that of the most toxic approved drilling mud.

In some cases interim approvals may be granted if preliminary bioassay data are submitted and the Region determines that additional bioassay testing is required. Such testing may be required, for example, to examine possible cumulative or synergistic effects if the additive is to be used in combination with a number of other additives. The requested bioassay data must be submitted within 60 days of the date of interim approval.

In developing the final permit conditions, Region 10 has given special consideration to mineral oil additives. Lubricity or spotting agents (i.e. a concentrated "pill") may be required for specific, critical drilling conditions when the drill bit is in danger of becoming stuck. Region 10 expects that such conditions are encountered on an infrequent basis. The permits prohibit the discharge of diesel oil, which has commonly been used for such situations, due to its high toxicity. Mineral oils are generally considered to be acceptable substitutes for diesel due to their lower toxicities. However, the Agency is faced with a lack of specific information on the characteristics, applications, and toxicities of all available mineral oils. If a permittee requests approval of a mineral oil additive which would cause the drilling mud to be more toxic than the most toxic generic mud, Region 10 will additionally consider whether the requested mineral oil is the least toxic alternative mineral oil (provided that it also complies with limitations on free oil and elutriate oil and grease). Region 10 believes that this requirement is consistent with the technology-based approach of product substitution, but acknowledges that toxicity data on mineral oils is limited. Therefore, in some cases the toxicity level of the most toxic generic mud may be exceeded. Based on bioassays conducted by EPA with one widely used mineral oil, a 5% concentration (volume/volume) in Mud No. 2 and in Mud No. 8 would have an LC_{50} as low as approximately 900 ppm v/v, whole mud basis.

Generic muds are listed in these permits in Table 1. The definition of a generic mud additionally includes any type of mud listed in Table 1 which contains one or more components or additives not listed in Tables 1 and 2, if the standard drilling fluids toxicity test demonstrates that: (1) For Generic Muds Nos. 2 through 8, the additives or other components do not cause a substantial increase in the toxicity of the listed generic mud, (2) for Generic Mud No. 1, there is no increase in the toxicity due to the addition of additives or other components. In order to afford permittees some flexibility in operations, permittees may discharge generic muds which are not: (1) Exactly as described in Table 1, or (2) otherwise previously approved by EPA Region 10. Bioassay data and other information must be submitted prior to discharge or no later than 60 days after the discharge. Whether the drilling mud can be considered a generic mud shall be based on the above demonstration and a comparison of the lower 95% confidence limit of the bioassay test results with that of the corresponding listed generic mud. However, the discharge of any biocides is not allowed under this provision and will require approval by EPA prior to their discharge.

Region 10 does not expect these requirements to cause undue operational restrictions or costs to the industry since similar requirements have been in place under BPT permits for exploratory drilling, and since the requirements are based on product substitution. Region 10 does not expect that additional bioassays will have to be conducted for all operations once previously collected bioassay data on drilling muds and additives will probably provide for many well drilling operations. The cost of a standard bioassay test is approximately $1000, although costs can vary depending on the contractor and the shipping costs for the sample. Region 10 believes the costs associated with this regulatory requirement will be minimal and are therefore economically achievable.

b. *Mercury and cadmium content of barite in discharged drilling muds.* The discharge of mercury and cadmium is of concern in the marine environment since a number of studies have demonstrated the toxicity and bioaccumulation potential of both mercury and cadmium. These and other heavy metals (including lead, arsenic, copper, and zinc) may be present as impurities in drilling mud components, particularly in certain types of barite deposits (Neff 1982, Kramer et al. 1980, and Nelson et al. 1980). The majority of analyses of barite used in drilling muds show much less than 1 mg/kg mercury and less than 2 mg/kg cadmium (see Neff 1982 for a review). Consequently, most drilling muds and the EPA generic drilling muds also contain much less than 1 mg/kg mercury (dry weight basis) and less than 2 mg/kg cadmium (CENTEC 1983, Ayers et al. 1980). However, numerous barite sources containing more than 1 mg/kg of mercury and 2 mg/kg cadmium have been identified (Crippen et al. 1980, Nelson et al. 1980, Neff 1982).

Region 10 proposed to control the discharge of these pollutants by placing limitations on the mercury and cadmium levels in any barite which is discharged in drilling muds. Barite comprises the majority of the solids in most drilling muds. EPA's intent in imposing the limitations on barite was to allow permittees to substitute sources of relatively uncontaminated barite for any highly contaminated sources (e.g. from vein deposits) in discharged drilling muds. Thus, the permits do not allow the discharge of drilling mud if contaminated barite was added to the mud. Uncontaminated barite sources have been defined as having less than 1 mg/kg mercury and less than 3 mg/kg cadmium. These levels represent what Region 10 considers to be the upper reasonable limits (in rounded-off values) for relatively "clean" sources of barite.

Mercury and cadmium levels must be monitored in the barite. The permittee is also required to submit the results of an analysis of the metal content of drilling muds sampled at the end of the well in order to provide information for the comparison of the mercury and cadmium content of barite with the levels of metals in discharged drilling muds. An additional analytical requirement has been imposed to monitor "active" mercury and cadmium in addition to total metals in discharged muds. Active mercury and cadmium are operationally defined by acidifying the sample to a pH of 4 with nitric acid and then measuring the concentration of metal that passes through a 0.45 u (micron) filter. The active metal concentration is believed to represent that fraction of the metal that is readily bioavailable. This and other information (e.g. definitive bioaccumulation studies and a determination of the ultimate bioavailability) will be considered in determining future effluent limitations.

Recent results submitted to Region 10 of analyses of drilling mud samples collected from the greatest well depth at three offshore drilling rigs in Alaska show mercury concentrations in the whole mud of 0.24 mg/kg (dry weight) or less. Cadmium levels were 1.36 mg/kg (dry weight) or less. It is Region 10's understanding that Alaskan oil and gas operations use barite predominantly from a Nevada mine. Mercury concentrations of less than 0.2 mg/kg and cadmium concentrations of less than 0.9 mg/kg have been reported for this source. Therefore, Region 10 believes that compliance with the permit conditions is economically achievable by Alaskan operators.

EPA's Effluent Guidelines Division is evaluating the economic impact of limitations on barite, should they be applied on a nationwide basis. However, due to the "clean" barite source already available for Alaskan operations (i.e. the opportunity for product substitution) and the limited number of offshore Alaskan operations involved in these permits, Region 10 does not believe that the permit conditions will place undue economic restrictions on dischargers or barite suppliers.

In evaluating these discharges under section 403(c), the levels of mercury and cadmium in barite and drilling mud discharges were compared to naturally occurring levels in sediments, to polluted sediment levels, to sediment contamination levels measured in field studies of discharged drilling muds, to criteria developed for the disposal of dredge material (40 CFR 227.6), and to the draft marine water quality criteria for mercury and cadmium. These comparisons confirm that the discharge of mercury and cadmium in concentrations characteristic of "clean" barite sources will not cause unreasonable degradation. However, contaminated sources of barite may have mercury concentrations which are up to two to three orders of magnitude greater than the lowest background sediment levels. Although the trace heavy metal contaminants are believed to exist primarily as insoluble sulfides in barite, a portion is probably soluble or adsorbed onto clays or other materials (Kramer et al. 1980). This fraction may, therefore, be readily bioavailable, and the insoluble fraction may ultimately become bioavailable to the benthos in contact with deposited drilling muds. Since the ultimate fate, transformation, and bioavailability of these metals in drilling muds is poorly understood at present, limiting mercury and cadmium levels in barite to the "cleanest" sources available affords maximum protection of the marine environment.

The permit conditions are based in part on data for barite assumed to be available to Alaskan operators. Region 10 acknowledges the possibility of unexpected changes in metals content of "clean" barite. The permits therefore contain a provision which would allow the permittee to obtain a waiver from the limitations if compliance was not possible due to the lack of availability of barite which complies with permit limitations. The Water Division Director may grant such waivers on a case by case basis if the permittee demonstrates to the satisfaction of the Water Division Director that barite which meets the limitations is unavailable and provides the results of analyses of the substitute barite.

c. *Prohibition on the discharge of diesel oil.* Diesel oil is highly toxic to marine organisms. Recent research by EPA and others indicates that the toxicity of drilling fluids may be directly correlated with diesel oil content (see, for example, NRC 1983). Since alternatives to the use of diesel oil as an additive exist (Petrazzuolo 1983, NRC 1983), Region 10 is prohibiting the discharge of drilling mud systems containing diesel oil. Diesel oil may be substituted with mineral oil without affecting well drilling operations; and mineral oil, as well as muds containing mineral oil, generally have a lower toxicity to marine organisms. Mineral oil additives must be evaluated with respect to toxicity and approved by EPA prior to discharge, and the drilling mud system containing mineral oil must comply with the limitation on the discharge of free oil (Part IV.A.3.a., below).

The discharge of diesel oil is currently prohibited under Region 10's other general permits for offshore oil and gas exploratory operations. There is no cost beyond what is required of other Alaskan drilling operations currently subject to BPT limitations.

3. *BPJ/BCT Effluent Limitations.* By July 1, 1984, all permits are required by section 301(b)(2) of the Act to contain effluent limitations representing Best Conventional Pollutant Control Technology (BCT) for all categories and classes of point sources. BCT effluent limits apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliforms). Any BCT treatment improvements must be shown to be economically "reasonable" as defined in section 304(b)(4)(B) of the Act. BCT guidelines are currently under development and have not been proposed for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435). Therefore, the permits incorporate BCT effluent limitations based on Best Professional Judgment.

a. *No discharge of free oil.* In previous permits Region 10 has applied BPT limitations on the discharge of free oil in drilling muds and cuttings by using the static (laboratory) sheen test. This test, which is conducted onboard the drilling facility, is appropriate for the adverse weather conditions encountered in Alaska. As a condition of this BPJ/BCT permit, Region 10 continues to require the static sheen test in order to detect free oil. If a sheen is detected with this test, the drilling mud or cuttings cannot be discharged. Since the requirement is

zero discharge, there is no option more stringent to consider as a candidate BCT technology.

b. *Oil-contaminated cuttings.* These general permits restrict the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see Part IV.A.3.a., above) and by limiting the maximum mineral oil content of cuttings. The limitation of 10%, by weight, on oil content is based on the efficiency of available cuttings washers in removing mineral oil from drill cuttings.

Region 10 expects that cuttings washers will be required only for drilling operations which use mineral oil-based drilling muds and not for all drilling operations. Thus, the permit requires analyses of oil content only if mineral oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) were used during the monitoring period. The sheen test on muds and cuttings, however, is required daily for all discharges. The maximum oil content in discharged drilling muds due to additives or spotting agents must be stated in the end-of-well chemical inventory.

The permits require an analysis of cuttings for oil content both weekly (during any week in which discharge has occurred) and immediately on any sample that has failed the static sheen test. Two alternative analytical methods for determining the oil content of drill cuttings are specified in the permits: (1) The soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute retort distillation procedure for oil.

EPA believes that the limitation will not place a significant burden on the Alaskan offshore oil and gas industry since, due to the rare usage of mineral oil-based drilling muds, very few, if any, Alaskan facilities will require the installation of cuttings washers. Further, industry concurs that a 10% oil content limitation in these permits is attainable.

c. *Sanitary waste discharges.* The general permit provides that the concentration of chlorine be maintained as close to 1 mg/l as possible in sanitary waste discharges from oil and gas facilities housing ten or more persons. Any exploratory drilling vessels using an approved marine sanitation device that complies with section 312 of the Act shall be in compliance with the final permit [40 CFR Part 140(2)]. Since the BCT requirement is the same as BPT for sanitary waste discharges, there will not be additional costs from this requirement.

d. *Discharge of formation (produced) waters.* During exploratory drilling operations, the discharge of formation waters is not expected unless they are encountered during testing of the well. EPA cannot conclusively determine that discharges of formation waters will have no significant effect on Alaskan marine organisms. Except for those limited volumes which are encountered during testing of the well, the discharge of formation waters during exploratory drilling operations is prohibited. This position is in accordance with the requirements of section 403(c)(2) of the Clean Water Act because (1) insufficient information exists on the nature of this discharge, and (2) it has been demonstrated that the discharge of formation waters can adversely impact aquatic resources. BCT limitations for oil and grease equal to the BPT limitations have been placed on produced water discharges (test fluids). Additional limitations have been placed on pH to protect marine water quality. These discharges will be monitored with respect to pH, oil and grease content, and characterization of constituents added downhole. If monitoring information shows that the potential for unreasonable degradation may occur, EPA can reopen the permit and modify the discharge requirements for formation waters. Further, in the Beaufort Sea the discharge of formation waters is prohibited into open or ice-covered marine waters of less than 10 m in depth (U.S. Department of Interior and State of Alaska Lease Stipulations).

B. Other Discharge Limitations

In addition to the BAT and BCT effluent limitations, the permits include other conditions which may regulate or prohibit the discharge of drilling muds and cuttings, require predilution of discharged muds and cuttings, and limit the discharge of toxic substances. These requirements are designed to provide adequate dilution and dispersion of the waste and/or to protect water quality and aquatic resources. The general permits do not allow the discharge of any constituent of drilling mud systems in concentrations which exceed applicable marine water quality criteria (45 FR 79318) after allowance for initial mixing (40 CFR Part 227.29).

1. Bering Sea General Permit

The Agency has not identified a need for reduced flow rates or predilution of discharged drilling muds and cuttings in the St. George and Navarin Basins. Existing field and computer modeling studies for oceanographic conditions similar to those occurring in the permit areas are adequate for evaluating dilution and dispersion of discharged drilling muds and cuttings.

2. Beaufort Sea General Permit

EPA proposes to regulate the discharge of drilling muds and cuttings depending on water depth, aquatic resources potentially impacted, and ice conditions at the discharge location.

Prohibited Discharges in Shallow Waters: Discharges of muds and cuttings are prohibited in the shallow water area from the shoreline out to the 2 m isobath during the open water season. EPA is confronted with a lack of data on discharges of drilling muds to shallow water areas (0 to 2 m depths). Mathematical dispersion models are also limited to deeper waters. Available data indicate that dilution and dispersion would generally be limited due to the small amount of tidal action and would depend mostly on periodic strong winds and storms. Thus, there is a significant potential for accumulation of drilling fluids in these areas. The shoreline waters of the Beaufort Sea 0 to 2 m deep provide important feeding and migratory habitat for a large number of species. Therefore, EPA cannot conclude that the discharge of muds and cuttings to these shallow receiving waters would not cause irreparable harm to the environment.

Prohibited Discharges in River Mouths and Deltas: Discharges of muds and cuttings within 1000 m of river mouths or deltas is also prohibited. Discharges are allowed in deeper water beyond the 2 m isobath, but a 9:1 predilution (seawater: muds and/or cuttings) will be required out to a water depth of 20 m. The Region is presently evaluating this predilution requirement using the OOC (Offshore Operators Committee) Mud Discharge Model. The model is being used to evaluate how different receiving water conditions (e.g., depth, current, and stratification) and discharge options (e.g., predilution vs. a reduced discharge rate) affect water column concentrations of suspended solids and bottom accumulations of drilling muds and cuttings.

Exclusion of Stefansson Sound Boulder Patch: The permit does not authorize discharges within 1000 m of the Stefansson Sound Boulder Patch as shown by Dunton et al. (1982). The Boulder Patch is specifically defined as an area that has more than 10% of a one-hundred-square-meter area covered by boulders to which kelp is attached. Permit coverage also does not include the area between individual units of the patch where the separation between units is greater than 2000 m but less than 5000 m, as, for example, found between Narwhal and Duck Islands. Facility owners and/or operators wanting to

locate in this area are required to apply for and obtain individual NPDES permits. Due to the uniqueness of the Boulder Patch, EPA will need the 180-day application period of the individual permit to ensure that an acceptable monitoring program is developed and initiated prior to any discharges to this area.

C. Monitoring and Enforcement

The general permits require operators to monitor the discharge flow rate of muds and cuttings, the daily results of the static sheen test on drilling muds and cuttings, the pH and oil and grease content of test fluids when discharged, and the chlorine residual in sanitary waste discharges. In addition, the permits require monitoring of the drilling muds and cuttings for free oil, the presence of diesel oil, and heavy metals. Drill cuttings to be discharged must also be monitored for oil content if an oil-based drilling mud was used and/or if the static sheen test is positive. Monthly flow rate estimates are required for deck drainage and sanitary and domestic wastes. The permittee must maintain a chemical inventory of all constituents added downhole, their estimated maximum concentrations at the point of discharge and the total volume or mass discharged. Other reports are required for requests for approval of non-approved additives and drilling muds. The permits require monthly reporting of ongoing monitoring activities so that EPA will have an early opportunity to review the effectiveness of the permit limitations. This information will also be useful in developing general permits in other OCS areas.

Several environmental monitoring requirements have been identified as a result of the ODCEs for Federal Lease Sales 71 and 87, the joint Federal/State Lease Sale BF, and State Lease Sales 39 and 43. No environmental monitoring programs have been identified for Federal Lease Sales 70 and 83. As provided by 40 CFR Part 125.123(a), the monitoring requirements are intended to provide information on the fate and, in some cases, the effects of discharged drilling muds. These requirements primarily involve field monitoring of drilling muds discharged on-ice from 0–2 m, to open water from 2–5 m, below-ice (any depth), and within 1,000 m of a unique biological community or habitat.

It is not EPA's intention to have all operators monitor in a particular area. Ideally, the monitoring sites and the specifics of each monitoring program will be developed well in advance of any discharges from exploration activities The Agency has requested the assistance of the Alaska Oil and Gas Association in working with the operators and EPA to develop monitoring plans so that all operators share any financial and operational burdens. They have not as yet responded to this request. Without such coordination, the monitoring requirements of the permits will be assigned on a case-by-case to the initial operator in an area requiring monitoring. Except for areas of biological concern (e.g., an overwintering habitat for fish under ice), subsequent discharges may be allowed without monitoring. In areas of biological concern, subsequent discharges would be prohibited until the results of the initial monitoring study have been received and evaluated by EPA and the Alaska Department of Environmental Conservation.

Existing field studies in the Beaufort Sea are of limited value because only relatively small volume discharges were studied, and the water column sediment sampling programs were not comprehensive enough to obtain definitive results. Computer models are also of limited use because they have not been field verified in shallow water, and the models may not be appropriately designed for discharges in shallow water.

V. Other Legal Requirements

Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, these permits do not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of toxic pollutants which are covered by section 311 of the Act.

Endangered Species Act

Based on information provided by the Environmental Impact Statements prepared for each of the Federal lease sale areas, EPA has concluded that the discharges authorized by these general permits will neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat. Further, EPA requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the draft permits, and considered their responses in the final permit decisions. EPA will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

Coastal Zone Management Act

The draft permits and consistency certifications were submitted to the State of Alaska at the time of public notice. The State of Alaska has concurred that the activities allowed by these general permits are consistent with the Alaska Coastal Management Plan.

Marine Protection, Research, and Sanctuaries Act

No marine sanctuaries exist in the vicinity of the permit areas.

State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to Section 401 that the discharges authorized in State waters by the Beaufort Sea general permit comply with State water quality standards. Since State waters are not included in the Bering Sea general permit area, the provisions of Section 401 of the Act do not apply.

Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. Comments received during the public comment period on the information collection requirements contained in the draft general permits are addressed in Appendix A of this notice ("Public Comments").

Effective Date

The final NPDES general permits published today are effective on May 30, 1984, the date of signature. Ordinarily, EPA would issue these permits and allow 30-days before making the final permits effective. However, EPA may, under 5 U.S.C. § 553(d)(1) make the permits effective immediately because it relieves a restriction on the regulated community by authorizing the discharge of pollutants in compliance with its terms. Without a permit, discharges of

pollutants are prohibited under section 301 of the Clean Water Act. In addition, EPA finds that good cause exists under section 553(d)(3) because a later effective date would result in significant economic loss due to delays in the commencement of exploratory drilling operations. The 30-day period between the date of issuance and the date of effectiveness is provided to afford administrative appeal, and this procedure is not available for general permits.

The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C 605(b), that these general permits will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 *FR* 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: May 30, 1984.

Ernesta B. Barnes,

Regional Administrator, Region 10.

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Appendix A—Public Comments

A public hearing was held on the proposed Bering Sea and Beaufort/Chukchi Seas general NPDES permits in Anchorage, Alaska, on April 16, 1984. Numerous comments were submitted to EPA during this public hearing and within the public comment period, which closed on April 18, 1984. The following individuals testified during the hearing: William D. Maer, Alaska Oil and Gas Association; Richard Shafer, Sohio Alaska Petroleum Company; and Dave Yesland, Shell Western E & P, Inc.

The following parties responded with written comments during the public comment period:

Alaska Oil and Gas Association
American Petroleum Institute
ARCO Alaska, Inc.
Bering Straits Coastal Resource Service Area Board
Chevron U.S.A. Inc.
Conoco Inc.
Dresser Industries, Inc.
Exxon Company, U.S.A.
Gulf Oil Exploration and Production Company
Marathon Oil Company
Natural Resources Defense Council, Inc.
North Slope Borough
Nunam Kitlutsisti
Petroleum Equipment Suppliers Association
Placid Oil Company
Shell Western E & P Inc.
Sierra Club
Texaco U.S.A.
U.S. Department of the Interior, Fish and Wildlife Service

The following party submitted comments which were mailed and received after the public comment period: U.S. Department of the Interior, Minerals Management Service.

During the public comment period, the following parties requested authorization to discharge under the general permit for the Bering Sea: ARCO Alaska, Inc.; Chevron U.S.A. Inc.; Gulf Oil Exploration and Production Company; Exxon Company, U.S.A.; Mobil Oil Corporation; Placid Oil Company; and Shell Western E & P Inc. Also during the public comment period, the following parties requested authorization to discharge under the general permit for the Beaufort Sea: Exxon Company, U.S.A.; Global Marine Development Inc.; and Shell Western E & P Inc.

Significant comments presented during the public comment period and at the public hearing were reviewed by EPA and considered in the formulation of the final decision regarding the proposed permits. The comments and Region 10's responses to the comments are as follows:

1. *Comment:* Industry representatives and trade organizations were opposed to incorporating in these permits Best Professional Judgment (BPJ) determinations of permit terms representing Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT). This was perceived as preempting and second-guessing, without an adquate technical basis, the national effluent guidelines for the Offshore Oil and Gas Subcategory under development by the EPA Headquarters Effluent Guidelines Division (EGD). In addition, EPA's anti-backsliding policy would prevent changing the permit if less stringent guidelines were eventually promulgated. It was proposed that EPA set BPJ of BCT/BAT equal to BPT (Best Practicable Control Technology Currently Available) and include a reopener provision in the permits to allow permit modification when guidelines are promulgated. The existing Beaufort Sea and Norton Sound general permits were cited by industry as having advanced beyond BPT and as containing the best professional judgments of the regulators, the scientific community, and the permittees of effluent limitations necessary at this time. An environmental organization supported issuing a permit with BPJ determinations, but underscored the importance of prompt development of BAT guidelines for the Offshore Subcategory. An organization representing Native concerns protested the use of BPJ determinations as not allowing a meaningful opportunity for comment and urged retention and enforcement of BPT standards. However, this latter comment was based on the misunderstanding that BPT would be more stringent than BPJ of BCT/BAT, which is not the case.

Response: As discussed in the fact sheet accompanying the draft permits, July 1, 1984, is the statutory date requiring the implementation of BCT and BAT effluent limitations. In the absence of effluent guidelines, under 40 CFR 122.43, the Agency has clear authority and the responsibility to establish permit conditions, as required, on a case-by-case basis. In making the determinations for these permits, the Agency has taken into account the factors cited in section 304(b) of the Act, including engineering aspects of various control techniques, costs of achieving effluent reduction, and the feasibility of applying specific control techniques. Contractor reports and studies prepared for the EGD were a principal source of information for these determinations. At this time, EGD considers the technical and cost information it has gathered in conjunction with this guidelines development effort to be complete for most categories of discharge. The Region's permits, while perceived as precedent-setting, are in no way binding on other Regions. Moreover, justification for some of the permit terms is related to conditions specific to Alaskan operations. These conditions should be reevaluated as appropriate for application in other Regions.

The anti-backsliding provision (40 CFR 122.44(l)) will apply to reissuance of these permits with the exception of effluent guidelines that are subsequently promulgated based on BCT [40 CFR 122.44(l)(2)(iii)]. The permits issued today are similar to the existing Norton Sound and Beaufort Sea permits and go beyond BPT in controlling toxics. Based on a thorough review of EGD data, these permit terms are not anticipated to be more stringent than the guidelines that will be proposed. In the event more stringent guidelines are promulgated in 1985, the final permits contain the reopener clause proposed by industry. The permits may also be reopened and modified or revoked at any time if the Regional Administrator determines that unreasonable degradation of the environment is occurring as a result of the permitted discharges.

The Agency agrees that it is important to promulgate national effluent guidelines for this subcategory soon. This was identified as a priority EGD effort in the *Natural Resources Defense Council, Inc.* v. *Costle*, Settlement Agreement, C.A. No. 7963442 (D.D.C.).

With regard to public input, although the BPJ permit issuance process does not generally allow for the extended time period for comment and revision normally true for guidelines development, it does provide for a Federal Register notice, notices in local newspapers, and a public hearing, all aimed at soliciting public comment. In addition, the State solicits public input in its decisions through its Section 401 water quality certification (only required for State waters) and Coastal Zone Management consistency determination. All comments have been carefully considered in the final permit decisions.

2. *Comment:* The Regional Administrator has erroneously concluded that "oil and gas facilities operating under effluent limitations and conditions in the Bering Sea and the Beaufort/Chukchi Seas general permit areas will not cause unreasonable degradation to the marine environment pursuant to the Ocean Discharge Criteria Guidelines."

Response: An NPDES permit for a marine discharge can not be issued except in compliance with guidelines for determining the degradation of marine waters. The guidelines are referred to as Ocean Discharge Criteria (40 CFR 125.120–124). Ocean Discharge Criteria Evaluations (ODCEs) have been prepared for the permitting activities proposed by EPA, and are a part of the administrative record which is available for public review. The Region has concluded, after detailed evaluations of the potential adverse impact caused by the discharges from oil and gas exploration operations, that unreasonable degradation of the marine environment will not under the conditions of the permits.

3. *Comment:* Individual permits which take into account site-specific conditions are clearly more appropriate than general permits because (1) industry has very little drilling experience in the Beaufort and Chukchi Seas and none in the Bering Sea; (2) the data base on currents and dispersion in these areas ranges from extremely minimal to non-existent; and (3) both regions have extremely sensitive and valuable biological resources. Knowledge of discharge effects on the biological resources is therefore rudimentary to non-existent.

Response: As shown in the ODCEs, there is a greater data base available on currents, dispersion, and biological resources than the comment indicates. In addition, industry does have substantial drilling experience in the permit areas, having drilled approximately 40 wells in the Alaskan Beaufort Sea, numerous others in the Canadian Beaufort Sea, and several stratigraphic test wells in the Bering Sea. Region 10's decision to issue general permits was made only after considering all available information, including many field and laboratory studies on the fate and effects of drilling or similar discharges. For example, approximately 70 sources on these topics were evaluated in the ODCE for Federal Lease Sale 87.

4. *Comment:* Native organizations and environmental groups raised a concern about EPA's ability to monitor and enforce the permit terms given limited staff and travel funds and the size, remoteness, and severity of weather conditions in the permitted areas. There was particular concern about EPA's ability to evaluate and verify industry-collected analytical data. It was suggested that EPA develop and distribute for public review an enforcement plan for the permits, prior to issuance of any discharge permits.

Response: It is not within the scope of these NPDES permits to rigidly define in advance the way in which enforcement shall occur. EPA routinely targets facilities for compliance verification inspections. The criteria used to select these facilities include: the date of last compliance inspection, compliance history (with permit terms and previous inspections), relative impact of the facility's discharge to the receiving water, and maximization of the inspector's time (i.e., geographic grouping of facilities). Although EPA's staff and resources for on-site monitoring are limited, a joint agreement with the Department of Interior (DOI) has been drafted that would provide for involvement of DOE's Minerals Management Service personnel in the EPA compliance program. DOI personnel are frequently on site during rig operations.

Self-monitoring has been required in NPDES permits since the early 1970's and has proved an effective, viable means of ascertaining compliance with applicable effluent limits. The false reporting of self-monitored information can carry significant penalties, both civil and criminal. The accuracy of the reports is verified during on-site inspection conducted by EPA personnel.

5. *Comment:* The permits should be keyed to areas rather than lease sales to avoid the necessity for permit reissuance or extension with each new lease sale. Alternatively, the present permits should include a mechanism whereby coverage could be administratively expanded to future lease sale areas. If the permits must be keyed to lease sales, they should include all areas described in the ODCEs rather than leased tracts only.

Response: Region 10 has revised the permits to cover all areas offered for lease at each sale rather than those

tracts actually leased. This is reasonable given that the environmental information and estimates of the number of operations and their discharge volumes described in the ODCEs for the lease sales apply to the entire sale area. Because the boundaries of the lease sale areas described in the ODCEs were modified prior to the lease sales by Minerals Management Service (MMS) or the State for environmental or other reasons, the final permits limit coverage to those areas offered at the lease sales rather than those areas described in the ODCEs.

Due to the insufficient environmental and discharge information available at this time, the permits will not be expanded to cover those areas proposed for future lease sales, which were not offered previously. Some of the required information for a particular lease sale is contained in that sale's MMS Draft Environmental Impact Statement (DEIS) or State of Alaska Social, Economic, and Environmental Analysis (SEEA), as well as studies conducted in the preparation of that document. The DEIS or SEEA is not available until 9 to 12 months before the lease sale, which means that an Ocean Discharge Criteria Evaluation and decision to issue a permit cannot be made until that time. As those lease sales draw closer and the documents for them become available, the present permits will be reevaluated to see if they can be modified to include the new areas or if new permits will be required.

6. *Comment:* General permits are acceptable, but they should limit the number of point sources allowable in any given geographical area.

Response: In evaluating discharges from exploratory operations, EPA used exploration scenarios developed by the Minerals Management Service in their environmental impact statements for Federal lease sales, or by the State of Alaska for State lease sales. For some State lease sales, a conservative forecast of drilling activity was used where more specific forecasts were lacking. In any case, EPA has found that exploration discharges in offshore lease sales are separated temporally and/or spatially such that unacceptable cumulations of discharged materials from exploration activity are highly unlikely to occur in a defined geographical area. The history of exploration activities on the Alaskan OCS generally substantiates this finding. EPA, therefore, will not limit the number of point sources in a given geographical area beyond the limit contained in the draft permit of five wells per site. The general permit can be reopened, however, if unexpected discharge activity occurs which results in unreasonable degradation. We expect that this may be a concern more properly directed to the discharges occurring during the development of an oil field.

7. *Comment:* Several industry representatives protested the limitation on the toxicity of the complete drilling mud mixture (i.e. containing all additives), and requested a return to separate lists for approved drilling muds and for approved additives. Having a separate list of approved additives affords maximum operational flexibility since any additives on the approved list could be used in the basic generic drilling muds listed in Table 1. Industry commented that costly delays could result if unforeseen drilling conditions require the use of additional additives and if the permittee must consequently: (a) Evaluate the toxicity of the new formulation, and (b) certify 60 days prior to discharge that it complies with the toxicity ceiling. Therefore, industry requested that: (1) An approved additives list be restored and an EPA nationwide approval process be developed (see Comment 8), (2) the definition of approved drilling mud types be changed to the definition in the existing Beaufort Sea and Norton Sound general permits (the former is also referred to as the BF general permit because it covers the area of Joint State-Federal Lease Sale BF), (3) the certification requirement be changed to require certifying that only generic muds and approved additives will be discharged, and (4) that provisions allowing the emergency use of additives be reinstated.

Additional comments from various industry representatives were: (a) Barging is extremely costly and will not always be feasible in these particular lease sale areas; thus no discharge of drilling muds may not be a feasible option, (b) a permittee cannot absolutely guarantee and certify that a discharged drilling mud will continuously meet a particular toxicity ceiling based on a bioassay test, and (c) the basic mud types should not be limited to the eight generic muds.

Response: Region 10 has carefully evaluated the above concerns. While we acknowledge that unforeseen drilling conditions may require last-minute reformulation of drilling muds, we also believe that advance planning for special additives to handle specific drilling roblems should and does take place, especially for operations in frontier areas of Alaska. Thus, we agree that the certification requirement, as written with the 60-day advance notification requirement, may not be a feasible means of controlling the discharges in all cases. A more practicable approach for limiting the toxicity of additives, including a separate approved additives list, has been incorporated into the final permit. As suggested, the permittee will be required to certify that only generic muds and approved additives will be discharged. The additives list and the approval process for additives and non-generic muds will limit the toxicity of the final drilling mud system. Additional provisions will control the discharge of mineral oil as a spotting or lubricity agent (see Comment 12). This overall approach is consistent with the objectives in the draft permits and the existing general permits for Norton Sound and the BF Lease Sale area.

Emergency use provisions, however, will not be incorporated into the permit, since Region 10 believes that advance planning and bioassay testing of additives is achievable by industry and essential for the control of drilling mud additive toxicity. We firmly believe that all materials, including those which will be made available in the event that unforeseen drilling problems are encountered, should be evaluated with respect to their toxicity before their discharge. Thus, for products with a similar application, those resulting in unacceptable toxicities can be substituted with less toxic products in order to meet the toxicity limitations.

8. *Comment:* Several industry representatives requested that: (a) Region 10 consider adopting the approved additives lists from other Regions, and (b) EPA Headquarters conduct all future approvals of additives so that criteria would be uniformly applied in all Regions.

Response: Each Region has developed an approach for evaluating and limiting drilling mud additives in conducting its section 403(c) determination. No standardized approach has been used nationwide. Thus, we have no basis for judging previously-approved additives.

EPA's Effluent Guidelines Division, in developing proposed BAT effluent limitations guidelines, is currently evaluating approaches to controlling the discharge of toxic constituents in drilling muds. Their proposal is not expected until early this fall. For the time frame of these permits, it is therefore not feasible for EPA Headquarters to conduct the initial approval process. However, we strongly support this approach in the future.

9. *Comment:* Industry representatives commented that toxicity limitations on drilling muds should be based on

concentrations of drilling muds at the boundary of the mixing zone. They assert that the proposed LC_{50} (toxicity) limitation could be lowered by as much as an order of magnitude. They stated that drilling muds are practically nontoxic, that with rapid settling and dilution, concentrations are rapidly diminished in the ocean, and that biological impacts, if measurable, are limited to burial of the benthos. Industry contends that long-term accumulation of drilling muds is unlikely in high energy environments such as the Bering and Beaufort Seas.

Response: Although drilling muds are generally "practically nontoxic" according to the classification reprinted in the 1983 National Research Council report, "Drilling Discharges in the Marine Environment", the most toxic generic mud and generic muds containing mineral oil are within the "slightly toxic" category.

The permit restriction on toxicity is based on product substitution and standardized bioassay testing of the generic muds. It is also based on the limiting permissible concentration that will not cause unreasonable toxic effects in sensitive marine species at the boundary of the mixing zone. This level can be considered to be the concentration which will not cause chronic toxicity or other sublethal adverse effects, and may be derived from the acute toxicity (96-hour LC_{50}) level by multiplying it by an appropriate application factor. The standard application factor of 0.01 may be conservative for drilling muds. 0.33 is the upper limit based on bioassay results for the ratios of chronic to acute toxicities for a particular drilling mud and a particular species. Based on bioassays of Alaskan species with used drilling muds, Region 10 has determined that, for the types of drilling muds expected to be discharged under these permits, the acute toxicity level for an appropriate sensitive Alaskan species, pink salmon fry, is 3000 ppm v/v (volume/volume mixture of drilling mud with seawater, as reported in the ODCEs). Use of an application factor for chronic or sublethal toxicity results in a maximum permissible concentration at the boundary of the mixing zone from 30 to 990 ppm v/v, depending on which of the above application factors is used. A maximum allowable concentration of 30 ppm is the most conservative value.

These concentrations can be compared to those expected under field conditions. Given a minimum expected dilution of the discharged drilling mud of approximately 8000:1 in deeper water (according to the ODCE for lease Sales 83 and 70), the concentration of drilling mud at the boundary of the mixing zone will be approximately 125 ppm v/v. This concentration is less than the level which is expected to cause acute toxicity (3000 ppm). It is within the range estimated to have a potential for causing chronic or sublethal toxicity (30 to 900 ppm); however, chronic or sublethal toxicity is not expected to be significant under field conditions because the exposure to discharge plumes will not be long-term, but rather intermittent and short. Therefore, based on the acute toxicity level of 3000 ppm (v/v), the drilling mud plume is not expected to cause acute toxicity effects or unacceptable sublethal or chronic toxicity effects after initial mixing in the ocean. However, EPA believes that lowering the allowable LG_{50} level (increasing the toxicity) by as much as an order of magnitude, as suggested by industry, is not generally acceptable under section 403(c). It should further be noted that not all areas in the Beaufort and Bering Seas are high energy environments, particularly during ice cover conditions.

10. *Comment:* Bioassay testing should be conducted with indigenous, sensitive marine organisms representing benthic, planktonic, and pelagic life forms and various phylogenetic groups. Long-term, cumulative, and sublethal effects should be evaluated. Industry should not be allowed to base the proposed certification of compliance with the toxicity ceiling on the principle of additive toxicity since possible synergistic effects must be considered.

Response: Region 10 agrees that useful information could be derived from testing a variety of indigenous species with all new drilling mud formulations. However, without a standardized testing procedure for each species, it would be difficult to make a direct comparison of the tests results for the different drilling mud mixtures. Thus, Region 10 has determined under section 403(c) and the BPJ determination of BAT that a permit condition based on the existing standardized test protocol is essential for comparing and limiting the relative toxicities of drilling mud components and mixtures. Chronic toxicity or other sublethal adverse effects are considered in detail in ODCEs. As a practical approach, chronic levels may be estimated by multiplying acute toxicity levels by an appropriate application factor (see previous comment). These permits may also require biological monitoring in biologically sensitive areas, as discussed in comment 33. Although the standardized procedure currently tests only this suspended particulate phase, research is being conducted on a sensitive solid phase bioassay test.

Region 10 believes that the standardized test procedure required by these permits is a reasonable and practical tool for limiting the toxicity of drilling muds from exploratory wells in the Alaskan marine environment. Testing of numerous marine and estuarine species from Alaska and other areas with a variety of water-based drilling muds (including the generic drilling muds and use muds characteristic of those which may be discharged from Alaskan drilling operations) indicates that the range of sensitivities are similar among Alaskan species and all species tested. Also, morphologically similar species from different areas in some cases show similar sensitivities to drilling muds. These results suggest that an adequately sensitive nearshore species is an appropriate indicator for toxic effects of drilling muds.

EPA has revised the certification procedure and will be evaluating individual additives for approval to discharge. Therefore, the proposed provision allowing the permittee to base a certification on the principle of additive toxicity has been deleted.

11. *Comment:* In addition to the acute bioassay test, the following factors must also be considered in the approval criteria for additives: Chemical composition, biodegradability, and overall persistence in the marine environment.

Response: Region 10 agrees that these factors are extremely important and does require information on the chemical composition of additives. For the present permits, Region 10 has determined that the appropriate primary screening criterion for approving additives is acute toxicity (in 96 hours), as determined by a standardized test protocol. Long-term biodegradation and persistence are addressed in a general way in the additive approval process through knowledge of chemical composition of the additive and the general behavior of compounds and classes of compounds in the marine environment. Short-term biodegradation and persistence are addressed indirectly through the use of a 96-hour bioassay test.

12. *Comment:* An industry representative commented that, "While the LG_{50} value is low enough to accommodate the eight generic muds and most of the approved additives, mineral oil lubricity agents will be a problem."

Response: Region 10's intent in limiting drilling mud constitutents is to require that for a given application, less toxic substances be substituted for more toxic substances. As discussed in this notice (PART IV.A.2.a.), mineral oil additives have been given special consideration. Mineral oils may approved as additives in drilling muds (subject to other limitations on free oil and elutriate oil and grease) if: (a) Standard bioassay data demonstrate that the selected mineral oil would not cause a drilling mud to be more toxic than the most toxic generic mud, or (b) the permittee adequately demonstrates that the requested mineral oil is the least toxic available mineral oil alternative.

13. *Comment:* One party expressed concern that substituting less toxic additives for more toxic additives would result in the discharge of greater volumes of the less toxic additives to be released.

Response: It is conceivable that greater volumes of less toxic additives and components could be released. It is also possible that similar or smaller volumes could be released because the amount of additives used depends on what amount is necessary to do the job during drilling. Changes in additive volumes will have only a minor effect on overall mud volumes for a well, however, and that mud must comply with the toxicity limitations established in the permit.

14. *Comment:* Since used whole muds may have an increased toxicity over laboratory formulated muds, industry should be required to demonstrate that used muds comply with the toxicity limitation. While this information is being gathered, toxicities of unused whole muds should be determined in the laboratory, with each additive included at its maximum expected concentration. Laboratory formulated drilling muds should be subjected to temperature and pressure conditions which simulate drilling conditions ("hot rolling") before bioassay testing.

Response: Region 10 agrees that testing used drilling muds would provide useful information. However, testing of used muds would not be a practical approach to limiting the discharge due to the time required to transport and test a sample in the lab. EPA intends therefore to rely primarily on laboratory formulated drilling muds for evaluating the toxicities of additives and drilling muds since controlled conditions will allow direct comparisons of different formulations. EPA is conducting bioassays of used drilling muds as part of its on-going research efforts. Additional testing of used drilling muds may be required of the permittees if EPA grants interim approval of an additive or drilling mud and determines that testing of the used drilling mud is warranted (see Part II.A.1.f. of the permit). EPA recommends that laboratory formulated muds should be hot-rolled whenever possible.

15. *Comment:* The mercury and cadmium limitations on barite are not justified since these metals are expected to have low bioavailability and toxicity to marine organisms. Studies demonstrating solubility of these metals have not examined a number of additional factors, including the bioavailability or bioaccumulation of the solubilized trace elements. Thus, the Agency has failed to support its contention that mercury and cadmium in barite cause, or have caused, an environmental problem from the discharge of drilling fluids. A large percentage of ocean sediments would fail the proposed standards. A 10 ppm limitation would be more achievable, and there is insufficient evidence to warrant a more stringent level. Additionally, supplies of barite of diffrent qualities are often blended to meet a specific gravity requirement.

Response: Bioaccumulation of metals in invertebrates collected from contaminated sediments as opposed to uncontaminated areas is well documented. Additionally, a large body of data demonstrate the toxicity and bioaccumulation potential of cadmium and mercury in particular. However, the bioavailability, biotransformation, and chemistry of these metals in discharged drilling muds needs further study. EPA has carefully reviewed data available to date on metal contamination resulting from drilling mud discharges. In some cases, the barite in the drilling mud was characterized as having mercury and cadmium levels that would meet the proposed limitations; these studies have confirmed our belief that the proposed limitations in the draft permits are environmentally sound since serious contamination of sediments or organisms was not demonstrated. By comparison, a study that examined the discharge of drilling mud with barite containing 14.2 mg/kg mercury and 10 mg/kg cadmium demonstrated increased levels of mercury, cadmium, and other metals in the sediment near the platform. Two samples of benthic organisms collected near the platform appeared to have elevated mercury levels (baseline data were not collected and the sample size was small). The platform was located in a dynamic nearshore area, where erosion of the gravel island drilling platform was occurring and resuspension of sediments and drilling mud discharges would be expected. In less dynamic areas, the discharge of drilling muds with these levels of mercury could result in greater contamination.

For reasons discussed in this notice (Part IV.A.2.b), control of these toxic heavy metals is appropriate under section 403(c) as well as under the BPJ determination of BAT. Since these two heavy metals may be present as impurities in particular sources of barite, EPA's intent in proposing the limitations in the draft permits was to ensure the discharge of only relatively uncontaminated or "clean" sources of barite. Thus, the proposed limitations were based on the best available technology using product substitution.

In response to industry's comment that proposed limitations on mercury and cadmium in discharged barite should be raised. Region 10 has reevaluated these limits. The proposed 2 mg/kg limitation on cadmium has been replaced by a value of 3 mg/kg. Region 10 has determined that the 3 mg/kg limitation will ensure, without being unduly restrictive, that only relatively uncontaminated sources of barite will be discharged. The limitation on mercury in discharged barite remains unchanged. A requirement for measuring "active" mercury and cadmium (one fraction which disassociates and may become readily bioavailable) in the end-of-well drilling mud sample has been included in the final permits. This and other information (e.g. definitive bioaccumulation studies and a determination of ultimate bioavailability) will be considered in determining future effluent limitations.

16. *Comment:* Several industry representatives and barite suppliers commented that the proposed limitations on barite would have a significant economic effect on the world barite market since roughly one-half of the world's barite would be unacceptable for offshore use. Another industry representative stated that the limits would eliminate approximately 70% of the current sources of barite.

Response: Region 10 believes that discharging only relatively uncontaminated barite is economically achievable by Alaskan operators. The current barite source for Alaskan operators complies with the conditions in the final permits, and analyses of Alaskan muds demonstrate low levels of mercury and cadmium. Region 10 has reevaluated the proposed limitations and has revised the limitation on cadmium (see previous comment). Additionally, a provision has been added which would allow the permittee

to obtain a waiver from the limitation of compliance was not possible due to the lack of availability of "clean" barite. The Water Division Director may grant such waivers on a case by case if the permittee demonstrates to the satisfaction of the Water Division Director that barite which meets the limitations is unavailable and provides the results of analyses of the substitute barite.

17. *Comment:* EPA has questionable legal authority to place a limitation on a raw material, barite, and to regulate a product before it reaches the platform.

Response: The limitations on barite apply only if the barite is being discharged in drilling muds. The permit conditions do not allow the discharge of drilling muds to which contaminated barite was added. The limitations are written to allow sampling of the raw barite, rather than the drilling muds, for compliance. Since barite is expected to be the chief source of heavy metals in discharged drilling mud, the limitations will effectively control the levels of metals in the discharge. Region 10 did not place the limitation on the drilling mud because it would not be feasible for an operator to determine in advance if the discharge complied with the permit requirements, since metals analyses generally have to be conducted at commercial laboratories onshore. Such a requirement would impose costly and unreasonable delays while the analyses were being conducted.

18. *Comment:* Two oil and gas trade associations and several oil companies expressed concern for the proposed permit condition which prohibits the discharge of a drilling mud system which contained diesel oil. They requested that EPA modify this condition to allow the discharge of a drilling mud system after a "diesel pill" and an appropriate buffer of diesel-contaminated mud have been removed for non-marine disposal. Further, it was offered that marine discharge would not occur if the diesel level in the remaining mud system was greater than a trace (0.5% or 5,000 ppm by means of the standard API retort analysis) above the level in the drilling mud system prior to the addition of the "diesel pill."

Response: In the Region's recent BPT general permits (48 FR 54881), the discharge of drilling mud systems which contained diesel was prohibited. The oil and gas industry had no information then and offers none at this time on the efficiency of the "diesel pill" removal process. Significant questions still remain even after all of the discussions EPA has had with industry. Two of the most important questions are the volume of the "appropriate buffer zone" of diesel-contaminated mud to be removed, and the diesel concentration in the remaining mud system. This information is not obtainable by EPA. Further, as reported by the National Research Council of the National Academy of Sciences in "Drilling Discharges in the Marine Environment," there is growing evidence that diesel fuel may contribute significantly to the toxicity of drilling fluids that contain it. Research has shown that as little as 100–200 ppm unweathered No. 2 fuel oil added to a water surface can result in toxic concentration of dissolved hydrocarbons. Mortalities to various aquatic organisms occurred after short duration (48 hrs) exposures to dissolved oil-derived hydrocarbon concentrations initially in the range of 1–50 ppm. These mortalities occurred even though 80–90% of the hydrocarbons was lost to evaporation in the first 24 hours.

The partitioning of diesel in drilling fluids, which is expected to be similar to No. 2 fuel oil, will result in up to 90% of the hydrocarbons entering the water column. Thus, the discharge of drilling muds containing 5,000 ppm diesel oil is also very likely to result in dissolved hydrocarbon concentrations that have toxic effects after short exposures. Because of the highly toxic nature of diesel, the Region will maintain the prohibition on its use as an additive or as a spotting fluid. Reasonable substitutes of lower toxicity (e.g., mineral oil) are available for these uses. Therefore, the recommended method for diesel pill removal and testing is not considered adequate to protect the marine environment from "unreasonable degradation."

19. *Comment:* Diesel refers to a subset of pollutants (i.e., oil and grease) which are to be regulated as conventional, not toxic, pollutants.

Response: Diesel oil is a complex mixture of petroleum hydrocarbons. Alkenes and aromatics are of greatest concern as toxicants; many of these are formed during the refining process. Aromatics, phenols, and certian alcohols are water-soluble. Photooxidation can also generate materials highly toxic to aquatic organisms. Further, exposure to ultraviolet light increases the toxicity of the water-soluble fraction of No. 2 fuel oil. Because of this complex toxicity, Region 10 has concluded that diesel oil should be considered as a toxic rather than as a conventional pollutant such as oil and grease.

20. *Comment:* The proposed GC methodology for detection of diesel should not be included in the permit since it is "untested" and relies on a "standard diesel oil," which does not exist. A definition of "no diesel in the discharged mud" must consider that ubiquitous "trace amounts of hydrocarbons" occur in drilling muds.

Response: GC analysis of drilling muds for diesel content is not an untested procedure; it has been conducted as part of a number of studies. Refinements of a protocol are being developed; however, the currently specified approach is adequate for determining compliance with the permit limitation. EPA has considered that trace amounts of hydrocarbons may occur in drilling muds in the absence of diesel. By requiring a GC analysis, a hydrocarbon spectrum characteristic of diesel can be distinguished from other sources of hydrocarbons. Since diesel oils vary, the permit requires the drilling mud sample to be compared with a sample of diesel fuel from the drilling platform.

21. *Comment:* Several oil companies and industry trade associations suggested that the 5% (w/w) mineral oil limit on cuttings be modified or deleted. Two of the parties felt that a 5% limit was not achievable with the present cuttings washer technology, while another thought there were no technical nor environmental data to support such a limit. Suggested options for the final permit were: (1) Change the limit to read 10% by weight; (2) set no limit pending further evaluation of cuttings washers; or (3) delete the limit altogether (the "no free oil" condition would still apply to the discharge).

Response: Region 10 agrees that the present cuttings washer technology may not be able to achieve a 5% limit. Because most cuttings washers are able to achieve residual mineral oil levels between 5 and 10%, the permit has been changed to allow a residual mineral oil concentration of 10% (by weight).

22. *Comment:* Cuttings washers should be used even for systems without reported mineral oil usage since the illegal usage of mineral oil cannot be ruled out. Although analysis would be required if a sample fails the sheen test, this is an after-the-fact type of check. EPA needs to determine what it will do if a violation is found.

Response: The high cost of cuttings washers does not warrant their placement on a rig if they will only be required to meet effluent limitations when mineral oil-based drilling muds are being used. The permittee will perform the sheen test daily. EPA will monitor the results of that testing in accordance with the procedures discussed in the response to Comment 4, including on-site inspections and independent laboratory analyses of muds and cuttings. Violators will be

subject to penalties under the provisions of the Clean Water Act.

23. *Comment:* The ban on discharges of formation (produced) waters is unnecessary and inconsistent with the fact that test fluids may be discharged. By EPA's own definition, test fluids include "waters and particulate matter from the formation."

Response: EPA agrees that test fluids may include a limited volume of formation waters. The prohibition on the discharge of formation waters has accordingly been modified to allow their discharge with test fluids. These discharges are subject to certain effluent limitations, monitoring, and reporting requirements, which have been added to the general permits. However, Department of Interior stipulations for lease sales in the Beaufort Sea prohibit the discharge of any produced waters into ice-covered or open marine waters of less than 10 m in depth. If monitoring information shows that the potential for unreasonable degradation may occur, EPA can reopen the permit and modify the discharge requirements for formation waters.

24. *Comment:* Formation (produced) waters do not display significant toxicity even when discharged at rates of tens of thousands of barrels/day over long periods of time. Therefore, there is no reason to prohibit the discharge of modest volumes of formation water from exploratory drilling operations.

Response: EPA cannot conclusively determine that discharges of formation waters will have no significant effect on Alaskan marine organisms. Most studies to date have occurred in temperate waters, which are very different from the cold waters off Alaska. Not only are the biological resources different, but rates of hydrocarbon degradation and of ecological recovery after perturbation are generally slower in colder waters. Further, variability in the composition and quantity of produced waters is quite large from site to site as well as at a single site over time, making it very difficult to predict the environmental effects of produced water discharges in advance.

Region 10 is concerned because adverse effects of produced water discharges have been found in shallow Texas bays. Common constituents of produced water were found to accumulate in marine sediments and organisms. As a result, the population of benthic organisms was depressed in the vicinity of the discharge. Impacts persisted for months.

Except for those limited volumes which can not be operationally separated from test fluids, the discharge of formation waters encountered during exploration operations is prohibited. Technology is available for the control and/or reinjection of these waters. This position is in accordance with the requirements of Section 403(c)(2) of the Clean Water Act because (1) insufficient information exists on the nature of this discharge, and (2) it has been demonstrated that the discharge of formation waters can adversely impact aquatic resources. Those formation waters discharged with test fluids will be monitored.

25. *Comment:* The static sheen test as used in the draft general permits is an inappropriate application of a test developed for above or below ice discharges of muds and cuttings. As an alternative, the API retort test should be made available to the operators. The static sheen test must be deleted from deck drainage and bilge water.

Response: Region 10 maintains that the static sheen test is appropriate because of the inclement weather, severe wave and ice conditions, and extended periods of darkness that occur on the Alaskan OCS. Experimental evaluation of the static sheen test has shown that the test procedure is sensitive and reproducible. We have replaced the testing requirement for deck drainage and bilge water during open water conditions. The permits now require the "no free oil/visible sheen on the receiving water" (BPT) limitation for the discharges during this season. However, the static sheen test is required for these discharges when broken or stable ice is present in the receiving water.

The static sheen test is preferred over a retort distillation because it is difficult to interpret what the results of the retort analysis actually mean. The results should indicate the amount of "oil" contained in the sample; however, the distillate is often a multi-layered mixture containing sediment, water and various hydrocarbon fluids and therefore correlation to other tests is very difficult.

26. *Comment:* Industry representatives and their Alaska trade association objected to the prohibition of discharges in water shallower than 2†m. They assert that no scientific support exists for this prohibition and that EPA has exceeded its authority under section 403 of the Clean Water Act (CWA).

Response: This permit requirement has been very carefully considered since it originally appeared in the first Beaufort Sea general permit (48 FR 54881). EPA's response to industry's objections when this condition was originally proposed is still valid today. In fact, through closer inspection while developing the ODCE for Federal Lease Sale 87, the Region has expanded this requirement to shallow water areas around offshore islands. The nearshore area is an important migratory pathway for anadromous fish and a feeding and nursery ground for fish and waterfowl. Due to the lack of dilution and dispersion of discharged wastes in shallow water, drilling effluents may adversely impact these resources. The Region will, therefore, maintain this prohibition while requiring field monitoring of discharges in the area between the 2 to 5 m isobaths. This requirement is well within the authorities of the CWA and the Ocean Discharge Criteria, particularly 40 CFR 125.123(d).

27. *Comment:* EPA's administrative record is devoid of any justification for a prohibition of discharges within 1,000 m of river mouths or deltas. Further, the provision is meaningless since "river mouth" and "delta" are not defined.

Response: The administrative record includes the North Slope Borough's strong objections to any discharges shoreward of the 2-m isobath (see following comment) in their response to the draft general permit for Lease Sale BF and again for the proposed Beaufort/Chukchi Seas general permit. They appear to base their concern on the potential for adverse impacts to nearshore subsistence resources of importance to North Slope natives. EPA shares this concern as these potential impacts have been considered in the Ocean Discharge Criteria evaluation process. The 1000-m no discharge zone around the mouths of rivers and delta areas is intended to protect important aquatic resources and sensitive habitats found in these areas. For example, anadromous fish may concentrate off rivers during their migrations. We see no need to provide a definition for "river mouth," as its meaning is obvious. However, "delta" can be clarified. It is used in reference to the accreted land edge adjacent to a river mouth, and not submerged offshore alluvial deposits. If permittees are in doubt about a disposal site, they should contact EPA for guidance.

28. *Comment:* The North Slope Borough strongly objected to on-ice discharges between the mainland shoreline and the 2-m isobath because the ice in this area is usually bottom fast and the discharged materials may be deposited in very shallow water at breakup.

Response: EPA is also concerned about shallow water discharges and clearly this concern is shown in the permit conditions which seasonally prohibit discharges in the 0–2 m area

and within 1000 m of a river mouth or delta (see previous response). We have concluded that unreasonable degradation to the marine environment will not occur with discharges on stable ice within the 2-m isobath. However, because we are particularly concerned with shallow water discharges, environmental monitoring will be required to verify that the discharge of effluents in this area will not produce conditions that may lead to unreasonable degradation.

29. *Comment:* EPA has no basis for an absolute prohibition on discharges of drilling muds and cuttings within or near the Stefansson Sound Boulder Patch or similar areas. Such areas are non-depositional, therefore, discharged materials will not accumulate there on a long-term basis.

Response: Discharges to the Boulder Patch are not authorized, rather than prohibited, by the general permit for this area. Operators locating in or near this area need to apply for an individual permit, which requires a minimum 180-day processing period. Region 10 needs the 180-day lead time to evaluate the proposed discharges and ensure that, if discharges are allowed, an acceptable environmental monitoring program is designed and initiated prior to the discharge of muds and cuttings.

We agree that the Boulder Patch is non-depositional on a long-term basis. However, the erosional forces acting on this area occur mainly during the open water period in the summer. For about eight months of the year broken or stable ice covers the Boulder Patch. We are concerned that discharges during or just prior to this time may accumulate in levels far in excess of that occurring naturally. As such, environmental monitoring will be required for those discharges which potentially may adversely impact this unique biological community.

30. *Comment:* The requirement for 9:1 predilution within the 2 to 20 m isobaths in the Beaufort Sea is unduly restrictive. Monitoring studies in Alaskan waters as shallow as 6 m show no significant effect on the marine environment from mud and cuttings discharges.

Response: In the Region's response to a similar comment made on the first general Beaufort Sea permit, we indicated that the discharge rate and predilution requirements for waters shallower than 20 m were being reevaluated. This reevalution has not been completed. Until it is completed, the discharge rate and predilution requirements represent our best professional judgment of what is needed to ensure compliance with receiving water criteria at the edge of the mixing zone. The monitoring studies referenced involved either limited volumes of drilling mud, sampling programs not comprehensive enough to obtain definitive results, and/or discharges that were prediluted 30:1 and 75:1 seawater. These studies are only of limited value in evaluating the discharge rate and predilution requirements.

31. *Comment:* Because of the value of the bilological resources and the lack of knowledge regarding the impact of drilling muds, a 10:1 predilution should be required to discharges of muds and cuttings to the Bering Sea.

Response: Region 10 agrees that the biological resources of the Bering Sea are valuable and should be protected. These resources and knowledge of the fate and effects of muds and cuttings discharged into deep water were carefully evaluated in the ODCEs for the St. George and Navarin Basins (OCS Lease Sales 70 and 83). We have determined that predilution and/or restricting the discharge rate for muds and cuttings below 1000 bbl/hr is not needed to protect water column or benthic organisms in these lease sale areas.

32. *Comment:* No consideration appears to have been given to prior environmental (fate and effects) monitoring programs conducted in the Beaufort Sea.

Response: As documented in the ODCEs for the lease sales in the Beaufort Sea, EPA has carefully considered past field studies conducted in this area. These studies are of limited value because only small volumes of drilling effluent were studied, and the water column and/or sediment sampling programs were not comprehensive enough to obtain definitive results.

33. *Comment:* Environmental monitoring should include heavy metal distribution and likelihood of bioaccumulation as well as initial distribution and long-term resuspension and transport of solids. Baseline data is also needed for an assessment of the effects of any discharges.

Response: EPA's approach to field monitoring will be to focus on the fate of drilling effluents in the initial discharge area and then attempt to trace the transport of the discharged material as it is resuspended by oceanographic processes. The distribution and concentration of heavy metals and/or hydrocarbons in bottom sediments will be included in the monitoring requirements. This information is needed to obtain a clear understanding of what is available for bioaccumulation prior to initiating areawide studies on bioaccumulation. However, bioaccumulation monitoring may be required in biologically sensitive areas concurrent with fate monitoring, depending on the nature of the discharge and the resources potentially impacted. In the case of either fate or bioaccumulation monitoring, EPA will require baseline sampling in the area potentially impacted by the discharge.

34. *Comment:* The Natural Resources Defense Council strongly recommended that any biological monitoring plan be developed in coordination with the North Slope Borough and the Bering Sea Biological Task Force. Further, the monitoring program should be subject to public review prior to the issuance of the general permit.

Response: EPA will develop specific monitoring programs through direct coordination with the Alaska Department of Environmental Conservation (ADEC) and the permittee. EPA's approach to monitoring is provided in the previous response. Due to the time required to effectively develop a comprehensive environmental monitoring program, we do not believe that direct coordination with many agencies and the public is possible. In developing the monitoring program, however, EPA and ADEC will consult with interested agencies or organizations having expertise with monitoring or knowledge of the resources potentially impacted.

35. *Comment:* The requirement to analyze for barium should be deleted. The presence of barium in drilling mud is well-established and the required neutron activation analysis technique is expensive. At the very least, allow x-ray fluorescence analysis to be used.

Response: Region 10 believes that the results of barium analyses should be an integral part of information collection on used drilling muds. The Region recognizes that neutron activation analysis is expensive, and has changed the permits to allow the use of x-ray fluorescence analysis for barium as well. Operators wishing to use a method other than these two methods may submit appropriate data to EPA demonstrating the comparability of results from the proposed method with either of the other two methods.

36. *Comment:* The Discharge Monitoring Report (DMR) due date should be changed from the 10th of the month to the 28th of that month. There is simply not enough time to have laboratory analyses done and submit DMRs if samples were taken at the end of this month.

Response: DMRs will be due on the 10th of the month as stated in the draft permits. Results from laboratory analyses on samples collected during

the latter half of the month may be submitted in DMRs for the following month's monitoring activities if results are not available in time.

37. *Comment:* Monitoring and reporting should not be required as frequently as in the permits. This would reduce the burden on the permittee as well as EPA's workload. In addition, it would allow both chemical analysis and operational results to be combined into a single, more meaningful report.

Response: Due to the short-term nature of exploratory drilling, monitoring and reporting are most useful to the Agency when done monthly. If reporting for an operation were done quarterly, it is possible that no DMR would be received until the well was completed and discharges had ceased. Monthly reporting is presently a requirement of all individual oil and gas permits.

38. *Comment:* In the Beaufort/Chukchi Seas permit, there should not be a requirement for submitting requests to be covered or submitting reports to the State for those operations occurring outside of the State's territorial waters.

Response: Region 10 concurs; the permit has been changed to require submissions to the State of requests to be covered or monitoring reports only when operations will be located in State waters or in waters where State-Federal jurisdiction is in dispute.

39. *Comment:* The requirement that requests for coverage include a discription, location, and water depth of operations and discharges should be changed to require that this information be submitted 14 days in advance of operations. Such information is often not available 60 days in advance.

Response: The permit has been modified to require that requests for coverage include only the approximate location (lease sale and tract numbers) of operations and discharges. This information must be submitted at least 60 days in advance of discharges. More precise information (including parcel number, water depth, and exact coordinates of the site) must be submitted with the notification of commencement of operations no less than 14 days in advance of discharges. It may be submitted earlier with the request for coverage if it is available at that time. EPA cannot assign permit numbers for discharge sites until site-specific information is submitted. Permittees locating in an area identified as requiring environmental monitoring shall notify EPA as soon as possible but in no case less than 60 days prior to discharge so that the monitoring design, analytical techniques, participants, and reporting requirements can be determined and any baseline samples taken prior to the discharge of drilling muds and cuttings.

40. *Comment:* Regarding the certification of compliance with the toxicity ceiling, a submission date less than 60 days prior to discharge should be allowed in the case of permittees who expect to discharge less than 60 days after the effective date of the permit.

Response: Region 10 agrees and will accept certfications and evaluate boassay test data submitted less than 60 days prior to discharge under these conditions.

41. *Comment:* Several industry parties objected to the 1000 bbl/hr flowrate limit on drilling mud discharges, mainly on grounds that no environmental benefit would be achieved by the limit. Some felt the limit was superfluous since it affected only discharges from mud change-overs and the end of the well.

Response: The 1000 bbl/hr limit is consistent with Region 10's evaluation of 1000 bbl/hr flow rate in arriving at the "no unreasonable degradation of the marine environment" determination. This limit is not a burden on operators since it is near the maximum operationally attainable flow rate.

42. *Comment:* The 1000 bbl/hr limit should specifically exclude predilution water.

Response: Region 10 concurs; predilution seawater was not intended to be included in the discharge rates in these permits.

43. *Comment:* Oil and grease discharges from deck drainage and bilge water are miniscule compared to those from other natural and industrial sources. Regulatory action should be directed to those sources instead.

Response: Under sections 402 and 404 of the Clean Water Act, discharges of all pollutants should be controlled. In fact, BPT national effluent guidelines with a "no free oil" restriction on the discharge of deck drainage have already been issued. To allow a small, unrestricted discharge simply because larger discharges have not yet been controlled would be counter to both the BPT guidelines and the intent of the Act.

44. *Comment:* Sanitary waste should not be dumped into the ocean.

Reponse: The permit terms are consistent with BPT national effluent guidelines. Sanitary waste will be disinfected prior to discharge and will not result in violation of State water quality standards in either State or Federal waters. The ocean can break down and assimilate the minor amounts of organic matter and solids contributed by the sanitary waste.

45. *Comment:* The listing of authorized discharges on page 1 should be expanded to include "Drilling Structure Ice Protection" (Discharge 016). This discharge consists of sea water which is sprayed around the drilling island or rig during freeze-up to form a bottom-fast ice barrier to protect the structure.

Response: Region 10 does not concur. We believe authorization for the construction of an ice barrier for the physical protection of a drilling island or rig is more properly addressed under section 10 of the River and Harbors Act. Authorization for its construction should be obtained from the U.S. Army Corps of Engineers.

46. *Comment:* The onshore disposal of exploratory drilling effluents is prohibited, according to paragraph 1 of Part II of the Fact Sheet.

Response: Although the onshore disposal of exploratory drilling effluents is not authorized under these NPDES permits, it is not prohibited by them. The onshore disposal of drilling wastes is covered instead by other types of permits.

47. *Comment:* In Part IV.B. of the Fact Sheet, "mixing zone" should be defined because of restrictions on effluents to meet marine water quality standards.

Response: The mixing zone at which the marine water quality standards must be met is 100 m from the point of discharge. That distance is the one which was evaluated in the ODCEs.

48. *Comment:* "Significant contributor of pollution" on p. 21 (part III.C.a) of the permits is vague and should be defined.

Response: This phrase is taken directly from the NPDES regulations. It would be impossible to define it more precisely because many factors determine what constitutes a "significant contributor." These factors include the nature of the discharge, the rate and duration of the discharge, the number of other discharges in the vicinity, and the nature of the receiving water and its biological resources.

49. *Comment:* One oil company commented that the comment period of 35 calendar days was too short for such important permits.

Response: Region 10 minimized the length of the comment period in response to industry's demands for prompt issuance of the permits. The comment period could have been extended, but there were no requests to do so.

General NPDES Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

[Permit No. AKG283000 (Bering Sea)]

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Offshore Oil and Gas Exploration and Cost Wells

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.: the "Act"), the following discharges are authorized:

Drilling Mud	Discharge 001
Drill Cuttings and Washwater.	Discharge 002
Deck Drainage	Discharge 003
Sanitary Wastes	Discharge 004
Domestic Wastes	Discharge 005
Desalinization Unit Wastes	Discharge 006
Blowout Preventer Fluid	Discharge 007
Boiler Blowdown	Discharge 008
Fire Control System Test Water.	Discharge 009
Non-Contact Cooling Water	Discharge 010
Uncontaminated Ballast Water.	Discharge 011
Uncontaminated Bilge Water.	Discharge 012
Excess Cement Slurry	Discharge 013
Mud, Cuttings, Cement at Sea Floor.	Discharge 014
Test Fluids	Discharge 015

From offshore oil and gas exploratory facilities (defined in 40 CFR Part 435, Subpart A), to receiving waters named the Bering Sea (St. George and Navarin Basins), in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I, II, and III hereof.

Offshore permittees who fail to submit a request to be covered by this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the facility by EPA, Region 10.

The authorized discharge sites include all lease parcels offered for lease by the Minerals Management Service during Federal Lease Sales 70 (St. George Basin) and 83 (Navarin Basin).

In accordance with regulations promulgated under section 403 (40 CFR 125.123[d][4]) of the Clean Water Act, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64.

If an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on May 30, 1984.

This permit and the authorization to discharge shall expire at midnight, five years from the effective date of this permit.

Signed this 30th day of May 1984.

Ernesta B. Barnes,

Regional Administrator, Region 10.

Part I. Notification Requirements

A. Request To Be Covered

Written request to be covered by this permit including the name and address of permittee, and the location (lease sale and tract numbers) of the operations and discharges shall be provided to EPA at least sixty (60) days prior to initiation of discharges. The 60-day notification requirement may be waived for those permittees who notify EPA during the public comment period on the draft permit. The permittee shall be the owner and/or operator of the exploratory drilling facility. However, the lessee may become the permittee after submitting a certification that the lessee asumes responsibility for compliance with this general permit. This certification shall be made to EPA in writing prior to commencement of the operation. The lessee may make certification for all of its leases in a single request for coverage to assume responsibility for compliance with this general permit. However, such action taken by the lessee does not remove the responsibility of the owner or the operator for compliance with this general permit.

The permittee shall receive notification from EPA that coverage has been granted before a discharge is authorized. However, the site specific information required by Part I.B. is needed so that EPA can assign permit numbers for each discharge site.

B. Commencement of Operations

No less than fourteen (14) days prior to initiation of discharges from a new or existing well at an authorized discharge site the permittee shall provide EPA with written notification of such actions. The notification shall include the water depth and exact coordinates of the new site and the initial date and expected duration of drilling activities at the site. This information may be provided with the 60-day notification requirement of Part I.A.

C. Exploratory Drilling Sites Requiring Environmental Surveys

All exploratory drilling operators that locate within the areas covered by this general permit shall submit to EPA copies of any exploration plans, biological surveys, and/or environmental reports required by the Regional DMMOFO (Deputy Minerals Manager, Offshore Field Operations), Minerals Management Service (MMS) for the identification and/or protection of biological populations or habitats.

D. Termination

The permittee shall notify EPA within thirty (30) days of each well completion at an authorized discharge site.

E. Submission of Requests To Be Covered and Other Reports

Reports and notifications required herein shall be submitted to the following address:

U.S. Environmental Protection Agency, Region 10, Attn: Water Permits & Compliance Branch, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101

Part II. Effluent Limitations and Monitoring Requirements

A. Drilling Muds and Cuttings and Washwater Discharges (Outfall Serial Numbers 001 and 002)

1. *General Requirements.* a. Such discharges shall be limited and monitored by the permittee as follows:

Effluent characteristic	Discharge limitation	Monitoring requirements		Reported value(s)
		Frequency	Method	
Flow (bbls/hr)	1,000 bbls/hr, daily maximum.	Continuous during discharge.	Estimate of daily maximum and average.	Daily maximum, monthly average.
Free oil	No visible sheen	Daily	Static sheen test.	Number of days sheen observed.
Total volume (bbls)	(1)	Daily	Estimate	Monthly total.
Oil content of cuttings	10% by weight	(2)	(2)	Results of each analysis.
Diesel oil content of drilling muds.	No discharge of diesel oil	(4)	GC analysis	Determination of presence or absence.[5]

[1] For the purpose of this permit, exploratory drilling is limited to no more than five wells at a single drilling site.
[2] Analysis is required: (a) Weekly at the time that oil-based drilling fluids are used, and (b) immediately on any sample that has violated the static sheen test if a discharge has occurred. Analysis is not required if mineral oil has not been used in any drilling mud system during that monitoring period.

[3] Analysis required for oil and grease by soxhlet extraction (40 CFR Part 136) or for oil by retort distillation (American Petroleum Institute, Recommended Practice 13B, 1980).
[4] Analysis is required: (a) On a sample collected from each drilling mud system at the greatest well depth where that system is used, and (b) whenever the static sheen test is violated and a discharge has occurred.
[5] Determination shall be based on a spectral comparison of the drilling mud sample with diesel oil in storage on the platform.

b. *Prohibition on the Discharge of Oil-Based Muds or Diesel Oil.* The discharge of oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase) or water-based drilling muds which have contained diesel oil as an additive is prohibited. Compliance with the limitation on diesel shall be demonstrated by a gas chromatography (GC) analysis of the drilling mud (see Part II.A.1.a., above). The discharge of drill cuttings associated with diesel oil-based drilling muds or muds containing diesel oil is prohibited.

c. *No Discharge of Free Oil.* There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall, on each day of discharge of drilling muds and cuttings, perform the static (laboratory) sheen test in accordance with "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) and Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test." The permittee shall also conduct the static sheen test prior to any bulk discharges. The discharge of drilling muds or cuttings which fail the static sheen test is prohibited.

Whenever muds or cuttings fail the static sheen test and a discharge has occurred, the permittee is required to immediately collect an undiluted sample of the material which failed the test. The permittee shall analyze this sample by gas chromatography (GC) to determine the presence or absence of diesel oil. The results and raw data, including the spectra, from the GC analysis shall be provided to the Regional Administrator by written report within thirty (30) days of a positive result with the static sheen test.

d. *Certification of Discharge.* The permittee is required to certify at the time coverage is requested under the general permit (at least 60 days prior to the initiation of discharge) that only generic muds and approved additives will be discharged, in accordance with Parts II.A.1.e.-g., below.

Permittees wishing to discharge less than 60 days from the effective date of this permit may submit the certification less than 60 days prior to the initiation of discharges.

e. *Generic Drilling Muds and Additives.* (1) Only generic drilling muds and approved additives shall be discharged. The eight generic mud types which have been approved for discharge are given in Table 1, with specified limitations on composition. A list of additional approved mud components (specialty additives) are given in Table 2.

(2) Any type of mud listed in Table 1 which contains one or more components or additives *NOT* listed in Tables 1 and 2 shall be considered a generic mud if the permittee provides the results of the standard drilling fluids toxicity test, or other procedures approved in advance by Region 10, which demonstrate that it passes the screening criteria listed below.

(a) For Generic Mud No. 1 (Table 1) there shall be no decrease in the LC_{50} (increase in toxicity) under this provision.

(b) For Generic Muds Nos. 2 through 8 (Table 1) the addition of additives or other components shall cause a substantial increase in the toxicity of the listed generic mud. The increase in toxicity is defined as the difference between the inverses o the LC_{50} values multiplied by 10^6, i.e., by the following formula:

$$\text{increase in toxicity} = (1/LC_{ma} - 1/LC_m) \cdot 10^6$$

where LC_m equals the LC_{50} (ppm volume to volume) of the listed generic mud (as determined by either EPA or the permittee) and LC_{ma} equals the measured LC_{50} of that mud with the added components or additives.

A *substantial increase* is defined as any increase greater than seven (7). This equation allows a 10% decrease in the LC_{50} of the second most toxic generic mud and a correspondingly greater percent decrease for those muds which are less toxic. However, the same absolute increase in toxicity applies to all generic muds except Mud No. 1 (see (a) above.).

(c) In no case shall biocides be discharged in drilling muds under this provision. These discharges require prior approval by Region 10 under Part II.A.1.f.

The discharge of generic muds does not require prior approval, but is subject to the following reporting requirements, if the generic mud is not listed in Table 1 or has not been previously approved. Prior to discharge or no later than 60 days after the discharge, the permittee shall submit a report containing the following information: a description and a list of all drilling mud constituents (including chemical composition), concentration of each constituent (lbs/bbl and % by volume), the estimated total volume of discharge, and bioassay test results conducted in accordance with the standard drilling fluids toxicity test (or other procedures approved in advance by Region 10). The demonstration of whether a combination of drilling mud components other than those specified in Tables 1 and 2 is a generic mud shall be bioassay test results conducted in accordance with the standard drilling fluids toxicity test (or other procedures approved in advance by Region 10). Additional information may be required at the discretion of Region 10.

f. *Approval of Drilling Muds and Additives Not Listed in Tables 1 and 2.* The discharge of any additive (or components) not allowed under Part II.A.1.e. shall require approval by Region 10 PRIOR to discharge.

The permittee shall follow the procedures outline below. Region 10 will require up to 60 days from the receipt of this information to evaluate requests for approval of additives and drilling muds. In the approval process Region 10 will evaluate whether the use of the additive will unacceptably increase the toxicity of the drilling mud. The permittee shall supply the following information to EPA Region 10:

(1) Approximate date and duration of proposed discharge.

(2) Bioassay testing and reporting of results in accordance with the Standard Drilling Fluids Toxicity Test or other procedures approved in advance by Region 10; additives may be tested with this methodology in a standard reference mud, a generic mud, or in the proposed drilling mud system. The bioassay report shall specify the concentration of each constituent in the tested drilling fluid.

(3) Chemical characterization of the additive; estimate of total amount required for any particular well, the requested application rate (lbs/bbl and % by volume) in drilling mud, total volume of the drilling mud in which the additive will be dispersed. For the particular well under consideration, a description of drilling mud type and list of other additives, including concentrations (lbs/bbl and % by volume) likely to be present in the drilling mud.

Additives may be approved on an interim basis, at the discretion of Region 10, if preliminary bioassay data and other information are submitted and if the Water Division Director determines that additional information is required. The requested additional information

shall be submitted by the permittee within 60 days from the date of interim approval.

g. *Approval of Mineral Oil Lubricity or Spotting Agents.* Mineral oil lubricity or spotting agents will be approved as additives in discharged drilling muds (subject to other limitations; e.g. on free oil) in accordance with Part II.A.1.f., above, if the standard drilling fluids toxicity test demontrates that: (1) The selected mineral oil would not cause the drilling mud to be more toxic than the most toxic generic mud, or (2) the permittee adequately demonstrates that the use of mineral oils which meet this limitation is not possible and that the requested mineral oil is the least toxic available alternative.

h. *Mercury and Cadmium Content of Barite.* The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample of barite once for each well to submit the results for total mercury and total cadmium in the Discharge Montoring Report upon well completion. Analyses shall be conducted by atomic absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

If the permittee is unable to comply with this provision due to the lack of availability of barite which meets the above limitations, the Water Division Director may on a case by case basis allow the discharge of barite which exceeds these limitations. Prior to discharge the permittee shall demonstrate to the satisfaction of the Water Division Director that barite which meets the limitations is unavailable and shall provide the results of analyses of the substitute barite.

i. *End-of-Well Chemical Inventory.* For each well the permitteee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. For each constituent the inventory shall note the estimated maximum concentration in the discharged drilling mud and the total volume or mass added downhole. Upon well completion the inventory shall be submitted in the Discharge Monitoring Report.

j. *End-of-Well Chemical Analysis.* The permittee shall complete one chemical analysis for each mud type used. The sample shall be: (1) Taken after the mud is used at its greatest well depth, and (2) collected from the used mud immediately prior to any predilution. The chemical analysis shall include the following metals: barium, cadmium, chromium, mercury, zinc, and lead. The results shall be reported in "mg/kg of whole mud (dry weight)", and the moisture content (% by weight) of the original drilling mud sample shall be reported. The total concentration shall be reported for each metal and shall be obtained by complete acid digestion where appropriate. Neutron activation analysis (NAA) or x-ray fluorescence analysis shall be used for barium. Flame or flameless atomic absorption spetrophotometry (AAS) shall be used for mercury, cadmium, zinc and lead. Either NAA or AAS may be used for chromium. The results of the chemical analysis shall be submitted with the monthly Discharger Monitoring Report.

Results for "active" cadmium and mercury (operationally defined by acidifying the sample to a pH of 4 with nitric acid and then measuring the concentration of metal that passes through a 0.45 um filter) shall also be reported for this sample.

2. *Specific Area, Seasonal, and/or Depth-Related Requirements.* There are no specific area, seasonal, or depth-related requirements in this general permit.

B. Environmental Monitoring Requirements

Further monitoring programs are not required.

C. Drainage, Sanitary and Domestic Wastes, and Bilge Water (Outfall Serial Numbers 003–005, 012)

1. Such discharges shall be limited and monitored by the permittee as follows:

Outfall/effluent characteristic	Discharge limitation	Measurement frequency	Monitoring requirements	
			Sample Type/method	Reported Value(s)
003 Deck Drainage:				
Flow Rate (MGD)		Once/month	Estimate	Monthly average.
Volume (gallons)		Once/month	Estimate	Monthly total.
Free oil	No visible sheen	Daily, during discharge.	Visual/sheen on receiving water[1].	Number of days sheen observed.
004 Sanitary Wastes:				
Flow Rate (MGD)		Once/month	Estimate	Monthly average.
Residual chlorine	1.0 mg/l	Once/month	Grab	Concentration.
005 Domestic Wastes:				
Flow rate (MGD)		Once/month	Estimate	Monthly average.
012 Bilge Water:				
Free oil	No visible sheen	Once/discharge occurrence.	Visual/sheen on receiving water[1].	Number of days sheen observed.

[1] If discharge occurs during broken or stable ice conditions, the sample type/method shall be "Grab/static sheen test."

2. *Deck Drainage.* Area drains for either washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. The contaminated deck drainage shall be processed through an oil-water separator to minimize hydrocarbon release.

3. *Sanitary Wastes.* As specified above, sanitary waste discharges shall contain a minimum of 1 mg/l of residual chlorine, which shall be maintained as close to this concentration as possible. Facilities which are intermittently manned or permanently manned by nine (9) or fewer persons can take exception to this provision and need only assure there shall be no floating solids as a result of the discharge of these wastes. Any facility using a marine sanitation device that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with this permit limitation until such time as the device is replaced or is found not to comply with such standards and regulations.

4. *Bilge water.* Bilge water (discharge 12) shall be run through an oil-water separator prior to discharge.

5. *Sampling.* Samples taken in compliance with monitoring requirements specified above shall be taken at a sampling point prior to commingling with any waste stream or entering receiving waters. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations shown above for sanitary wastes shall apply to the mixed waste stream.

D. Miscellaneous Discharges (Outfall Serial Numbers 006–011 and 013–015)

1. There shall be no discharge of free oil to the receiving waters as a result of these discharges.

2. Any spent acidic test fluids (discharge 015) shall be neutralized before discharge such that the pH at the point of discharge shall not be less than 6.5 or greater than 8.5. Test fluids shall be diluted and neutralized in the receiving waters so that they do not

vary more than 0.1 pH unit from the natural condition at the edge of the 100-meter mixing zone. Monitoring at (or before) the point of discharge for the 6.5 to 8.5 pH limitation shall be required once daily during discharge and records maintained on-site.

3. Except for test fluids, there shall be no discharge of formation waters encountered during exploratory operations. Test fluids containing formation water may be discharged but shall be processed through an oil-water separator prior to discharge. The discharge of these formation waters shall be further limited and monitored by the permittee as follows:

Outfall/effluent characteristic	Discharge limitation	Measurement frequency	Monitoring requirements	
			Sample type/method	Reported value(s)
015 Test Fluids:				
Volume		Once/discharge occurrence.	Estimate	Total volume/test.[1]
Oil and grease	72 mg/1 daily max., 48 mg/1 monthly average.	Once/discharge day	Grab	Value/day, daily max., average over discharge period.

[1] Volume will be reported as the number of barrels of fluids sent downhole during testing *and* the number of barrels discharged. The chemical composition of the fluids sent downhole will also be reported.

E. Other Discharge Limitations

1. *Floating Solids or Visible Foam.* There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. *Applicable Marine Water Quality Criteria.* There shall be no discharge of any constitutent in concentrations which exceed applicable marine water quality criteria after allowance for initial mixing. Initial mixing is defined at 40 CFR 227.29 and applicable marine water quality criteria at 45 FR 79318, 23 November 1980.

3. *Highly Toxic Compounds and Materials.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

4. *Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service.

F. Monitoring and Records

1. *Representative Sampling.* Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity.

2. *Monitoring Procedures.* Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit. Residual chloride and pH may be monitored at the facility using the Hach Test Kit.

3. *Penalties for Tampering.* The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

4. *Reporting of Monitoring Results.* a. The permittee shall be responsible for submitting monitoring results for each facility operating within each lease tract.

b. If there is more than one facility (platform, manmade gravel island, natural island, drilling ship, semi-submersible), the outfalls shall be designated in the following manner: 001–1, 002–1, 003–1, for the first facility; 001–2, 002–2, 003–2 for the second facility, etc.

c. If any category of waste has more than one discharge point, the permit limitations apply to each discharge point and shall be reported as 001A, 001B, 001C, etc. The flow limitations apply to the total discharge of each category of wastes; e.g., the sum of 001A, 001B, 001C, etc. would be limited to a daily maximum of 1,000 bbl/hr.

d. The monitoring requirements in this permit shall take effect upon commencement of discharge and shall be due monthly. The first report is due on the 10th day of the 2nd month from the day this permit first becomes applicable to a permittee.

e. Monitoring results obtained during the previous month shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320–1). The daily maximum with the highest concentration sample taken during the reporting period shall be reported as the daily maximum concentration for each month. DMR Forms shall be submitted to the Regional Administrator at the address specified under submission requirements in Part I.E.

f. If any category of waste (outfall) is not applicable due to the type of operation or drilling facility no reporting is required for that particular outfall. Only DMRs representative of the activities occurring need to be submitted. Information indicating the type of operation should be provided with the DMRs.

5. *Additional Monitoring by the Permittee.* If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

6. *Averaging of Measurements.* Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. *Retention of Records.* The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit for a period of at least three (3) years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time.

8. *Record Contents.* Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

9. *Inspection and Entry.* The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

G. Additional Reporting Requirements

1. *Anticipated Noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. *Monitoring Reports.* Monitoring results shall be reported at the intervals specified in Part II.F.4d. of this permit.

3. *Reports Required Within 24 Hours.* The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission, to be provided within 5 days of the time the permittee becomes aware of the circumstance, shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass (Part III.A3.a.[1]) which exceeds any effluent limitation in the permit;

b. Any upset (Part III.A.4.a.) which exceeds any effluent limitation in the permit; and

c. Violation of a maximum daily discharge limitation for any toxic permit pollutant or hazardous substance, listed as such by the Regional Administrator in the permit to be reported within 24 hours.

Telephone reports should be made to (206) 442–1388 at the Regional EPA Office. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

4. *Other Noncompliance.* The permittee shall report all instances of noncompliance not reported under Part II.G.3 at the time monitoring reports are submitted. The reports shall contain the information in Part II.G.3.

5. *Signatory Requirements.* All reports or information submitted to the Regional Administrator shall be signed and certified in accordance with 40 CFR 122.22 as amended on September 1, 1983, (48 FR 39611).

6. *Availability of Reports.* Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the term of this permit shall be available for public information at the office of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

7. *Penalties for Falsification of Reports.* The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

Part III. Other Conditions

A. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonable be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c.(1) and (2) below.

c. *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, submit prior notice, if possible, at least ten (10) days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass within twenty-four (24) hours of becoming aware of the circumstances as required under Part II.G.3. above.

d. *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted notices as required under paragraph of this section, and the bypass has been approved by the Regional Administrator.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph d.(1) of this section.

4. Upset Conditions

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an

action brought for noncompliance with technology-based permit effluent limitations, if the requirements of paragraph c. below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required under Part II.G.3.; and

(4) The permittee complied with any remedial measures required under Part III.B.4.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollution from such materials from entering navigable waters.

B. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply to and obtain an individual NPDES permit.

2. Duty to Comply with Toxic Effluent Standards

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

3. Penalties for Violations of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one (1) year, or both.

4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypasses" (Part III.A.3.) and "Upsets" (Part III.A.4.), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

8. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

9. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

C. Additional General Permit Conditions

1. The Regional Administrator may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s) is (are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by the permit.

e. A Water Quality Management Plan containing requirements applicable to such point source is approved.

f. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of wastes,

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring; or

g. In the opinion of the Regional Administrator, the discharges are more appropriately controlled under an individual permit than under general NPDES permits.

2. The Regional Administrator may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than ninety (90) days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the

applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

5. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

D. Definitions

1. Approved drilling mud types: Eight generic mud types have been evaluated by EPA during permit development in Region I, II, VI, IX, and X. These mud types have been approved for discharge with limitations on composition given in Table 1. A list of approved specialty additives is given in Table 2. Any type of mud listed in Table 1 which contains one or more components or additives not listed in Tables 1 and 2, shall be considered a generic mud if the standard drilling fluids toxicity test for the drilling mud with the additive demonstrate that there has not been a substantial decrease in the LC_{50} value of the listed generic mud. The LC_{50} value of Mud No. 1, however, shall be decreased.

2. "Ballast water" means seawater added or removed to maintain the proper ballast floater level and ship draft.

3. "Bilge water" means water which collects in the lower internal parts of the drilling vessel hull.

4. "Blowout preventer fluid" means fluid used to actuate hydraulic equipment on the blowout preventer.

5. "Boiler blowdown" means the discharge of water drained from boiler drums.

6. "Cooling water" means once-through non-contact cooling water.

7. "COST well" means Continental Offshore Stratigraphic Test Well and refers to wells which are drilled to define geologic formations as opposed to exploratory wells which are drilled to locate petroleum hydrocarbon reserves. The Minerals Management Service designates these as Deep Stratigraphic Test wells.

8. "Daily maximum" means the maximum value measured of the parameter specified during any 24-hour period.

9. "Deck drainage" means all waste resulting from platform washings, deck washings, and run-off from curbs, gutters, and drains including drip pans and wash areas.

10. "Desalinization unit discharge" means wastewater associated with the process of creating freshwater from seawater.

11. A "discrete sample" means any individual sample collected in less than fifteen (15) minutes.

12. "Domestic wastes" includes wastes from showers, sinks, galleys, and laundries.

13. "Drill cuttings" means particles generated by drilling into subsurface geological formations.

15. "Drilling mud" means any fluid sent down the hole, including any specialty products, from the time a well is begun until the final cessation of drilling in that hole.

16. "Excess cement slurry" means the excess cement and wastes from equipment washdown after a cementing operation.

17. "Exploratory" operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a hydrocarbon reserve has been defined.

18. "Fire control system test water" means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

19. "Monthly average" for drilling mud and cutting discharges means the average flow rate during the period of each calendar month.

20. "Monthly maximum" for drilling fluid and cutting discharges means the peak flow rate which occurs during the period of each calendar month.

21. "Muds, cuttings, cement at sea floor" means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

22. "No discharge of free oil" means a discharge that does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

23. "No discharge of diesel oil" in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatographic spectrum from an extract of the drilling mud and from diesel oil. The diesel oil sample shall be obtained from the drilling platform. Extraction procedures and analytical methods shall be as carried out in the Georges Bank Monitoring Program. Sample holding time is 7 days at 4 °C in a sealed container. Analyses shall be conducted by gas capillary gas chromatography with a flame ionization detector.

24. "Open water" is defined as less than 25% ice coverage within a one (1) mile radius of the discharge site after spring breakup or prior to slush ice formation in the fall.

25. "Sanitary wastes" means human body waste discharged from toilets and urinals.

26. "Slush ice" occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

27. "Standard drilling fluids toxicity test" means bioassays conducted in and reported in accordance with the following standard bioassay methodology: "Proposed Methodology: Drilling Fluids Toxicity Test for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) or other methods approved in advance by Region 10.

28. "Static sheen test" means those procedures which are described in the draft "Proposed Methodology: Laboratory Sheen Test for the Offshore Subcategory, Oil and Gas Extraction Industry," prepared by Technical Resources, Inc., April 10, 1983.

29. "Test fluids" means the discharge which would occur should hydrocarbons be located and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with waters and particulate matter from the formation.

30. "Unstable or broken ice conditions" are defined as greater than 25% ice coverage within one (1) mile radius of the discharge site after spring breakup or after the start of slush ice formation in the fall.

TABLE 1.—APPROVED DRILLING MUD TYPES

Components	Maximum allowable Concentration[1]
1. *Seawater/Freshwater/Potassium/Polymer Mud:*	
KCl	50
Starch	12
Cellulose Polymer	5
Xanthum Gum Polymer	2
Drilled Solids	100
Caustic	3
Barite	450
Seawater or Freshwater	(2)
2. *Seawater/Lignosulfonate Mud:*	
Attapulgite or Bentonite	50
Lignosulfonate, Chrome or Ferrochrome	15
Lignite, Untreated or Chrome-treated	10
Caustic	5
Barite	450
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulose Polymer	5
Seawater	(2)
3. *Lime Mud:*	
Lime	20
Bentonite	50
Lignosulfonate, Chrome or Ferrochrome	15
Lignite, Untreated or Chrome-treated	10
Caustic	5
Barite	180
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Seawater or Freshwater	(2)

TABLE 1.—APPROVED DRILLING MUD TYPES—Continued

Components	Maximum allowable Concentration[1]
4. *Nondispersed Mud:*	
Bentonite	15
Acrylic Polymer	2
Barite	180
Drilled Solids	70
Seawater or Freshwater	(2)
5. *Spub Mud:*	
Lime	1
Attapulgite or Bentonite	50
Caustic	2
Barite	50
Soda Ash/Sodium Bicarbonate	2
Seawater	(2)
6. *Seawater/Freshwater Gel Mud:*	
Lime	2
Attapulgite or Bentonite	50
Caustic	3
Barite	50
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulose Polymer	2
Seawater or Freshwater	(2)
7. *Lightly Treated Lignosulfonate Freshwater/Seawater Mud:*	
Lime	2
Bentonite	50
Lignosulfonate, Chrome or Ferrochrome	6
Lignite, Untreated or Chrome-treated	4
Caustic	3
Barite	180
Drilled Solids	100
Soda Ash/Sodium Bicarbonste	2
Cellulos Polymer	2
Seawater to freshwater ratiol:1 approx	(2)
8. *Lignosulfonate freshwater Mud:*	
Lime	2
Bentonite	50
Lignosulfonate, Chrome or Ferrochrome	15
Lignite, Untreated or Chrome-treated	10
Caustic	3
Barite	450
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulos Polymer	2
Freshwater	(2)

[1] (pounds per barrel).
[2] =As needed.

TABLE 2.—APPROVED MUD COMPONENTS/SPECIALTY ADDITIVES

Additive function	Generic description[1]	MAC[2] (pounds per barrel)
Lost Circulation:		
Mica	Flakes of silicate mineral mica.	45
Nut Shells	Crushed granular nut hulls.	[3]
	Vegetable plus polymer fibers, flakes, and granules.	50
Friction Reducers:		
Inert Spheres	Plastic spheres	8
Organic Material	Liquid triglycerices in a vegetable oil.	6
	Oleates in mixed alcohols.	6
	Phosphoric acid esters and triethanolamine.	0.4
Defoamer	Aluminum Stearate	0.2
Dispersant	Sodium polyphosphate	0.5

[1] Any proprietary formulation that contains a substance which is an intentional component of the formulation, other than those specifically described, must be approved by the Regional Administrator.
[2] Maximum Allowable Concentration.
[3] As needed.

General NPDES Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

[Permit No. AKG284000 (Beaufort Sea)]

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Offshore Oil and Gas Exploration and Cost Wells

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.: the "Act"), the following discharges are authorized.

Drilling Mud	Discharge 001
Drill Cuttings and Washwater.	Discharge 002
Deck Drainage	Discharge 003
Sanitary Wastes	Discharge 004
Domestic Wastes	Discharge 005
Desalinization Unit Wastes	Discharge 006
Blowout Preventer Fluid	Discharge 007
Boiler Blowdown	Discharge 008
Fire Control System Test Water.	Discharge 009
Non-Contact Cooling Water	Discharge 010
Uncontaminated Ballast Water.	Discharge 011
Uncontaminated Bilge Water.	Discharge 012
Excess Cement Slurry	Discharge 013
Mud, Cuttings, Cement at Sea Floor.	Discharge 014
Test Fluids	Discharge 015

From offshore oil and gas exploratory facilities (defined in 40 CFR Part 435, Subpart A), to receiving water named the Beaufort Sea, in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I, II, and III hereof.

Offshore permittees who fail to submit a request to be covered by this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the facility by EPA, Region 10.

The authorized discharge sites include all units offered for lease by the (1) Minerals Management Service (MMS) during Federal Lease Sales 71 and 87, (2) State of Alaska for State Lease Sales 39, 43 and 43A, and (3) MMS and/or the State in the joint Federal/State Lease Sale BF, State Lease Sale 36 (tracts C-36-001 through C-36-013, generally the area around Flaxman Island and the Midway Islands), and all contiguous inshore State lease sale areas. However, discharges within 1000 m of the Stefansson Sound Boulder Patch or between individual units of the patch are not authorized. The Boulder Patch is located in leasing units BF-62, BF-70, BF-71, BF-76, BF-77, BF-78, BF-79, BF-82, BF-83, BF-98, and BF-116. Operators in this area shall submit an application for an individual permit.

In accordance with regulations promulgated under section 403 (40 CFR 125.123[d][4]) of the Clean Water Act, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In accordance with the procedures unde 18 AAC 15.130 and AS 46.03, for permit modifications which affect State waters or for reissuance of the general NPDES permit, a copy of the proposed modification, together with a cover letter requesting certification, must be served on the central office of the Department of Environmental Conservation at least sixty (60) days before any EPA deadline for certification action on the modification

If an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304 (b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on May 30, 1984.

This permit and the authorization to discharge shall expire at midnight, five years from the effective date of this permit.

Signed this 30th day of May 1984.

Ernesta B. Barnes,

Regional Administrator, Region 10.

Part I. Notification Requirements

A. Request To Be Covered

See Part I.A. of the Bering Sea Permit (AKG283000).

The following *additional* provisions apply to this permit: Permittees locating in an area identified as requiring environmental monitoring shall notify EPA as soon as possible, but in no case less than 60 days prior to discharge, so that the monitoring design, analytical techniques, participants, and reporting requirements can be determined and baseline samples can be taken prior to the discharge of drilling muds and cuttings.

B.–D. See parts I.B. Through I.D. of the Bering Sea Permit (AKG283000)

E. Submission of Requests to be Covered and Other Reports

Reports and notifications required herein shall be submitted to the following addresses. The Alaska Department of Environmental Conservation will receive reports and notifications only for those discharges which occur in State waters or in waters where State-Federal jurisdiction is in dispute.

U.S. Environmental Protection Agency, Region 10, Attn: Water Permits & Compliance Branch, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101.

Regional Environmental Supervisor, Northern Regional Office, Alaska Department of Environmental Conservation, Pouch 1601, Fairbanks, Alaska 99707.

PART II. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Drilling Muds and Cuttings and Washwater Discharges (Outfall Serial Numbers 001 and 002)

1. *General Requirements.* a. Such discharges shall be limited and monitored by the permittee as follows:

Effluent characteristic	Discharge limitation	Monitoring requirements		Reported value(s)
		Frequency	Method	
Flow (bbls/hr)	1,000 bbls/hr, daily maximum.	Continuous during discharge.	Estimate of daily maximum and average.	Daily maximum, monthly average.
Free oil	No visible sheen	Daily	Static sheen test.	Number of days sheen observed.
Total volume (bbls)	[1]	Daily	Estimate	Monthly total.
Oil content of cuttings	10% by weight [2]	[3]	[4]	Results of each analysis.
Diesel oil content of drilling muds.	No discharge of diesel oil	[5]	GC analysis	Determination of presence or absence.[6]

[1] For the purpose of this permit, exploratory drilling is limited to no more than five wells at a single drilling site.
[2] In State waters, the elutriate oil and grease limitation requirements under Part II.A.1.k. also apply to this discharge.
[3] Analysis is required: (a) Weekly at the time that oil-based drilling fluids are used, and (b) immediately on any sample that has violated the static sheen test if a discharge has occurred. Analysis is not required if mineral oil has not been used in any drilling mud system during that monitoring period.
[4] Analysis required for oil and grease by soxhlet extraction (40 CFR Part 136) or for oil by retort distillation (American Petroleum Institute, Recommended Practice 13B, 1980).
[5] Analysis is required: (a) On a sample collected from each drilling mud system at the greatest will depth where that system is used, and (b) whenever the static sheen test is violated and a discharge has occurred.
[6] Determination shall be based on a spectral comparison of the drilling mud sample with diesel oil in storage on the platform.

b–j. See Parts II.A.1.b. through II.A.1.j. of the Bering Sea Permit (AKG283000).

k. *Elutriate testing for oil and grease.* In State waters, discharge of oil-contaminated drilling muds and/or cuttings shall be prohibited. Elutriate testing of oil and grease concentrations in representative samples of drilling effluents shall be required prior to change-over discharges and end-of-well bulk discharges to State waters and at least weekly during routine discharges to State water in order to establish whether the threshold level of 50†mg/1 oil and grease in elutriates is exceeded. Drilling effluents containing greater than 50†mg/1 total elutriate oil and grease shall not be disposed of on sea ice or into waters of the State of Alaska. The results of elutriate tests shall be maintained on-site and submitted with the Discharge Monitoring Reports. The above elutriate requirements do not apply to Federal waters.

If the 50†mg/1 elutriate analysis limitation for oil and grease is exceeded and a discharge has occurred, the permittee shall conduct an analysis of total extractable oil and grease. The results shall be maintained on-site and submitted to EPA and ADEC with the Discharge Monitoring Reports.

2. *Specific Area, Seasonal, and/or Depth-Related Requirements.* a. Discharge is not authorized with 1000†m of the Stefansson Sound Boulder Patch, or between individual units of the patch where the separation between units is greater than 2000†m but less than 5000†m. The Boulder Patch is defined as an area which has more than 10% of a one-hundred-square-meter area covered by boulders to which kelp is attached.

b. Discharge is prohibited within 1000†m of river mouths or deltas during unstable or broken ice or open water conditions.

c. During *openwater conditions* the following conditions apply:

(1) Discharge is prohibited between the shoreline (mainland and island) and the 2†m isobath.

(2) Discharge in the area from the 2 to 20†m isobaths shall be prediluted at a ratio of 9:1 (seawater: drilling muds and cuttings) and released no deeper than 1†m below the surface of the receiving water.

d. During *unstable or broken ice conditions,* the following conditions apply:

(1) Drilling effluents shall be placed on-ice using routine or nonroutine methods of discharge whenever practicable.

(2) Discharge is prohibited, unless it is not practicable to: 1. Store drilling effluents onsite for subsequent discharge on stable ice or during open water, 2. dispose of the drilling effluents on land, 3. create an on-ice disposal site by pumping and artificial thickening of the sea ice and/or 4. handle the drilling effluent in another manner that prevents below-ice discharge.

(3) If it is not practicable to meet the conditions in (2) above, discharge may be allowed under the following conditions.

(a) Permittee notifies EPA that discharge will occur. Notification, in writing, shall be received by the Regional Administrator (RA) at least thirty (30) days prior to the discharge. The notification will include:

(i) a comprehensive evaluation of disposal alternatives for drilling muds and cuttings.

(ii) a demonstration that discharges to areas shallower than 10 m are not overwintering areas for significant fish populations.

The RA may prohibit discharges if an acceptable alternatives analysis has not been completed, or if a clear demonstration can not be made that significant overwintering fish populations are absent from the discharge area. Discharge is not authorized until the permittee receives notification from the RA.

(b) Predilution of 9:1 (seawater: drilling muds and cuttings).

(c) Environmental monitoring is required as specified in Part II.B.1.

e. During *stable ice conditions,* unless authorized otherwise by the Regional Administrator, the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid to the maximum extent possible areas of sea ice cracking or major stress fracturing.

(2) Predilution and flow rate restrictions do not apply.

B. Environmental Monitoring Requirements

Monitoring is required in four general areas, which have been identified as requiring further information on the fate and, in some cases, the effects of discharged drilling muds. These areas are: (1) Open water in water depths form 2–5m, (2) below-ice at any water depth, (3) on stable ice between the shoreline and the 2 m isobath, and (4) within 1,000 m of an area of biological concern (i.e., a unique biological community or habitat). The specifics of each monitoring program, including

survey design, analytical techniques, participants, and reporting requirements, will be determined by the Regional Administrator in consultation with the Regional Environmental Supervisor of the Alaska Department of Environmental Conservation (ADEC) and the permittee. Such monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and up to one year after drilling operations cease.

The results of the initial monitoring survey in areas of biological concern shall be made available for review prior to any autoriziation of subsequent disposals into areas with significant biological communities.

Information related to the effects of island construction and erosion will be considered but will not in itself be sufficient to make the above determination.

C. Deck Drainage, Sanitary and Domestic Wastes, and Bilge Water (Outfall Serial Numbers 003–005, 012)

See Part II.C. of the Bering Sea General Permit (AKG283000).

D. Miscellaneous Discharges (Outfall Serial Numbers 006–011 and 013–015)

1.–2. See Parts II.D.1. and 2. of the Bering Sea General Permit (AKG283000).

3. See Part II.D.3. of the Bering Sea General Permit (AKG283000).

The following *Additional* provision applies to this permit: The discharge of formation waters is prohibited into open or ice-covered marine waters of less than 10 m in depth (U.S. Department of Interior and State of Alaska lease stipulations).

E.–G. See Parts II.E. through G. of the Bering Sea General Permit (AKG283000)

Part III. and Tables 1. and 2

See Part III. and Tables 1. and 2. of the Bering Sea General Permit (AKG283000).

[FR Doc. 84–15166 Filed 6–6–84; 8:45 am]
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federal register

Thursday
June 7, 1984

Part III

Department of Education

Office of Elementary and Secondary Education

34 CFR Parts 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, and 262

Indian Education Programs; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, and 262

Indian Education Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to amend the existing regulations governing awards authorized by the Indian Education Act of 1972, as amended. The changes result from a review of the existing regulations for purposes of reducing burdens as stated in Executive Order 12291. The Secretary takes this action to reduce costs and other regulatory burdens and to clarify application and compliance requirements.

EFFECTIVE DATE: These regulations 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, please call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Hakim Khan, Acting Director, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (FOB–6, Room 2177), Washington, D.C. 20202. Telephone: (202) 245–8020.

SUPPLEMENTARY INFORMATION: These regulations implement the Indian Education Act of 1972 (Title IV of Pub. L. 92–318, the Education Amendments of 1972), as amended.

Under the regulations the Secretary of Education provides Federal financial assistance to public school systems, as well as to Indian-controlled schools, or eligible local educational agencies, on or near reservations, for the purpose of planning, developing, and carrying out elementary and secondary school projects designed to meet the special educational needs of Indian children.

Under the regulations the Secretary also provides Federal financial assistance to Indian tribes, Indian institutions, and Indian organizations, as well as to State and local educational agencies and elementary and secondary schools for Indian children operated by the Department of the Interior, for special planning, pilot, and demonstration projects and other projects designed to improve educational services and opportunities for Indian children and adults.

In addition, for educational personnel development projects, the Secretary provides Federal financial assistance to institutions of higher education, State and local educational agencies, Indian tribes, and Indian organizations.

These regulations govern eight programs: (1) Formula Grants—Local Educational Agencies and Tribal Schools (formerly known as Entitlement Grants); (2) Indian-Controlled Schools—Establishment; (3) Indian-Controlled Schools—Enrichment Projects; (4) Educational Services for Indian Children; (5) Planning, Pilot, and Demonstration Projects for Indian Children; (6) Educational Personnel Development; (7) Educational Services for Indian Adults; and (8) Planning, Pilot, and Demonstration Projects for Indian Adults.

Not included in these rules are regulations governing the Indian Fellowship Programs, which were previously published.

The Secretary is also removing from the Code of Federal Regulations regulations for four programs that have not been implemented in the recent past and that are not currently funded. Those four programs are: (1) Demonstration Projects—Local Educational Agencies; (2) Adult Education Research and Development Projects; (3) Adult Education Surveys; and (4) Adult Education Dissemination and Evaluation projects.

As a result of these removals, the regulations for many of the remaining programs have been redesignated and given new part numbers in Title 34 of the Code of Federal Regulations. Each of the programs affected by these regulations and the part number assigned are listed in 34 CFR 250.1, the first section of the general provisions regulations governing all of the affected programs.

Regulations for these programs were published previously in the **Federal Register** on May 21, 1980 (45 FR 34152). The Secretary recently reviewed those regulations for regulatory burden reduction. Based on that review, the Secretary published a notice of proposed rulemaking (NPRM) on January 23, 1984 (49 FR 2850) and invited interested persons to submit comments and recommendations.

The major proposed revisions in that NPRM included: (1) Specific criteria that distinguish planning, pilot, and demonstration projects as three separate grant competitions; (2) deletion of a number of non-statutory provisions from the existing regulations to reduce administrative burdens of applicants and grantees, and to enable them to exercise local options; and (3) provision for the Secretary to specify the minimum number of pages with which applicants for financial assistance under the formula grants program could satisfy certain of the application requirements and reduce the time needed for and costs involved in the preparation of applications.

More than 140 written comments and recommendations were received during the comment period. Substantive comments and recommendations and the Secretary's responses to them are summarized in the Appendix to these regulations. The summary also explains why the Secretary has made certain changes in the regulations from the notice of proposed rulemaking.

Summary of Changes From NPRM

A brief summary of changes in the final regulations resulting from substantive comments on the NPRM follows.

The list of programs covered by Executive Order 12372 and contained in the preamble to the notice of proposed rulemaking (49 FR 2851; January 23, 1984) was incorrect and conflicted with the accurate listing of covered programs provided in 34 CFR 250.3(e). The error has been corrected elsewhere in this preamble, under the heading *Intergovernmental Review*. The Secretary had earlier determined the appropriateness of including these programs under Executive Order 12372 (see 48 FR 29158 *et seq.*).

It should be noted, however, that transactions with federally recognized Indian tribal governments and with nongovernmental entities, including State postsecondary educational institutions, are not covered under the Department's regulations implementing Executive Order 12372 (see 34 CFR 79.3(b)).

A new paragraph (2) has been added to § 251.20(c) of these regulations to be consistent with section 305(b)(2)(B)(ii) of the Act. The added paragraph provides that the parent committee must include at least one teacher and, where applicable, at least one secondary school student to be served by the program for which assistance is sought.

Section 251.20(b)(2) of these regulations has been changed to include guidance counselors as "teachers" eligible to serve as members of the parent committee. It has been the practice under this program to regard certified guidance counselors as teachers for purposes of parent committee membership.

Section 251.22(b)(3)(v) has been changed to provide for an assurance by an applicant that the parent committee

has approved not only the project for which the application is made, but also any amendments to the application.

Also, a new paragraph has been added to this section which specifies that the approval of a project by a parent committee must be in writing unless the committee and applicant agree on another method of documenting that approval.

These final regulations are substantially the same as the proposed regulations with the exception of the changes summarized in preceding paragraphs. Numerous technical and editorial changes have been made in the regulations to improve clarity, ensure consistency, and eliminate redundancy.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria established for major regulations in the order.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations (§§ 251.22, 252.20, 253.20, 254.20, 255.20, 256.20, 257.20, and 258.20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 1810-0021, expiration date February 1986. Section 251.50 has been approved and assigned OMB Control No. 1810-0031, expiration date September 1985.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Intergovernmental Review

The Indian Education Act Programs in 34 CFR Parts 251, 254, 255, 257, and 258 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

List of Subjects

34 CFR Part 250

Adult education, Education, Elementary and secondary education, Grant programs—Indians, Indians—education, Teachers.

34 CFR Parts 251, 252, 253, 254, and 255

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education.

34 CFR Part 256

Education, Grant programs—education, Grant programs—Indians, Indians—education, Teachers.

34 CFR Parts 257 and 258

Adult education, Education, Grant programs—education, Grant programs—Indians, Indians—education.

34 CFR Parts 259, 260, 261, and 262

Adult education, Educational research, Grant programs—education, Grant programs—Indians, Indians—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.060 Development Awards Program—Indian Education—Local Educational Agencies and Tribal Schools; 84.061 Indian Education—Special Programs and Projects; 84.062 Indian Education—Adult Indian Education; and 84.072 Indian Education—Grants to Indian-Controlled Schools)

Dated: May 31, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 250 is revised to read as follows:

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

Authority: Title IV, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241aa-241ff, 1211a, 1221h, 3385, 3385a), unless otherwise noted.

Subpart A—General

§ 250.1 What programs are governed by these regulations?

The regulations in this part apply to all programs conducted under the Indian Education Act except the Indian Fellowship Program (34 CFR Part 263). Programs governed by these regulations and their applicable program regulations are as follows:

(a) Formula Grants—Local Educational Agencies and Tribal Schools (34 CFR Part 251).

(20 U.S.C. 241aa—241ff)

(b) Indian-Controlled Schools—Establishment (34 CFR Part 252).

(20 U.S.C. 241bb(b))

(c) Indian-Controlled Schools—Enrichment Projects (34 CFR Part 253).

(20 U.S.C. 241bb(b))

(d) Educational Services for Indian Children (34 CFR Part 254).

(20 U.S.C. 3385 (a), (c))

(e) Planning, Pilot, and Demonstration Projects for Indian Children (34 CFR Part 255).

(20 U.S.C. 3385 (a), (b))

(f) Educational Personnel Development (34 CFR Part 256).

(20 U.S.C. 3385(d), 3385(a)

(g) Educational Services for Indian Adults (34 CFR Part 257).

(20 U.S.C. 1211a)

(h) Planning, Pilot, and Demonstration Projects for Indian Adults (34 CFR Part 258).

(20 U.S.C. 1211a)

§ 250.2 [Reserved]

§ 250.3 What regulations apply to these programs?

In addition to the regulations contained in this part and the applicable program regulations, the programs under

34 CFR Parts 251 through 258 are subject to the Education Department General Administrative Regulations (EDGAR) in—

(a) 34 CFR Part 74 (Administration of Grants);

(b) 34 CFR Part 75 (Direct Grant Programs), except for § 75.590(c) relating to a grantee's project evaluation;

(c) 34 CFR Part 77 (Definitions);

(d) 34 CFR Part 78 (Education Appeal Board); and

(e) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that Part 79 does not apply to 34 CFR Parts 252, 253, and 256.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

§ 250.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* Except as otherwise provided, the following terms used in this part and in 34 CFR Parts 251 through 258 are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget period
EDGAR
Elementary school
Facilities
Fiscal year
Grant
Grantee
Grant period
Local educational agency (LEA) (except as used in 34 CFR Parts 257 and 258)
Local government
Minor remodeling
Nonprofit
Private
Project
Project period
Public
Secondary school (except as used in 34 CFR Parts 254, 255, and 256)
Secretary
State (except as used in 34 CFR Parts 251, 252, and 253)
State educational agency (SEA)
Supplies

(b) *Definitions that apply to the programs governed by this part.* Unless otherwise provided, the following definitions apply to this part and to 34 CFR Parts 251 through 258:

"Adult" means an individual who has attained the age of sixteen.

"Adult education" means services or instruction below the college level for adults who—

(1) (i) Lack sufficient mastery of basic educational skills to enable them to function effectively in society; or

(ii) Do not have a certificate of graduation from a school providing secondary education and have not achieved an equivalent level of education; and

(2) Are not currently required to be enrolled in school.

"Ancillary educational personnel"

(1) This term means guidance counselors, librarians, and others who assist in meeting the educational needs of Indian students.

(2) The term does not include persons in positions not directly involved in the educational process, such as clerks or cafeteria personnel.

"Child" means an individual within the age limits for which the applicable State provides a free public education.

"Demonstration project" means a project that affords opportunities to examine in practice, and to assess the qualities of, an educational method, approach, or technique for the purpose of adaptation of that method, approach, or technique by other institutions with similar needs.

"Equipment" means—

(1) Machinery, utilities, and built-in apparatus;

(2) Any enclosure or structure necessary to house the items listed in paragraph (1) of this definition; and

(3) Any other item necessary for the functioning of a facility for the provisions of educational services, including items such as—

(i) Instructional apparatus and necessary furniture;

(ii) Printed, published, and audiovisual instructional materials; and

(iii) Books, periodicals, documents, and related materials.

"Free public education" means education that is—

(1) Provided at public expense, under public supervision and direction, without tuition charge; and

(2) Provided as elementary or secondary school education in the applicable State.

"Full-time student" means an individual pursuing studies that constitute a full-time workload in accordance with an institution's established policy.

"Handicapped person" means an individual requiring special education and related services because he or she—

(1) Is mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired; or

(2) Has a specific learning disability.

"Indian"—except as noted in § 250.5(b)—means an individual who is—

(1) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An eskimo or Aleut or other Alaska Native.

"Indian institution" means a preschool, elementary, secondary, or postsecondary school that—

(1) Is established for the education of Indians;

(2) Is controlled by a governing board, the majority of which is Indian; and

(3) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation.

"Indian organization" means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the educational, economic, or social self-sufficiency of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

"Indian tribe" means any federally or State-recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" means, in any State, an educational institution that—

(1) Admits as a regular student only an individual having a high school graduation certificate or the recognized equivalent of a high school graduation certificate;

(2) Is legally authorized within that State to provide a program of education beyond high school;

(3) Provides—

(i) An educational program for which it awards a bachelor's degree;

(ii) An educational program of not less than two years that is acceptable for full credit toward a bachelor's degree; or

(iii) A two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields that require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5)(i)(A) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary; or

(B) If not accredited, is an institution whose credits are accepted, on transfer, by not fewer than three institutions that are accredited, on the same basis as if transferred from an institution that is accredited.

(ii) However, in the case of an institution described in paragraph (3)(iii) of this definition, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit that type of institution—

(A) The Secretary appoints an advisory committee composed of persons specially qualified to evaluate training provided by that type of institution; and

(B) The advisory committee prescribes the standards of content, scope, and quality that must be met in order to qualify that type of institution to participate under the appropriate program and determines whether particular institutions meet those standards.

(iii) For the purpose of paragraph (5) of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary determines to be reliable authority as to the quality of education or training offered.

"Local educational agency" (LEA), as used in 34 CFR Parts 257 and 258, means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools; or

(2) If there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools in the area referred to in paragraph (1) of this definition, that other board or authority.

"Parent"

(1) This term includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent). Examples of individuals who may stand *in loco parentis* with respect to a child are—

(i) A foster parent of the child; and

(ii) A grandparent with whom the child resides.

(2) In determining whether an individual stands *in loco parentis* with respect to a child, an LEA may consider such factors as—

(i) The current relationship of the child and the natural parent(s);

(ii) The length and stability of the relationship between the individual and the child;

(iii) Tribal custom and tribal law;

(iv) Applicable State law, whether legislative or judicial; and

(v) Dependency for purposes of State of Federal income taxes.

"Pilot project" means a project that tests an educational method, approach, or technique in a limited and controlled setting to determine—

(1) Whether the educational method, approach, or technique meets an established need; and

(2) Whether the educational objectives of the educational method, approach, or technique are appropriate for Indian children or adults.

"Planning project" means a project that—

(1) Establishes educational objectives; and

(2) Proposes activities and resources that would be needed to meet these objectives for the education of Indian children or adults.

"Secondary school," as used in 34 CFR Parts 254, 255, and 256, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"State," as used in 34 CFR Parts 251, 252, and 253, means any of the 50 States, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, or the Virgin Islands.

"Stipend" means an allowance for personal living expenses paid to a participant in a personnel development project.

"Teacher aide"

(1) This term means a person who assists a teacher in the performance of the teacher's teaching or administrative duties.

(2) The term does not include persons in positions not directly involved in the educational process, such as clerks or cafeteria personnel.

(20 U.S.C. 241aa–241ff, 244, 881, 1202, 1211a, 1221h(a), 3381, 3385, 3385a)

§ 250.5 What provisions of the Indian Self-Determination and Education Assistance Act apply to these programs?

(a) Awards under programs covered by this part that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises—as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e))—preference in the award of contracts in connection with the administration of the grant.

(Pub. L. 93–638, Section 7(b); 25 U.S.C. 450e(b))

(b) For purposes of this section, an "Indian" is a member of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 93–638, Section 4 (a), (b); 25 U.S.C. 450b (a), (b))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 250.20 How does an applicant apply under a particular program?

(a) An applicant shall specify in its application the particular program under 34 CFR Parts 251 through 258 under which it is applying.

(b) If the applicant submits an application under a program covered by this part and the project proposed by the applicant is not authorized under that program, the Secretary may, with the consent of the applicant, review and consider the application under an appropriate program, if any, covered by this part.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

2. Part 251 is revised to read as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

Subpart A—General

Authority: Title IV, Part A, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241aa—241ff), unless otherwise noted.

Subpart A—General

§ 251.1 Formula Grants—Local Educational Agencies and Tribal Schools

This program, Formula Grants—Local Educational Agencies (LEAs) and Tribal Schools, provides financial assistance to develop and carry out elementary and secondary school projects that meet the special educational and culturally related academic needs of Indian children.

(20 U.S.C. 241aa(a), 241bb-1)

§ 251.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) *LEAs.* (1) An LEA is entitled to receive a grant if the number of Indian children enrolled in the LEA's schools is either—

(i) At least 10; or

(ii) At least half the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment requirements of paragraph (a)(1) of this section if it is located—

(i) In Alaska, California, or Oklahoma; or

(ii) On, or in proximity to, an Indian reservation.

(20 U.S.C. 241bb(a))

(b) *Tribal schools.* An Indian tribe—or an organization that is controlled or sanctioned by an Indian tribal government—that operates a school for the children of that tribe is eligible to receive a grant on behalf of that school if the school either—

(1) Provides its students an educational program that meets the standards established by the Bureau of Indian Affairs under section 1121 of the Education Amendments of 1978; or

(2) Is operated by that tribe or organization under a contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act.

(20 U.S.C. 241bb-1)

§ 251.3 What regulations apply to this program?

The following regulations apply to this program:

(a)(1) The regulations in 34 CFR Part 250.

(2) However, 34 CFR 75.111 (d) and (e) of the Education Department General Administrative Regulations, relating to the contents of an application, do not apply to this program.

(b)(1) The regulations in this Part 251.

(2) However, the following provisions of this part do not apply to tribal schools:

(i) Section 251.20, relating to the selection of the parent committee.

(ii) Any other provisions of this part relating to the parent committee.

(iii) Section 251.40, relating to the maintenance of effort required for LEAs.

(20 U.S.C. 241aa-241ff)

§ 251.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 241aa-241ff)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 251.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing the establishment, maintenance, or operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children.

(b) An applicant may also apply for assistance to—

(1) Plan for and take other steps leading to the development of projects; and

(2) Carry out pilot projects designed to test the effectiveness of those plans.

(20 U.S.C. 241cc)

Subpart C—How Does One Apply for a Grant?

§ 251.20 How is a parent committee selected?

(a) Before developing an application, an LEA shall establish and publicize procedures for the selection of a parent committee.

(b) The following are eligible to select and serve on a parent committee:

(1) Parents of Indian children who will participate in the proposed project.

(2) Teachers, including guidance counselors, except members of the project staff.

(3) Indian secondary school students, if any, enrolled in the LEA's schools.

(c)(1) At least half the members of the committee must be parents of the Indian children to be served by the proposed project.

(2) The committee must include at least one teacher and, where applicable, at least one secondary student to be served by the program for which assistance is sought.

(d) The persons listed in paragraph (b) of this section shall select the members of the committee.

(e) An individual may continue to be a member of the committee only so long as he or she is eligible under paragraph (b) of this section.

(20 U.S.C. 241dd(b)(2)(B))

§ 251.21 Must an applicant hold a public hearing?

(a) Before preparing an application for a new or continuation award, an applicant shall hold one or more hearings open to the general public.

(b) At the public hearing or hearings, the applicant shall provide to the parents of Indian children—including persons acting *in loco parentis* other than school administrators or officials—teachers, and, where applicable, secondary school students, a full opportunity to understand the project for which the applicant is seeking assistance and to offer recommendations on the project.

(c) In the case of an application for a continuation award, the grantee shall provide at the public hearing or hearings an opportunity for full public discussion of all aspects of the project to date and for the remainder of the project period.

(20 U.S.C. 241dd(b)(2)(B)(i))

§ 251.22 What must an application include?

(a) After holding the public hearing described in § 251.21, each applicant shall prepare its application in accordance with this section.

(b) *Local educational agencies.* An application from an LEA must—

(1) Describe the project for which the applicant seeks assistance;

(2) State the number of Indian children enrolled in the LEA and the number to be served by the project;

(3) Provide assurances that—

(i) The applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance;

(ii) The applicant will make an annual report and any other reports, in the form and containing the information that the Secretary may require, to—

(A) Carry out the functions of the Secretary under this program; and

(B) Determine the extent to which funds provided under this program have been effective in improving the educational opportunities of Indian students in the area served;

(iii) The applicant will keep records and will afford the Secretary access to these records as the Secretary may find necessary to assure the correctness and verification of reports made by the applicant;

(iv) The applicant will use the best available talents and resources, including persons from the Indian community, and will substantially increase the educational opportunities of Indian children in the area to be served by the proposed project;

(v) The applicant has developed the project for which application is made and any amendment to the application—

(A) In open consultation with parents of Indian childern—including persons acting *in loco parentis* other than school administrators or officials—teachers, and, where applicable, secondary school students, including one or more public hearings that meet the requirements of § 251.21;

(B) With the participation of a parent committee selected in accordance with § 251.20; and

(C) With the approval of that parent committee in writing, unless another method of documenting the approval is agreed upon by the applicant and the parent committee;

(vi) The parent committee selected in accordance with § 251.20 will adopt and abide by reasonable by-laws for the conduct of the project for which assistance is sought;

(vii) The applicant will provide for methods of administration as are necessary for the proper and efficient operation of the project;

(viii) The applicant has fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, funds the applicant receives under this program;

(ix) The applicant will adopt effective procedures, including provisions for appropriate objective measurement of educational achievement, to evaluate at least annually the effectiveness of the proposed project in meeting the special educational needs of Indian students; and

(x) In the case of an application for funds for planning—

(A) The planning was or will be directly related to projects to be carried out under 34 CFR Part 251, 252, or 253 and has resulted, or is reasonably likely to result, in a project that will be carried out under 34 CFR Part 251, 252, or 253; and

(B) The planning funds are needed because of the innovative nature of the project or because the LEA lacks the resources necessary to plan adequately for projects to be carried out under 34 CFR Part 251, 252, or 253;

(4) Include a copy of or describe the policies and procedures that assure that funds made available under this program for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of funds under this program, be made available by the applicant for the education of Indian children, and in no case to supplant those funds of the applicant; and

(5) Include a copy of or describe the policies and procedures, including those relating to the hiring of personnel, as will insure that the project for which the applicant seeks assistance will be operated and evaluated in consultation with, and with the involvement of, parents of the children and representatives of the area to be served, including the parent committee established under § 251.20.

(c) *Special application provisions.* With regard to the requirements in paragraph (b) of this section, in order to reduce the burden on applicants, the Secretary may recommend each year in the application notice the minimum number of pages with which an applicant may satisfy the requirements in paragraphs (b) (1), (4), and (5) of this section.

(d) *Tribal schools.* An applicant for assistance to support a tribal school shall comply with paragraphs (a), (b), and (c) of this section with the exception of those provisions that refer to a parent committee.

(20 U.S.C. 241dd)

(OMB Control No. 1810-0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 251.30 How does the Secretary determine the amount of a grant?

(a) The Secretary determines the amount an applicant receives any fiscal year on the basis of the formula in section 303(a), Part A, of the Indian Education Act.

(b) Under the statutory formula, the Secretary computes the amount of the grant to which an applicant is entitled by multiplying—

(1) The number of Indian children enrolled in the schools of the applicant and to whom the applicant provides free public education; by

(2) The average per pupil expenditure for the LEA as determined under section 303(a)(2)(C), Part A, of the Indian Education Act.

(c) If necessary, on the basis of available appropriations, the Secretary reduces the amount of an applicant's grant proportionately with those of all other applicants.

(20 U.S.C. 241bb(a), 241ff(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 251.40 What is the maintenance of effort required for LEAs?

(a) The Secretary does not make payments to an LEA for any fiscal year unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than the combined fiscal effort for that purpose for the second preceding fiscal year.

(b)(1) For the purpose of making the finding described in paragraph (a) of this section, a SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2)(i) "Aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA.

(ii) The term includes expenditures for administration, instruction, attendance, health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student activities.

(iii) The term does not include expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under any Federal program of assistance.

(3) "Per pupil expenditure" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(20 U.S.C. 241ee(b)(2))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 251.50 What are the responsibilities of a grantee regarding student certification?

For each student included in the count of Indian students on which the amount of a grant is based, a grantee shall keep on file the student certification form prescribed by the Secretary.

(20 U.S.C. 241bb–241dd)

(OMB Control No. 1810–0031, expiration date 9/85)

3. Part 252 is revised to read as follows:

PART 252—INDIAN-CONTROLLED SCHOOLS—ESTABLISHMENT

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart C—How Does One Apply for a Grant?

Subpart D—How Does the Secretary Make a Grant?

Authority: Title IV, Part A, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

Subpart A—General

§ 252.1 Indian-Controlled Schools—Establishment.

This program, Indian-Controlled Schools—Establishment, provides financial assistance to establish and operate Indian-controlled schools or LEAs on or geographically near reservations.

(20 U.S.C. 241bb(b))

§ 252.2 Who is eligible for assistance under this program?

Under this program any applicant among the following is eligible for assistance if it operates or plans to establish and operate a school for Indian children—or, if eligible, an LEA—that is located on or geographically near one or more reservations:

(a) Indian tribes.

(b) Indian organizations.

(c) Local educational agencies (LEAs) that have been in existence not more than three years.

(20 U.S.C. 241bb(b))

§ 252.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The following provisions in 34 CFR Part 251:

(1)(i) Section 251.20, relating to the selection of the parent committee.

(ii) However, this requirement does not apply to an Indian tribe or Indian organization.

(iii) If an applicant LEA has formed or is forming a parent committee under 34 CFR 251.20 for the purpose of applying for a grant under 34 CFR Part 251 (Formula Grants—Local Educational Agencies and Tribal Schools), the LEA may have that committee serve as the parent committee for the purpose of this program.

(2) Section 251.21, relating to the holding of one or more public hearings.

(3) Section 251.22 (a), (b), and (d), relating to the contents of an application.

(4)(i) Section 251.40, relating to the maintenance of effort required for LEAs.

(ii) However, this requirement does not apply to an Indian tribe or Indian organization.

(c)(1) The regulations in this Part 252.

(2) However, an Indian tribe or Indian organization is not subject to any provisions of this part relating to the parent committee.

(20 U.S.C. 241bb(b), 241dd)

§ 252.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 241aa–241ff)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 252.10 What types of projects may be funded?

(a) In the case of an application from an Indian tribe or Indian organization, the Secretary may fund a project designed to—

(1) Assume control over and operate a school previously operated by the Federal Government, the State, an LEA, or a private organization;

(2) Establish and operate a school for Indian children; or

(3) Establish and operate an LEA.

(b) In the case of an application from an LEA, the Secretary may fund a project listed in paragraphs (a) (1) and (2) of this section.

(20 U.S.C. 241bb(b))

Subpart C—How Does One Apply for a Grant?

§ 252.20 What must an application include?

In addition to addressing the criteria in § 252.31, an applicant shall comply with the application requirements in 34 CFR 251.22 (a), (b), and (d). The provisions of 34 CFR 251.22(c), regarding special application provisions, do not apply to this part.

(20 U.S.C. 241dd(a) (1), (2), (5), (7); 241bb(b))

(OMB Control No. 1810–0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 252.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 252.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 241bb(b))

§ 252.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the school or LEA that the applicant proposes to operate.

(2) In making this determination, the Secretary considers—

(i) The educational needs of the Indian children to be served by the

school or LEA—as indicated by academic achievement levels, dropout rates, standardized test scores, or other appropriate measures—and the extent to which the schools these children currently attend are inadequate to meet these needs;

(ii) The extent to which the school or LEA for which assistance is sought will help meet these needs and substantially increase educational opportunities for Indian children;

(iii) Cultural factors or other reasons that justify the need for an Indian-controlled school or LEA; and

(iv) An explanation of why the applicant lacks the financial resources to conduct the project.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program and the way the applicant plans to use its resources and personnel to achieve each objective;

(iv) An activity plan, including procedures to increase interaction between teachers and children—and their parents—served by these teachers.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which parents of the children to be served and other members of the Indian community are involved in the project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the children involved;

(ii) The applicant's plan for collecting and analyzing data including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 241bb(b))

4. Part 253 is revised to read as follows:

PART 253—INDIAN CONTROLLED SCHOOLS—ENRICHMENT PROJECTS

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart C—How Does One Apply for a Grant?

Subpart D—How Does the Secretary Make a Grant?

Authority: Title IV, Part A, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

Subpart A—General

§ 253.1 Indian-Controlled Schools—Enrichment Projects.

This program, Indian Controlled Schools—Enrichment Projects, provides financial assistance for educational enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools or LEAs.

(20 U.S.C. 241bb(b))

§ 253.2 Who is eligible for assistance under this program?

Under this program any applicant among the following is eligible for assistance if it operates or plans to establish and operate a school for Indian children—or, if eligible, an LEA—that is located on or geographically near one or more reservations:

(a) Indian tribes.

(b) Indian organizations.

(c) Local educational agencies (LEAs) that have been in existence not more than three years.

(20 U.S.C. 241bb(b))

§ 253.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The following provisions in 34 CFR Part 251:

(1)(i) Section 251.20, relating to the selection of the parent committee.

(ii) However, this requirement does not apply to an Indian tribe or Indian organization.

(iii) If an applicant LEA has formed or is forming a parent committee under 34 CFR 251.20 for the purpose of applying for a grant under 34 CFR Part 251 (Formula Grants—Local Educational Agencies and Tribal Schools) or a grant under 34 CFR Part 252 (Indian-Controlled Schools—Establishment), the LEA may have that committee serve as the parent committee for the purposes of this program.

(2) Section 251.21, relating to the holding of one or more public hearings.

(3) Section 251.22 (a), (b), and (d), relating to the contents of an application.

(4)(i) Section 251.40, relating to the maintenance of effort required for LEAs.

(ii) However, this requirement does not apply to an Indian tribe or Indian organization.

(c)(1) The regulations in this Part 253.

(2) However, an Indian tribe or Indian organization is not subject to any provisions of this part relating to the parent committee.

(20 U.S.C. 241bb(b), 241dd)

§ 253.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 241aa–241ff)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 253.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing projects that include, but are not limited to, those designed to—

(1) Improve acquisition of basic academic skills;

(2) Stimulate interest in careers;

(3) Stimulate interest in tribal culture and organization;

(4) Prevent school dropouts and reduce absenteeism;

(5) Establish or improve preschool education programs, including kindergarten; or

(6) Develop or improve instructional materials.

(b) The activities listed in paragraph (a) of this section are examples of projects the Secretary may fund under this program. An applicant may propose to carry out one or more of these activities or any other activity that meets the purpose of this program.

(20 U.S.C. 241bb(b))

Subpart C—How Does one Apply for a Grant?

§ 253.20 What must an application include?

In addition to addressing the criteria in § 253.31, an applicant shall comply with the application requirements in 34 CFR 251.22 (a), (b), and (d). The provisions of 34 CFR 251.22(c), regarding special application provisions, do not apply to this part.

(20 U.S.C. 241dd(a) (1), (2), (5), (7); 241bb(b))

(OMB Control No. 1810–0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 253.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 253.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 241bb(b))

§ 253.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed project.

(2) In making this determination, the Secretary considers—

(i) The educational needs to be addressed by the project, including the extent and severity of these needs as indicated by the number and percentage of Indian children with the needs in the area to be served by the project and by such factors as dropout rates, academic achievement levels, standardized test scores, or other appropriate measures.

(ii) A description of the efforts being made to meet these needs and an explanation of why these efforts are insufficient;

(iii) A clear description of the educational approach to be used and why the applicant has chosen this approach;

(iv) Evidence that the approach is likely to be successful with the children who will participate in the project; and

(v) An explanation of why the applicant lacks the financial resources to conduct the project.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) In making this determination, the Secretary looks for—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period;

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which parents of the children to be served and other members of the Indian community are involved in the project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the children involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(2) In making this determination, the Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 241bb(b))

PART 254—DEMONSTRATION PROJECTS—LOCAL EDUCATIONAL AGENCIES [REMOVED]

5. Part 254 is removed.

6. Part 255 is redesignated as Part 254 and is revised to read as follows:

PART 254—EDUCATIONAL SERVICES FOR INDIAN CHILDREN

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart C—How Does One Apply for a Grant?

Sec.

Subpart D—How Does the Secretary Make a Grant?

Authority: Title IV, Part B, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385 (a), (c)), unless otherwise noted.

Subpart A—General

§ 254.1 Educational Services for Indian Children.

This program, Educational Services for Indian Children, provides financial assistance for—

(a) Projects designed to improve educational opportunities for Indian children by providing educational services that are not available in sufficient quantity or quality to those children; and

(b) Enrichment projects that introduce innovative and exemplary approaches, methods, and techniques into the education of Indian children in elementary and secondary schools.

(20 U.S.C. 3385 (a), (c))

§ 254.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Indian tribes.

(d) Indian organizations.

(e) Indian institutions.

(20 U.S.C. 3385(c))

§ 254.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 254.

(20 U.S.C. 3385 (a), (c))

§ 254.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 3385 (a), (c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 254.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing projects that include, but are not limited to, those designed to—

(1) Improve acquisition of basic academic skills;

(2) Provide special educational services for handicapped and for gifted and talented Indian children;

(3) Stimulate interest in careers;

(4) Establish after-school educational centers;

(5) Stimulate interest in tribal culture and organization;

(6) Prevent school dropouts and reduce absenteeism;

(7) Establish or improve preschool education, including kindergarten;

(8) Provide guidance, counseling, and testing services; or

(9) Develop or improve instructional materials.

(b) The types of projects listed in paragraph (a) of this section are examples of projects the Secretary may fund under this program. An applicant may propose to carry out one or more of these activities or any other activity that meets the purposes of this program.

(20 U.S.C. 3385 (a)(2), (c))

Subpart C—How Does One Apply for a Grant?

§ 254.20 What must an application include?

(a) An application must contain the following:

(1) A description of the activities for which the applicant seeks assistance, including a statement of the number of children who will be served in the proposed project.

(2) An assurance that the applicant will provide for an evaluation of the effectiveness of the project in achieving its purposes and the purposes of this program.

(3) A description of a plan that would make adequate provision for the training of the personnel participating in the project.

(4) Information showing that the applicant will provide for the use of funds available under this program, and for other resources available to the applicant, in order to insure that, within the scope of the purpose of the project, there will be a comprehensive program to improve the educational opportunities of Indian children.

(b) The Secretary does not approve an application for a grant under this part unless—

(1) The Secretary is satisfied that the application, and any documents submitted with the application, show that there has been adequate participation by the parents of the children to be served and tribal

communities in the planning and development of the project, and that they will participate in the operation and evalution of the project; and

(2) The Secretary is satisfied that the application—to the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools whose needs are of the type that the program is intended to meet—makes provision for the participation of these children on an equitable basis.

(20 U.S.C. 3385(f)(1))

(OMB Control No. 1810-0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 254.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 254.32.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 3385 (c), (f)(1))

§ 254.31 To what applicants does the Secretary give priority?

In addition to the points awarded under § 254.32, the Secretary awards 25 points to each application from an Indian tribe, Indian organization, or Indian institution.

(20 U.S.C. 3385(f)(1))

§ 254.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed services.

(2) In making this determination, the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number and percentage of Indian children in the area to be served by the project who require the proposed services and by such factors as dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(ii) A description of other services in the area—including those offered by the applicant—that are designed to meet the same needs as those to be addressed by the project and the number of Indian children who receive these other services;

(iii) Evidence that these other services are insufficient in either quantity or quality or both, or an explanation of why they are not used by children who require the proposed services; and

(iv) An explanation of why the applicant lacks the financial resources to conduct the project.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) In making this determination, the Secretary looks for—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period;

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which parents and other members of the Indian community are involved in the project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(2) In making this determination, the Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the children involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(2) In making this determination the Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3385 (c), (f)(1))

7. Part 256 is redesignated as Part 255 and is revised to read as follows:

PART 255—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN CHILDREN

Subpart A—General

Sec.

Sec.

Authority: Title IV, Part B, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385 (a), (b)), unless otherwise noted.

Subpart A—General

§ 255.1 Planning, Pilot, and Demonstration Projects for Indian Children.

This program, Planning, Pilot, and Demonstration Projects for Indian Children, provides financial assistance for planning, pilot, and demonstration projects designed to create, test, and demonstrate the effectiveness of programs for improving educational opportunities for Indian children.

(20 U.S.C. 3385 (a)(1), (b))

§ 255.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) State educational agencies (SEAs).
(b) Local educational agencies (LEAs).
(c) Indian tribes.
(d) Indian organizations.
(e) Indian institutions.
(f) Federally supported elementary and secondary schools for Indian children.

(20 U.S.C. 3385(b))

§ 255.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.
(b) The regulations in this Part 255.

(20 U.S.C. 3385 (a), (b))

§ 255.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 3385 (a), (b))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 255.10 What types of projects may be funded?

(a)(1) The Secretary may fund applications proposing projects designed to plan, test, or demonstrate the effectiveness of programs for improving educational opportunities for Indian children.

(2) An applicant may apply for one or more of the types of grants listed in § 255.20(a)(2).

(3) An applicant may not apply for more than one type of grant for each proposed project.

(b) Proposed planning, pilot, or demonstration projects may include, but are not limited to—

(1) Activities designed to develop, test, replicate, or adapt—

(i) Curricular materials to improve the academic achievement of Indian children;

(ii) Successful educational practices to improve the academic achievement of Indian children;

(iii) Programs related to the educational needs of educationally deprived Indian children; or

(iv) Techniques to lower the school dropout rate or reduce absenteeism among Indian children;

(2) Development, testing and validation, or demonstration of materials appropriate for measuring the academic achievement of Indian children; or

(3) Coordination of the operation of other federally assisted programs that may be used to assist in meeting the educational needs of Indian children.

(c) The types of projects listed in paragraph (b) of this section are examples of projects the Secretary may fund under this program. An applicant may propose to carry out one or more of these activities or any other activity that meets the purposes of this program.

(d) *Priorities.* (1) Each year the Secretary may select for priority for planning, pilot, or demonstration grants one or more of the types of projects listed in paragraph (b) of this section.

(2) The Secretary publishes the selected priorities, if any, in a notice in the **Federal Register.**

(20 U.S.C. 3385 (a)(1), (b))

Subpart C—How Does One Apply for a Grant?

§ 255.20 What must an application include?

(a)(1) An applicant shall submit a separate application for each proposed project.

(2) The applicant shall specify whether its application is for—

(i) A planning grant;

(ii) A pilot grant; or

(iii) A demonstration grant.

(b) An application must contain the following:

(1) A description of the activities for which the applicant seeks assistance, including a statement of the number of children who will participate in the proposed project.

(2) An assurance that the applicant will provide for an evaluation of the effectiveness of the project in achieving its purposes and the purposes of this program.

(c) The Secretary does not approve an application for a grant under this program unless—

(1) The Secretary is satisfied that the application, and any documents submitted with the application, show that there has been adequate participation by the parents of the children to be served and tribal communities in the planning and development of the project, and that they will participate in the operation and evaluation of the project; and

(2) The Secretary is satisfied that the application—to the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools whose needs are of the type which the program is intended to meet—makes provision for the participation of these children on an equitable basis.

(20 U.S.C. 3385 (b), (f)(1))

(OMB Control No. 1810-0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 255.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the applicable criteria in § 255.32, 255.33, or 255.34, depending on the type of grant for which the applicant has applied.

(b) The Secretary awards up to 100 possible total points for the criteria established for each type of grant.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 3385(b))

§ 255.31 To what applicants does the Secretary give priority?

In addition to the points awarded under § 255.32, 255.33, or 255.34, the Secretary—

(a) Awards 25 points to each application from an Indian tribe, Indian organization, or Indian institution; and

(b)(1) May award up to 10 points to an application for the extent to which the applicant addresses the priorities, if any, selected by the Secretary under § 255.10(d); or

(2) May give absolute preference to each application that addresses these priorities.

(20 U.S.C. 3385(f)(1))

§ 255.32 What selection criteria does the Secretary use for a planning grant?

The Secretary uses the following selection criteria in evaluating each application for a planning grant:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the planning project.

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of significant magnitude among Indian children;

(ii) A clear statement of the educational approach to be developed;

(iii) A description of the literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that address similar needs or have tried similar approaches; and

(iv) Evidence that the project is likely to serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the planning project.

(2) In making this determination, the Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which parents of the children to be served and other members of the Indian community are involved in the planning project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the planning project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the planning project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the planning project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure the project's effectiveness in meeting each objective;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness for the method of analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the planning project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3385 (b), (f)(1))

§ 255.33 What selection criteria does the Secretary use for a pilot grant?

The Secretary uses the following selection criteria in evaluating each application for a pilot grant:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the pilot project;

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of significant magnitude among Indian children;

(ii) A clear statement of the educational approach to be tested in the project;

(iii) Evidence that—

(A) The plan on which the pilot project is based included an adequate literature review, site visits, or other appropriate activity; and

(B) The applicant has made a serious attempt to learn from research and from other projects that address similar needs or that have tried similar approaches; and

(iv) Evidence that the project is likely to serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the pilot project.

(2) The Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the parents of the children to be served and other members of the Indian community are involved in the pilot project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the pilot project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project;

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff; and

(v) The procedures the applicant intends to use to train staff for implementing the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the pilot project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the pilot project.

(2) In making this determination the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the children involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the pilot project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3385 (b), (f)(1))

§ 255.34 What selection criteria does the Secretary use for a demonstration grant?

The Secretary uses the following selection criteria in evaluating each application for a demonstration grant:

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the demonstration project.

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of sufficient magnitude among Indian children;

(ii) A clear statement of the educational approach to be demonstrated and evidence that the project is likely to serve as a model for communities with similar educational needs; and

(iii) Evidence that—

(A) The plan and pilot project on which the demonstration project is based included an adequate literature review, site visits, or other appropriate activity; and

(B) The applicant has made a serious attempt to learn from research and from other projects that address similar needs or have tried similar approaches.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the demonstration project.

(2) In making this determination, the Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period;

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Parental and community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the parents of the Indian children to be served and other members of the Indian community are involved in the demonstration project.

(2) The Secretary looks for information that shows that parents and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel to be used in the demonstration project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the development of the project;

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff; and

(v) The procedures the applicant intends to use to train staff, if necessary, for implementing the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well

as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the demonstration project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the demonstration project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the children involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Dissemination.* (15 points)

(1) The Secretary reviews each application for evidence that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) In making this determination, the Secretary looks for—

(i) Information that shows high quality in the design of the dissemination plan and procedures for evaluating the effectivenes of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(ii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting interested schools in adapting or adopting and successfully implementing the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(h) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the demonstration project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3385 (b), (f)(1))

8. Part 257 is redesignated as Part 256 and is revised to read as follows:

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under These Programs?

Subpart C—How Does One Apply for a Grant?

Subpart D—How Does the Secretary Make a Grant?

Subpart E—What Conditions Must Be Met by a Grantee?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

Authority: Title IV, Part B, Pub. L. 92-318, 86 Stat. 339, as amended (20 U.S.C. 3385); and the Indian Education Act, Section 422, as amended (20 U.S.C. 3385a), unless otherwise noted.

Subpart A—General

§ 256.1 Educational Personnel Development.

(a) Educational Personnel Development includes two programs supporting projects designed to—

(1) Prepare persons to serve Indian students as teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(2) Improve the qualifications of persons serving Indian students in these capacities.

(b) The two programs included in Educational Personnel Development are—

(1) The program authorized by Section 1005(d) of the Indian Education Act and referred to in this part as the Section 1005(d) Program; and

(2) The program authorized by section 422 of the Indian Education Act and referred to in this part as the Section 422 Program.

(20 U.S.C. 3385(d), 3385a)

§ 256.2 Who is eligible for assistance under these programs?

(a) The following are eligible for assistance under the Section 1005(d) Program:

(1) Institutions of higher education.

(2) Local educational agencies (LEAs) in combination with institutions of higher education.

(3) State educational agencies (SEAs) in combination with institutions of higher education.

(b) The following are eligible for assistance under the Section 422 Program:

(1) Institutions of higher education.

(2) Indian tribes.

(3) Indian organizations.

(20 U.S.C. 3385(d), 3385a)

§ 256.3 What regulations apply to these programs?

The following regulations apply to these programs:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 256.

(20 U.S.C. 3385, 3385a)

§ 256.4 What definitions apply to these programs?

The definitions in 34 CFR 250.4 apply to these programs.

(20 U.S.C. 3385, 3385a)

Subpart B—What Kinds of Activities Does the Secretary Assist Under These Programs?

§ 256.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing projects designed to—

(1) Prepare persons to serve Indian students as educational personnel or ancillary educational personnel, as described in paragraph (b) of this section;

(2) Improve the qualifications of persons serving Indian students in these types of positions; or

(3) Provide in-service training to persons serving Indian students in these types of positions.

(b) Projects assisted under these programs may prepare participants for positions such as teachers, special educators of handicapped or gifted and talented students, bilingual-bicultural specialists, guidance counselors, school psychologists, school administrators, teacher aides, social workers, adult education specialists or instructors, or college administrators.

(20 U.S.C. 3385(d), 3385a)

Subpart C—How Does One Apply for a Grant?

§ 256.20 What must an application include?

(a) An application must contain the following:

(1) A description of the activities for which the applicant seeks assistance, including the total number of participants in the proposd project and the number and percentage of participants who will be Indian.

(2) A description of the plan for giving preference to Indians in the selection of participants in accordance with § 256.50.

(3) Assurances that the applicant will—

(i) Provide for an evaluation of the effectiveness of the project in achieving its purposes and those of this program;

(ii) Provide in its final performance report information on the selection, academic performance, and job placement of project participants; and

(iii) Cooperate with follow-up studies of project participants conducted or authorized by the Secretary.

(b) The Secretary does not approve an application for a grant under the Section 1005(d) Program unless the Secretary is satisfied that the application—to the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools whose needs are of the type which the program is intended to meet makes provisions for the participation on an equitable basis of persons serving or preparing to serve these children as educational personnel or ancillary educational personnel.

(20 U.S.C. 3385a, 3385(d), (f)(1))

(OMB Control No. 1810-0021, expiration date 2/86)

§ 256.30 How does the Secretary evaluate an application?

(a) The Secretary reviews and approves applications under the Section 1005(d) Program separately from applications under the Section 422 Program.

(b) The Secretary evaluates each application under either program on the basis fo the criteria in § 256.32.

(c) The Secretary awards up to 100 possible total points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 3385(d), 3385a)

§ 256.31 To what applicants does the Secretary give priority?

In addition to the points awarded under § 256.32, the Secretary awards—

(a) Ten points to each application proposing a project in which all participants will be enrolled in—

(1) A course of study resulting in a degree at the bachelor's level or higher; or

(2) Courses beyond the bachelor's degree.

(b) Ten points to each application under the Section 1005(d) Program from an Indian institution of higher education;

(c) Ten points to each application under the Section 1005(d) Program proposing a project in which 100 percent of participants will be Indian.

(d) Fifteen points to each application under the Section 422 Program from an Indian institution of higher education, Indian tribe, or Indian organization.

(20 U.S.C. 3385(d), (f)(1), 3385a)

§ 256.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the type of personnel to be trained.

(2) In making this determination the Secretary considers—

(i) The conclusions of and supporting evidence from a current needs assessment or other appropriate documentation; and

(ii) The recency fo the assessment or other documentation.

(b) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) In making this determination, the Secretary looks for—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(iv) Techniques designed specifically to enable project participants to meet the needs of Indian students; and

(v) A plan for effective administration of the project.

(c) *Benefit to Indian students.* (10 points)

(1) The Secretary reviews each application to determine the likelihood that, after receiving training under the project, the participants will serve Indian students as educational personnel or ancillary educational personnel, as described in § 256.10(b).

(2) In making this determination, the Secretary considers—

(i) Policies or practices of the applicant, such as those governing selection of participants, that increase the likelihood that participants will serve Indian students on completion of the training; and

(ii) Evidence that, on completion of the training, participants will be able to obtain positions that involve the education of Indian students.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(2) In making this determination, the Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the participants; and

(ii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) In making this determination, the Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3385 (d), (f)(1), 3385a)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 256.40 What costs are allowable for stipends and dependency allowances?

(a) A grantee may, from project funds, pay to participants stipends and allowances for dependents.

(b) Each year, the Secretary announces in a notice in the **Federal Register** the estimated maximum amount of a stipend and the estimated maximum amount of an allowance for dependents.

(c)(1) In determining a participant's need for assistance and the amount of the assistance, the grantee shall deduct financial assistance—other than loans—received or expected to be received by the participant for his or her living expenses and for the support of his or her dependents.

(2) The total financial assistance provided to a participant from all sources other than loans may not exceed the participant's need for that assistance.

(d)(1) Unless approved by the Secretary, the grantee may not pay a stipend or dependency allowance to a participant who is not a full-time student.

(2) The Secretary may approve payment of a partial stipend to a teacher aide who must take leave without pay in order to be a part-time student.

(20 U.S.C. 3385(d), 3385a)

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 256.50 What preference must a grantee give in selecting participants?

In selecting project participants, a grantee shall give preference to Indians.

(20 U.S.C. 3385(d), 3385a)

9. Part 258 is redesignated as Part 257 and is revised to read as follows:

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart C—How Does One Apply for a Grant?

Subpart D—How Does the Secretary Make a Grant?

Authority: Title IV, Part C, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

Subpart A—General

§ 257.1 Educational Services for Indian Adults.

This program, Educational Services for Indian Adults, provides financial assistance for educational service projects designed to improve educational opportunities for Indian adults.

(20 U.S.C. 1211a(b))

§ 257.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) Indian tribes.

(b) Indian organizations.

(c) Indian institutions.

(20 U.S.C. 1211a(b))

§ 257.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 257.

(20 U.S.C. 1211a)

§ 257.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 1211a)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 257.10 What types of projects may be funded?

(a) The Secretary makes grants under this program for services and instruction below the college level.

(b) The Secretary may fund applications proposing projects designed to—

(1) Enable Indian adults to acquire basic educational skills, including literacy;

(2) Enable Indian adults to continue their education through the secondary school level;

(3) Establish career education projects intended to improve employment opportunities; and

(4) Provide educational services or instruction for—

(i) Handicapped or elderly Indian adults; or

(ii) Incarcerated Indian adults.

(c) The types of projects listed in paragraph (b) of this section are examples of projects the Secretary may fund under this program. An applicant may propose to carry out one or more of these activities or any other activities that meets the purposes of this program.

(d)(1) The Secretary does not fund under this program activities designed solely to prepare individuals to enter a specific occupation or cluster of closely related occupations in an occupational field after participating in the project.

(2) However, if the following types of activities are otherwise authorized under this part, the Secretary may fund—

(i) Activities that are designed to prepare individuals to benefit from occupational training; and

(ii) Activities that incidentally involve the teaching of employment-related skills.

(20 U.S.C. 1202(b), 1211a(b))

Subpart C—How Does One Apply for a Grant?

§ 257.20 What must an application include?

An application must contain the following:

(a) A description of the activities for which the applicant seeks assistance, including the total number of participants in the proposed project.

(b) An assurance that the applicant will provide for an evaluation of the effectiveness of the project in achieving its purposes and the purposes of this program.

(20 U.S.C. 1211a (b), (d))

(OMB Control No. 1810–0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 257.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 257.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1211a(b))

§ 257.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed services.

(2) In making this determination, the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number and percentage of Indian adults in the area to be served by the project who need the proposed services and by such factors as elementary and secondary school dropout or absenteeism rates, average grade level completed, unemployment rates, or other appropriate measures;

(ii) A description of other services in the area—including those offered by the applicant—that are designed to meet the same needs as those to be addressed by the project, and the number of Indian adults who receive these other services;

(iii) Evidence that these other services are insufficient in quantity or quality or both, or an explanation of why these other services are not used by adults who require the proposed services; and

(iv) An explanation of why the applicant lacks the financial resources to conduct the project.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community are involved in the project.

(2) The Secretary looks for information that shows that individuals to be served and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information to determine the quality of the plan for evaluating the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the adults involved;

(ii) The applicant's plan for collecting and analyzing data including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(2) In making this determination, the Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1211a (b), (d)(2))

10. Part 259 is redesignated as Part 258 and is revised to read as follows:

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

Subpart A—General

Sec.

Authority: Title IV, Part C, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

Subpart A—General

§ 258.1 Planning, Pilot, and Demonstration Projects for Indian Adults.

This program, Planning, Pilot, and Demonstration Projects for Indian Adults, provides financial assistance for planning, pilot, and demonstration projects designed to create, test, and demonstrate the effectiveness of programs for improving employment and educational opportunities for Indian adults.

(20 U.S.C. 1211a(a))

§ 258.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Indian tribes.

(d) Indian organizations.

(e) Indian institutions.

(20 U.S.C. 1211a)

§ 258.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 258.

(20 U.S.C. 1211a)

§ 258.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 1211a)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 258.10 What types of projects may be funded?

(a)(1) The Secretary may fund applications proposing projects designed to plan, test, or demonstrate the effectiveness of programs for improving employment and educational opportunities for Indian adults.

(2) An applicant may apply for one or more of the types of grants listed in § 258.20(a)(1).

(3) An applicant may not apply for more than one type of grant for each proposed project.

(b) Proposed planning, pilot, or demonstration projects may include, but are not limited to, activities designed to develop, test, replicate, or adapt—

(1) Educational approaches to assist Indian adults in achieving basic literacy;

(2) Methods for improving the basic skills of Indian adults so that they may benefit from occupational training; or

(3) Educational approaches to assist Indian adults in qualifying for high school equivalency certificates in the shortest time feasible.

(c) The types of projects listed in paragraph (b) of this section are examples of projects the Secretary may fund under this program. An applicant may propose to carry out one or more of these activities or any other activity that meets the purposes of this program.

(d) If a proposed project includes services and instruction, those services and instruction must be below the college level.

(e)(1) The Secretary does not fund under this program activities designed solely to prepare individuals to enter a specific occupation or cluster of closely related occupations in an occupational field after participating in the project.

(2) However, if the following types of activities are otherwise authorized under this part, the Secretary may fund—

(i) Activities that are designed to prepare individuals to benefit from occupational training; and

(ii) Activities that incidentally involve the teaching of employment-related skills.

(f) *Priorities.* (1) Each year the Secretary may select for priority for planning, pilot, or demonstration grants one or more of the types of projects listed in paragraph (b) of this section.

(2) The Secretary publishes the selected priorities, if any, in a notice in the **Federal Register.**

(Adult Education Act, section 303(b), 316(b); 20 U.S.C. 1211(a) (1), (2))

Subpart C—How Does One Apply for a Grant?

§ 258.20 What must an application include?

(a) (1) An applicant shall specify whether its application is for—

(i) A planning grant;

(ii) A pilot grant; or

(iii) A demonstration grant.

(2) The Secretary does not consider an application that addresses more than one of these three categories.

(b) An application must contain the following:

(1) A description of the activities for which the applicant seeks assistance, including the total number of participants in the proposed project.

(2) An assurance that the applicant will provide for an evaluation of the effectiveness of the project in achieving its purposes and the purposes of this program.

(c) The Secretary does not approve an application for a grant under this part unless the Secretary is satisfied that the application, and any documents submitted with the application, indicate that there has been adequate participation by the individuals to be served and tribal communities in the planning and development of the project, and that they will participate in the operation and evaluation of the project.

(20 U.S.C. 1211a (a)(1), (2), (d))

(OMB Control No. 1810-0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?

§ 258.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the applicable criteria in § 258.32, 258.33, or 258.34, depending on the type of grant for which the applicant has applied.

(b) The Secretary awards up to 100 possible total points for the criteria established for each type of grant.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 1211a(a) (1), (2))

§ 258.31 To what applicants does the Secretary give priority?

In addition to the points awarded under § 258.32, 258.33, or 258.34, the Secretary—

(a) Awards 25 points to each application from an Indian tribe, Indian organization, or Indian institution; and

(b)(1) May award up to 10 points to an application for the extent to which the

applicant addresses the priorities, if any, selected by the Secretary under § 258.10(f); or

(2) May give absolute preference to applications that address these priorities.

(20 U.S.C. 1211a(a) (1), (2))

§ 258.32 What selection criteria does the Secretary use for a planning grant?

The Secretary uses the following selection criteria in evaluating each application for a planning grant:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the planning project.

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of sufficient magnitude among Indian adults;

(ii) A clear statement of the educational approach to be developed;

(iii) A description of the literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that address similar needs or have tried similar approaches; and

(iv) Evidence that the project is likely to serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the planning project.

(2) In making this determination, the Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which individuals to be served and other members of the Indian community are involved in the planning project.

(2) The Secretary looks for information that shows that individuals to be served and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the planning project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the planning project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the planning project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure the project's effectiveness in meeting each objective;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the planning project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1211a (a) (1), (2), (d))

§ 258.33 What selection criteria does the Secretary use for a pilot grant?

The Secretary uses the following selection criteria in evaluating each application for a pilot grant:

(a) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the pilot project.

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of significant magnitude among Indian adults;

(ii) A clear statement of the educational approach to be tested in the project;

(iii) Evidence that—

(A) The plan upon which the pilot project is based included an adequate literature review, site visits, or other appropriate activity; and

(B) The applicant has made a serious attempt to learn from research and from other projects that address similar needs or that have tried similar approaches; and

(iv) Evidence that the project is likely to serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the pilot project.

(2) The Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which individuals to be served and other members of the Indian community are involved in the pilot project.

(2) The Secretary looks for information that shows that individuals to be served and other members of the Indian community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the pilot project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project;

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff; and

(v) The procedures the applicant intends to use to train staff for implementing the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the pilot project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the pilot project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the adults involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the pilot project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1211a (a)(1), (2), (d))

§ 258.34 What selection criteria does the Secretary use for a demonstration grant?

The Secretary uses the following selection criteria in evaluating each application for a demonstration grant:

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for and the soundness of the rationale for the demonstration project.

(2) In making this determination, the Secretary looks for—

(i) An identification and description of the specific problem to be addressed and evidence that the problem is of significant magnitude among Indian adults;

(ii) A clear statement of the educational approach to be demonstrated and evidence that the project is likely to serve as a model for communities with similar educational needs; and

(iii) Evidence that—

(A) The plan and pilot project on which the proposed demonstration project is based included an adequate literature review, site visits, or other appropriate activity; and

(B) The applicant has made a serious attempt to learn from research and from other projects that address similar needs or have tried similar approaches.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the demonstration project.

(2) In making this determination, the Secretary looks for information that shows—

(i) A clear statement of the purpose of the project;

(ii) Objectives that are—

(A) Related to the purpose of the project;

(B) Sharply defined;

(C) Stated in measurable terms; and

(D) Capable of being achieved within the project period.

(iii) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(iv) A plan for effective administration of the project.

(c) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community are involved in the demonstration project.

(2) The Secretary looks for information that shows that individuals to be served and other members of the Indian community—

(i) Were involved in planning and developing the demonstration project; and

(ii) Will be involved in operating and evaluating the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the demonstration project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(2) (i) and (ii) of this section will commit to the development of the project;

(iv) The extent to which the applicant will give preference to Indians in the hiring of project staff; and

(v) The procedures the applicant intends to use to train staff, if necessary, for implementing the projects.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the demonstration project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(2) In making this determination, the Secretary considers—

(i) How well the evaluation will measure—

(A) The project's effectiveness in meeting each objective; and

(B) The impact of the project on the adults involved;

(ii) The applicant's plan for collecting and analyzing data, including—

(A) The appropriateness of the instruments to collect the data;

(B) The appropriateness of the method for analyzing the data; and

(C) The timetable for collecting and analyzing the data; and

(iii) Procedures for—

(A) Periodic assessment of the progress of the project; and

(B) If necessary, modification of the project as a result of that assessment.

(g) *Dissemination.* (15 points)

(1) The Secretary reviews each application for evidence that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) In making this determination, the Secretary looks for—

(i) Information that shows high quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting interested Indian communities in adapting or adopting and successfully implementing the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(h) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the demonstration project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1211a (a)(1), (2), (d))

PART 260—ADULT EDUCATION RESEARCH AND DEVELOPMENT PROJECTS—[REMOVED]

11. Part 260 is removed.

PART 261—ADULT EDUCATION SURVEYS—[REMOVED]

12. Part 261 is removed.

PART 262—ADULT EDUCATION DISSEMINATION AND EVALUATION PROJECTS—[REMOVED]

13. Part 262 is removed.

Note to Readers: This Appendix will not be codified in the Code of Federal Regulations

SUMMARY OF COMMENTS AND RESPONSES TO THE NOTICE OF PROPOSED RULEMAKING

Parts 250–262—Indian Education Programs

General

Comment. One commenter recommended that during the revision of regulations, Indian tribes and Indian parents be involved.

Response. No change has been made. The Secretary invited interested persons to become involved by submitting comments and recommendations regarding proposed regulations during a 60-day comment period. The Secretary feels that this provided adequate opportunity for individuals to express their concerns and to make appropriate recommendations.

In addition, well before the issuance of these proposed regulations, the Secretary had informed the public through the Unified Agenda of Federal Regulations—published in the **Federal Register** each April and October—that the current regulations for these programs were scheduled to be reviewed. Interested parties had an opportunity to make comments and offer suggestions in the interim.

Comment. One commenter noted that the deregulation process has resulted in much more concise and more flexible regulations. However, to maintain "program integrity" the commenter recommended the development of non-regulatory guidelines.

Response. No change has been made. Deregulation offers policymakers at all levels greater opportunities for the exercise of discretion. However, the Secretary will give consideration to the development of non-regulatory guidelines to assist users of the regulations.

Comment. One commenter asked why four programs were removed from the proposed regulations. These programs are found in the current regulations as follows: 34 CFR Part 254, Demonstration Projects—Local Education Agencies; 34 CFR Part 260, Adult Education Research and Development Projects; 34 CFR Part 261, Adult Education Surveys; and 34 CFR Part 262, Adult Education Dissemination and Evaluation Projects.

Response. No change has been made. The Secretary has removed these regulations because the programs implemented by the regulations are not funded, and it is the policy of the Department not to retain regulations for unfunded programs. It should be noted, however, that many of the activities covered by the unfunded programs are permissible activities under other provisions of the Indian Education Act. If there were to be funding for the programs whose regulations have been removed, the Secretary would issue appropriate implementing regulations.

Comment. Eleven commenters requested clarification on the applicability of Executive Order 12372 (Intergovernmental Review) in relation to programs under the Indian Education Act. Another commenter recommended that Indian Education Programs be exempt from this order.

Response. A change has been made. The list of programs covered by Executive Order 12372 and contained in the preamble to the notice of proposed rulemaking (49 FR 2851; January 23, 1984) was incorrect and conflicted with the accurate listing of covered programs provided in 34 CFR 250.3(e). The error has been corrected in these final regulations. The Secretary had earlier determined the appropriateness of including these programs under Executive Order 12372 (see 48 FR 29158 *et seq.*). It should be noted, however, that transactions with federally recognized Indian tribal governments and with nongovernmental entities, including State postsecondary educational institutions, are not covered under the Department's regulations implementing Executive Order 12372. (See 34 CFR 79.3(b).)

Comment. Two commenters recommended retaining as a separate requirement the prohibition on supplanting in Parts 251 through 253.

Response. No change has been made. The requirement prohibiting supplanting of funds is contained in the Act. In addition 34 CFR 251.22(b)(4), 252.20 and 253.20 require an applicant to include in its application a copy or description of

policies and procedures designed to insure that funds under the Indian Education Program will not be used to supplant. The Secretary considers a separate section restating the prohibition to be duplicative of these sections.

Comment. Three commenters proposed changing the point structure of the evaluation criteria in 34 CFR Parts 252, 253, 254, 255, and 258. The commenters also recommended adding factors to the criteria relating to budget and cost effectiveness and increasing the maximum points for these criteria.

Response. No change has been made. The Secretary has given careful consideration to the selection criteria and the points assigned to each criterion in the proposed regulations. The commenters have not provided sufficiently persuasive reasons to warrant modification of the points assigned to the selection criteria or inclusion of additional factors.

Part 250—Indian Education Act—General Provisions

General

Comment. One commenter asked why the proposed regulations delete the following provisions from the current regulations found in 34 CFR Part 250: §§ 250.7 (allocation of available funds), 250.8 (capacity to carry out a project), 250.9 (salaries and wages), 250.10 (organizational and administrative documents), and 250.11 (continuation awards).

Response. No change has been made. In keeping with the policy of deregulation, the Secretary wishes to provide regulatory relief to applicants and grantees by removing from the current regulations provisions that go beyond the statutory requirements, impose unnecessary restrictions, hinder local decision-making, are duplicative, or are unduly burdensome. The Secretary believes that these amended regulations are sufficient to carry out the purposes of the Act.

Section 250.4 What definitions apply to these programs?

Comment. One commenter recommended that each definition have a subsection number.

Response. No change has been made. The section on definitions is in the format required by the Office of the Federal Register.

Comment. One commenter expressed concern over the elimination of the definition for "organized group of Indians." The commenter felt that the removal of this definition could eliminate the participation of a large number of currently non-federally recognized Indians who have to have not been "federally terminated."

Response. No change has been made. The definition of "Indian" in these regulations provides for members of organized groups of Indians, including groups terminated since 1940.

Section 250.5 What provisions of the Indian Self-Determination and Education Assistance Act apply to these programs?

Comment. One commenter indicated that in the awarding of subcontracts, the Indian preference prescribed in section 7(b) of Pub. L. 93-638 should be exercised. Two commenters recommended that Indian preference be exercised in the hiring of project staff. Another commenter recommended that Indian preference be implemented in all Indian Education Act programs.

Response. No change has been made. Section 250.5 of these regulations restates the requirements of section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Educational Assistance Act. The Secretary is considering whether additional clarification of the requirements is necessary for these programs and other programs of the Department. However, no change has been made at this time in these final regulations.

In addition, the requirements of the Indian Education Act that priority be given to certain Indian applicants and participants are implemented by 34 CFR 254.31, 255.31, 256.31, and 258.31.

Part 251—Formula Grants—Local Educational Agencies and Tribal Schools

General

Comment. Two commenters expressed concern about the change in the title of Part 251 from "Entitlement Grants" to "Formula Grants."

Response. No change has been made. The term "entitlement grants" is more appropriately reserved for programs of Federal financial assistance under which grants of specific amounts of money are guaranteed. The change in title will have no effect on program operation.

Comment. Sixty-two commenters recommended that the current regulations implementing Part A of the Indian Education Act (34 CFR Part 251—Formula Grants—Local Educational Agencies and Tribal Schools) not be changed.

Response. No change has been made. The revisions to Part 251 proposed by the Secretary are designed to provide—within the framework of basic statutory requirements—regulatory relief to constitutents in the field of education and to the general public. The regulations are intended to encourage State and local initiatives, creativity, and flexibility while ensuring that Federal financial assistance is used by grantees to assist those most in need of educational services.

Comment. One commenter asked why the proposed regulations delete the following provisions from the current regulations found in 34 CFR Part 251: §§ 251.21 (conducting a needs assessment), 251.22 (project design specifications), 251.25(a) (1)–(3) (specific parent committee information), 251.25(a) (4) and (5) (detailed project information), 251.25(a)(10) (information coordination with other projects), 251.40 (responsibilities of the LEA), 251.41 (responsibilities of the parent committee) and 251.42 (limitations on hiring project staff).

Response. No change has been made. In the interest of decreasing burdens on applicants and grantees, the Secretary has deleted from the current regulations a number of requirements that the Secretary regards as beyond the statute, overly prescriptive, duplicative, or confusing. The Secretary has determined that these revised regulations implement all statutory requirements and provide regulatory provisions necessary to ensure the effective implementation of programs without imposing undue burdens on applicants and grantees.

Comment. One commenter expressed concern that the proposed regulations do not address Indians living in urban areas.

Response. No change has been made. If a local educational agency (LEA) meets the requirements as an eligible applicant under § 251.2 of these regulations (Who is eligible for assistance under this program?) Indian children, regardless of where they live, are not precluded from being served. In addition, the statute does not grant the Secretary the authority to direct funds on the basis of residence.

Comment. Two commenters expressed concern that the proposed regulations would make it easier for an LEA to misuse funds awarded under the Act. One of the commenters felt that misuse of funds could result from the failure of the regulations to require the LEA "to be explicitly accountable for its administration of the projects."

Response. No change has been made. Section 251.22(b)(3)(viii) of the regulations follows the statute by requiring an applicant LEA to provide an assurance of fiscal control and adequate accounting procedures.

Section 251.22(b)(3)(iii) of the regulations also requires an assurance that "the applicant will keep records and will afford the Secretary access to these records * * * to assure the correctness and verification of reports made by the applicant." Other provisions governing the use of funds are found in the Education Department General Administrative Regulations (EDGAR), which apply to the Indian Education Programs.

Section 251.2 Who is eligible for assistance under this program?

Comment. One commenter recommended that the proposed regulations permit a parent committee to apply for funds under this program if the LEA declines to apply.

Response. No change has been made. Eligibility requirements for assistance under the program are specified in the Act.

Section 251.10 What types of projects may be funded?

Comment. One commenter asked why the proposed regulations delete the examples of authorized activities found in the current regulations in 34 CFR 251.10 (a) and (c) (authorized activities). The commenter pointed out that "the proposed regulations give more such examples with respect to the other programs." Another commenter recommended that the list of authorized activities be retained.

Response. No change has been made. In keeping with the policy of deregulation, the Secretary has decided—in the case of projects under the Formula Grants Program—to repeat the general types of activities stated in the Act and permit each applicant the flexibility and initiative to propose specific types of activities consistent with the purpose of the statute.

Under the Formula Grants Program any applicant is entitled to funds if the applicant meets the requirements specified in the statute. A grantee may then use its funds to achieve the broad goal of this program: To meet the special educational and culturally related academic needs of Indian students.

The other Indian Education Programs are different because an applicant must compete for discretionary grant funds, and a grantee must then use its funds to carry out activities designed to achieve goals that, by statute, are more specific than the goal of the Formula Grants Program.

The Secretary believes that, because of the competitive nature of these other programs, applicants could benefit from guidance in understanding—at least in general terms—types of projects that would address the goals of the respective programs and that the Secretary considers for funding.

Section 251.20 How is a parent committee selected?

Comment. Six commenters recommended that the parent committee be established through the process of election rather than selection.

Response. No change has been made. The method of establishing a parent committee in the proposed regulations is taken from section 305(b)(2)(B)(ii) of the Act. The word "select" is used to be consistent with the Act and to avoid the imposition of only one method of selection—e.g., election—in circumstances in which another method of selection may be more appropriate.

Comment. Two commenters recommended that the regulations specify a minimum number of members on a parent committee.

Response. No change has been made. Section 251.20(c) of these regulations implements statutory requirements by specifying that at least one-half the members of a parent committee be parents of Indian children to be served and that at least one teacher and, if applicable, at least one Indian secondary school student be on the committee. The Secretary feels that the regulations should not exceed these statutory provisions and that the LEA and the Indian community should cooperatively decide the total number of committee members based on local needs.

Comment. Three commenters recommended that parent membership on a committee be open to parents of Indian children enrolled in the district, rather than restricted to parents of children to be served by a proposed project.

Response. No change has been made. Section 305(b)(2)(B)(ii) of the Act requires that the committee be composed of, among others, "parents of children participating * * * in the program for which assistance is sought."

Comment. Twenty commenters recommended that the members of the committee be "Indian parents."

Response. No change has been made. The method of establishing a parent committee in the regulations is taken from section 305(b)(2)(B)(ii) of the Act, which prescribes that at least half the members of the committee be "parents of children participating * * * in the program for which assistance is sought."

Comment. One commenter recommended retaining the current requirement that a teacher and secondary school student serve on the committee.

Response. A change has been made. To be consistent with section 305(b)(2)(B)(ii) of the Act, a new paragraph (2) has been added to § 251.20(c) of these regulations. The added paragraph provides that the committee must include at least one teacher and, if applicable, at least one secondary school student to be served by the program for which assistance is sought.

Comment. One commenter recommended that guidance counselors be included among those eligible to select and serve on the parent committee.

Response. A change has been made. Section 251.20(b)(2) of these regulations has been changed to read as follows: "Teachers, including guidance counselors, except members of the project's staff." It has been the practice under this program to regard certified guidance counselors as teachers for purposes of parent committee membership.

Comment. Two commenters recommended that a school board member who is the parent of an Indian child be prohibited from serving as an officer or voting member of the parent committee.

Response. No change has been made. The Indian Education Act authorizes parents of children to be served, teachers, and secondary school students as eligible to serve as members of the committee. The Secretary believes that the type of issue raised by the commenter should be left to the parent committee and the local community.

Comment. Seven commenters recommended changing §251.20(b)(1) to read "Parents of Indian children enrolled in the applicant's school." A number of the commenters observed that it cannot always be determined which parent's child will be participating in a project.

Response. No change has been made. The regulations follow the statute in specifying that parent members of the committee be "parents of Indian children who will participate in the proposed project." The Secretary interprets this to include parents of all children who would be expected to be served by an approved project.

Comment. Ten commenters were concerned that the regulations do not contain eligibility requirements or stipulate terms of service for officers of a parent committee.

Response. No change has been made. Section 251.20 of these regulations restates the statutory eligibility requirements for serving on a parent committee. Section 251.22(b)(3)(vi)

requires an LEA to assure in its application that the parent committee "will adopt and abide by reasonable by-laws." At each committee's discretion the by-laws could include eligibility requirements and terms of service for officers, provided these requirements were consistent with the Act.

Comment. Thirty-eight commenters expressed concern that the proposed rules are contrary to provisions of the Act requiring the participation of parents of Indian children in the planning, operation, and evaluation of projects under this program. Twelve commenters expressed concern that the proposed regulations would eliminate the parent committee from the decision-making process and generally diminish the role of the committee.

Response. No change has been made. The regulations are consistent with the Act regarding the role of the parent committee in the planning, operation, and evaluation of a project. A number of sections contain requirements designed to ensure an important role for parents:

- Section 251.21(b) requires an applicant to hold a hearing or hearings open to the general public before preparing an application for a new of continuation award. At the public hearing or hearings the applicant is required to provide the parents of Indian children, among others, a full opportunity to understand the project and to offer recommendations on the proposed project.
- Section 251.22(b)(3)(v) requires an applicant that is an LEA to provide in its application specific assurances regarding the involvement of parents of Indian children and of the parent committee in the development of a proposed project.
- Section 251.22(b)(5) requires an applicant LEA to include a copy or description of the policies and procedures that ensure that the proposed project will be operated and evaluated in consultation with, and with the involvement of, parents of the children to be served, including the parent committee.
- In addition, 34 CFR 252.3 and 253.3 clarify that the requirements of § 251.22(b) (3)(v) and (5) apply to the programs under Parts 252 and 253.
- Furthermore, 34 CFR 252.31(c), 253.31(c), 254.32(c), 255.32(c), 255.33(c), and 255.34(c) contain selection criteria related to parental and community involvement in projects; and 34 CFR 257.31(c), 258.32(c), 258.33(c), and 258.34(c) contain selection criteria related to involvement of members of the Indian community, including persons to be served by projects.
- The Secretary believes that these regulatory provisions are adequate to ensure the involvement of parents of Indian children and other members of the community in projects assisted under Indian Education Programs.

Comment. One commenter recommended that the proposed regulations mandate joint parent committee and teacher meetings. The commenter also recommended that the proposed regulations prohibit school employees from serving as voting members of the parent committee. Another commenter recommended that the regulations prohibit an LEA from hiring members of the parent committee or their immediate families to serve on the staff of a project.

Response. No change has been made. The Secretary believes that matters such as joint parent committee and teacher meetings and hiring policies—beyond those governed by the statute and regulations—should be left to the discretion of the committee, the LEA, and the local community. The regulations, in § 251.20, stipulate that teachers on the staff of a project are not eligible to select members of a parent committee or to serve on the committee.

Comment. One commenter expressed concern that "deregulation" would disenfranchise parents of Indian children in their oversight of projects under the Act. The commenter contended that the proposed rules combine "requirements in the law for consultation with parents and members of the Indian community, with consultation with teachers of Indian children."

Response. No change has been made. Neither the Act nor the regulations restrict consultation to parents and members of the Indian community. Rather, the Secretary encourages all individuals involved in the process of educating Indian children to work cooperatively in order to provide Indian children the maximum benefits under the Act.

Comment. Three commenters recommended that consultation with parents of Indian children be specified in the regulations as one of an LEA's responsibilities. Another commenter recommended that the regulations retain a list of activities describing the responsibilities of the parent committee, as detailed in 34 CFR 251.41 of the current regulations. Fifteen other commenters suggested that the regulations retain the provisions of 34 CFR 251.40(j) of the current regulations, relating to parent advisory committee participation in the hiring of project staff. Eighteen commenters recommended that the regulations retain all of the provisions of 34 CFR 251.40 of the current regulations, and one of these commenters emphasized the need to retain 34 CFR 251.40(h) relating to "training of the parent committee."

Response. No change has been made. The Secretary considers that responsibilities of a parent committee or an LEA beyond those contained in the Act are best left to the discretion of the LEA and the Indian community. The Secretary feels that these regulations are adequate to ensure implementation of the provisions for parent committee involvement specified in the Act. With regard to the hiring of project personnel, § 251.22(b)(5) of these regulations requires an applicant that is an LEA to consult with the parent committee in the LEA's hiring of these personnel.

Section 251.22 What must an application include?

Comment. One commenter recommended that §251.22(b)(3)(v)(A) be changed to read "With the advice and consent of the parents * * *." instead of "In open consultation with parents * * *."

Response. No change has been made. The language of the proposed regulations is consistent with the provisions of the Act. The Secretary does not feel that § 251.22(b)(3)(v)(A) of these regulations need go beyond the requirement of section 305(b)(2)(B)(i) of the Act that a project be developed "in open consultation with parents * * *."

Comment. More than 100 commenters recommended retaining the requirement of the current regulations in 34 CFR Part 251 that parents review and approve in writing a project application (§ 251.41(c) of the current regulations). Another commenter recommended that § 251.22(b)(3)(v)(B) be changed to include "written approval."

Response. A change has been made. The Secretary has amended § 251.22(b)(3)(v) of the proposed regulations by adding a new paragraph (C), which specifies that the approval of a project by a parent committee must be in writing unless the committee and the applicant agree on "another method of documenting the approval."

An applicant LEA must include in its application an assurance that the parent committee has participated in developing the project for which the application is made and has approved the project. The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.731 require a grantee to "keep records to show its compliance with program requirements." Since an assurance of approval by the parent committee is a program

requirement, a grantee must keep records—that is, documentation—to show compliance.

While the Secretary anticipates that most applicant LEAs will follow the traditional practice under this program by obtaining in writing parent committee approvals of their respective applications, there is nothing in the Act or in these regulations to preclude an LEA and its parent committee from establishing some other reasonable, agreed-upon procedure or procedures to document the committee's approval of a project.

Comment. One commenter asked why the proposed regulations omitted a requirement of the existing regulations that a parent committee must approve any amendments to an application.

Response. A change has been made. The Secretary has amended § 251.22(b)(3)(v) to provide for an assurance by an applicant that the parent committee has approved not only the project for which the application is made but, also, "any amendments to the application."

Comment. One commenter recommended that the parent committee have access to applicable documents. Another commenter recommended that several paragraphs of § 251.22 be rewritten as follows:

Section 251.22(b)(3)(viii):

"The LEA shall make available to the Parent Committee and to the Indian community records, including financial records, relating to the project, except those records that are protected by law from disclosure."

Section 251.22(b)(3)(ii)(B):

"With the participation of the Parent Committee, determine the extent * * *"

Section 251.22(b)(5):

(Insert the following near the end of the sentence, after the words "to be served":) "* * * with and including the recommendations of the parent committee established under § 251.20."

Section 251.22(b)(3)(iii):

(Add at the end of the sentence:) "* * * and will provide the parent committee with copies of applicable regulations, the grant award document, and correspondence to or from the Department of Education relating to the project."

Response. No change has been made. The recommended revisions go beyond the requirements of the Act. However, individual LEAs, in cooperation with their parent committees and other representatives of their communities, may wish to include some or all of these proposed functions among their respective responsibilities. The Secretary notes that, in meeting its obligations under the Act and regulations, an LEA may not unreasonably withhold from a parent committee information that would interfere with the committee's duties under the Act and regulations, including the committee's approval of an application.

Comment. Three commenters objected to the elimination of the requirement that each project be evaluated by an independent evaluator. Another commenter recommended that proposed provisions dealing with evaluation include more definitive guidance.

Response. No change has been made. Section 251.22(b)(3)(ix) of these regulations states that "the applicant will adopt effective procedures, including provisions for appropriate objective measurement of educational achievement, to evaluate at least annually the effectiveness of the proposed project * * *." The Secretary believes that, with regard to evaluation, it is unnecessary for these regulations to specify requirements beyond those stated in section 305(a)(4) of the Act. Specific methods of objective evaluation may be developed or established cooperatively by an LEA and its parent committee.

Comment. Thirty-nine commenters recommended retaining requirements of the current regulations in 34 CFR Part 251 relating to needs assessment (§ 251.21 of the current regulations) and measurable objectives (§ 251.22(c) of the current regulations).

Response. No change has been made. These regulations implement the statutory requirements of section 305(a)(4) of the Act. The current provisions of 34 CFR 251.21 and 251.22 are not statutory. The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.111(c) require that an application under a formula grant program describe a project's objectives and how the applicant will achieve the objectives. In addition, § 251.22(b)(3)(ix) of these regulations requires an applicant to assure that it will adopt effective procedures, including provisions for objective measurement of educational achievement, to evaluate the effectiveness of its proposed project in meeting the special educational needs of Indian students. However, there is nothing in these regulations to preclude applicants, in cooperation with their parent committees and local communities, from developing particular methods for meeting the regulatory requirements.

Comment. One commenter requested clarification of the phrase "representative of the area to be served" in § 251.22(b)(5).

Response. No change has been made. Section 251.22(b)(5) of these regulations essentially restates the requirements of section 305(b)(2) (A) and (C) of the Act that an applicant: (1) Assure that a proposed project will use the best available talents and resources, including persons from the Indian community, and (2) provide copies of or describe policies and procedures to ensure that the program will "be operated and evaluated in consultation with, and with the involvement of * * * representatives of the area to be served."

In addition to involving persons specified in the statute, the Secretary encourages each applicant to involve a broad representation of the local community in planning, operating, and evaluating its project. However, the Secretary leaves to each local community the specific determination of this additional representation.

Comment. One commenter recommended that § 251.22(b)(3) require an applicant to specify the number of children to be served by a project and the number of children enrolled in the LEA.

Response. No change has been made. Section 251.22(b)(2) of these regulations requires an applicant to specify in its application the number of Indian children enrolled in the LEA or tribal school and the number to be served by the project. The Secretary feels that adding this requirement to § 251.22(b)(3)—which deals with assurances—would be inappropriate, as well as unnecessarily repetitious.

Part 252—Indian-Controlled Schools—Establishment

Comment. One commenter was concerned that the requirement for an Indian-controlled school to be "on or near" a reservation would prevent schools in Alaska from qualifying.

Response. No change has been made. Section 303(b) of the Act provides for "financial assistance to schools on or near reservations." The Secretary does not have the authority to waive this statutory requirement.

Part 254—Educational Services for Indian Children

Section 254.20 What must an application include?

Comment. One commenter questioned the use of Federal funds to serve children enrolled in nonprofit private schools.

Response. No change has been made. Section 254.20(b)(2) of these regulations (as does § 255.20(c)(2)) contains the

requirement of section 1005(f)(1) of the Act, which stipulates that the Secretary shall not approve an application for a grant under certain subsections unless the Secretary "is satisfied that such an application, to the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools whose needs are of the type which the program is intended to meet, makes provision for the participation of such children on an equitable basis."

Part 255—Planning, Pilot, and Demonstration Projects for Indian Children

Section 255.10 What types of projects may be funded?

Comment. One commenter asked why the proposed regulations removed the emphasis on culturally related curricular materials found in the current regulations under 34 CFR 255.10(a).

Response. No change has been made. The regulations list the purposes of projects the Secretary assists under this program. Each applicant has an opportunity to propose specific, effective means of achieving these educational and related goals. Thus, there is nothing in the regulations to preclude an applicant from proposing bilingual and bicultural educational activities—or any of the other examples of fundable activities that would be within the scope of the statute—as an appropriate means of achieving the principal goal of the program: to improve educational opportunities for Indian children.

[FR Doc. 84-15184 Filed 6-6-84; 8:45 am]

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federal register

Thursday
June 7, 1984

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Slot Transfer Methods; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24105; Notice 84-6]

Slot Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a mechanism which would remove Government restrictions on the transfer of slots used by operators at high density airports. The proposal is, in part, in response to recommendations made by a number of air carriers in connection with the FAA's High Density Rulemaking. A separate NPRM on a procedure for initial allocation of slots in the event a scheduling committee is unable to allocate capacity at a high density airport has been issued on this date.

DATES: Comments must be received on or before July 9, 1984. See Supplementary Information for dates of public hearings.

ADDRESS: Send comments on the proposal in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 22471, 800 Independence Avenue, SW., Washington, D.C. 20591

or deliver comments in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

See SUPPLEMENTARY INFORMATION for location of the public hearing.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Acting Chief Counsel, AGC-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426-3773; or

Rick Yates, Special Assistant to the Assistant Secretary for Policy and International Affairs, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, Telephone: (202) 426-4524

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this regulatory action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking further action on this rulemaking. This proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned wih this rulemaking will be filed in the docket.

In addition to seeking comments on this regulatory action, public hearings will be held to allow additional public input. In order to afford more people the opportunity to attend and participate, hearings will be held in Washington, D.C., Chicago, Illinois, and San Francisco, California.

Availability of Document

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the notice number of the document.

Public Hearing Schedule

The schedules for the hearings are as follows:

June 21, 1984

Federal Aviation Administration, 800 Independence Avenue, SW., 3rd Floor Auditorium, Washington, D.C.
9:00-9:15—Presentation of Meeting Procedures.
9:15-10:00—DOT Presentation.
10:15-12:15—Public Presentation and Discussion.
12:15-1:30—Lunch Break.
1:30-5:00—Public Presentation and Discussion.

June 26, 1984

Rosemont/O'Hare Conference Center, 5555 North River Road, Rosemont, Illinois 60018
9:00-9:15—Presentation of Meeting Procedures.
9:15-10:00—DOT Presentation.
10:15-12:15—Public Presentation and Discussion.
12:15-1:30—Lunch Break
1:30-5:00—Public Presentation and Discussion.

June 28, 1984

San Francisco Airport Hilton, San Francisco International Airport
9:00-9:15—Presentation of Meeting Procedures.
9:15-10:00—DOT Presentation.
10:15-12:15—Public Presentation and Discussion.
12:15-1:30—Lunch Break
1:30-5:00—Public Presentation and Discussion. Request to Make a Presentation.

Interested persons are invited to attend the public hearings and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Requests to make an oral presentation at one of the public hearings should identify the docket number and the time required (times may be limited depending upon the number of presentations), and be sent to Denise D. Hall, Office of the Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3080. Requests must be received on or before June 20, 1984. Presentations will be scheduled on a first-come first-served basis as time may permit within the meeting schedule.

Hearing Procedures

The following procedures will apply at the hearings:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation.

(b) The hearings will begin at 9:00 a.m. There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present an original and two copies to the presiding officer before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by DOT participants at the hearing should not be taken as expressing a final DOT position.

Related Rulemaking

This NPRM concerns the transfer of slots between operators for slots or other consideration at high density airports. On this date, a separate NPRM was issued concerning procedures for the initial allocation of slots. These two NPRM's should read together for a full discussion of the issues involved. It should be noted that, as stated in the interim final rule issued on March 1, 1984, the high density rule will be reviewed again in 6 to 9 months with all unwarranted restrictions being eliminated, effective January 1, 1985.

Background

The FAA has broad authority under the Federal Aviation Act of 1958, as amended (FAAct) to regulate and control the use of navigable airspace of the United States. Under section 307(a) of the FAAct (49 U.S.C. 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Under the authority of this statutory mandate, the FAA promulgated the "High Density" Rule (14 CFR 93.123 *et seq.*) in Amendment 93–13 (33 FR 17896; December 3, 1968), effective on April 27, 1969.

The rule designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was imposed on a trial basis with the general support of the air carriers in response to rapidly growing problems of congestion and delays at those airports. The rule established limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators—primarily general aviation operators but also charter operators. In 1973, the High Density Rule was made permanent, subject to continuing FAA review (38 FR 29463; October 25, 1973).

The hourly quotas were set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. In accordance with the policy announced by the FAA at the time the High Density Rule was adopted, the rule has been reviewed periodically to ascertain whether a continuing need for the quotas existed and whether the quotas should be modified to reflect changing circumstances. In the course of these reviews the quotas that Kennedy and O'Hare Airports were removed, except for a peak period from 3:00 p.m. to 7:59 p.m., local time. In addition, the entire quota at Newark was suspended indefinitely, and the procedures applicable to Washington National Airport were modified.

On March 1, 1984, the FAA issued an amendment to the High Density Rule. The amendment increased the hours in which limitations at O'Hare Airport are applicable and increased the number of operations permitted at the airport. The amendment slightly increased the number of operations allowed at LaGuardia and Kennedy Airports. The distribution of the operations among the various classes of users was also amended. The High Density Rule has never contained a specific allocation mechanism. The March 1 amendment did not change this.

Over the past several years, there has been considerable debate as to the merits and disadvantages of market approaches to slot allocation. Since the consequences of such as approch may be far reaching, the FAA believes that all parties, including airport proprietors, air carriers, commuters, general aviation, and local and state Governments, should be given the opportunity to participate in this discussion. Therefore, this NPRM is issued to solicit comments on all issues which relate to the question of allowing air carriers to transfer slots among themselves for any consideration, as free as possible of Government regulation. The proposal is intended as a permanent solution to the recurring problems of slot allocation. It would remove the Government restrictions on the buying and selling of slots.

Before delving into the details of this slot transfer proposal, FAA believes it would be beneficial to set some background.

In conjunction with the high density regulations and as a means of implementing the regulations, in 1968 and 1969 the air carriers and air taxis formed committees to schedule their operations allocatied under the rule. Under the authority of section 412 of the FAAct, the CAB approved the Air Carrier Scheduling Agreements (Orders 68–12–11) and the air taxi scheduling agreements (Order 69–2–52) finding them to be not adverse to the public interest. In approving the agreements, which provided the air carrier scheduling committee with immunity from the anti-trust laws, the CAB stated:

> Furthermore, the agreements appear to be a necessary step in the implementation of the FAA regulations . . . Considering the complexities which would be involved in any attempt by the Government to allocate scheduled assignments among the various individual airline users, we believe that the allocation of operations among the various individual carriers serving the high density airports should be left preferably to resolution by a voluntary cooperative effort by the carriers. Order 68–12–11, p.4.

Since the initial approval of the scheduling committees, slots have been allocated at high density airports by the committees (except in 1980 as explained later in this document) until the air traffic controllers strike in August, 1981. After the strike, a percentage of slots were taken away from carriers and through a variety of mechanisms (including a lottery) some were returned. Thus, most carriers holding slots at high density airports today obtained them from the scheduling committees or from the FAA strike-related allocation procedures.

During the past several years, the Scheduling Committees have had a difficult time in reaching agreement. On October 29, 1980, the Acting Secretary of Transportation issued Special Federal Aviation Regulation No. 43 (45 FR 72640; November 3, 1980) which allocated slots at Washington National Airport after the Scheduling Committee advised that it was deadlocked and unable to reach an agreement.

On May 6, 1982, during the period of tightened restrictions necessitated by

the controllers' strike, the FAA issued a Notice of Policy (47 FR 19989; May 10, 1982) which created a procedure that allowed the transfer of slots between carriers for any consideration. It was an experimented policy which provided additional flexibility for carriers to adjust their schedules. On July 6, 1982, the FAA announced suspension of the policy (47 FR 29814; July 8, 1982).

On April 26, 1983, the FAA issued an NPRM (48 FR 19174; April 28, 1983) which proposed to change the annual passenger ceiling at Washington National Airport from 16 million to 14.8 million. As a result of a direction in the Department of Transpontation Appropriations Bill in August 1983 that the Department consult with interested parties on the passenger ceiling proposal, discussions were held with a number of parties including the air carriers. The Air Transport Association (ATA), representing 23 air carriers, submitted a proposed revision to the policy which included a provision for the buying and selling of slots.

One carrier, supporting the ATA's proposal, stated:

> Any administrative allocation of slots necessarily must be arbitrary. It cannot be universally preceived as equitable, and to simply exclude new entrants and to limit incumbents to their administatively determined allocations is inconsistent with the principle of reliance on competitive market forces underlying Deregulation. For that reason, the carrier proposal would permit the purchase/sale or trade of slots, and we urge its adoption.

Later comments were received from carriers, associations, and state and local governments opposing the sale of slots.

When the scheduling committees fail, the responsibility for accomplishing allocation falls, to the Government. The Government's slot allocation alternatives, however, are quite limited. Administrative procedures have been shown to have significant drawbacks. It is for these reasons, that the FAA believes that the benefits and disadvantages of alternative allocation mechanisms should be reviewed. It is in this context that a market solution to slot allocation must by actively considered.

On October 21, 1980, the Acting Secretary of Transportation issued Notice No. 80–16 (45 FR 67103; October 9, 1980) which proposed alternative procedures for slot allocation. The alternatives proposed included administrative allocation, slot auctions and variations thereof. In addition, the notice solicited comments on the continued use of the Airline Scheduling Committee. The notice also proposed variations of each alternative to assure that small- and medium-sized communities do not lose nonstop service to National Airport to larger markets. Comments submitted on that NPRM are in the Docket (Docket No. 70, Docket Clerk, Office of the General Counsel, Room 10105, 400 Seventh Street, SW., Washington, D.C. 20590.)

Notice 80–16, however, did not deal with the transfer of slots for any consideration. This proposal, which addresses allocation problems by removing most Government restrictions on the transfer of slots for any consideration, differs from the slot allocation alternatives set forth in Notice No. 80–16. There are, of course, many types of such proposals, but most would encompass the following:

(1) The initial allocation of slots would be by scheduling committee, lottery, assigning slots to their current users, or other mechanism under which carriers would be allocated slots without any fee or cost.

(2) A carrier holding a slot could use that slot or transfer the slot to another carrier for any compensation.

(3) A carrier, in negotiating the transfer of a slot, would deal with any other carrier and the terms of such transfer would be determined by the contracting carriers.

(4) New entrant operations or increased operations by an existing carrier at an airport would be dependent upon the particular carrier purchasing slots or receiving new slots, when available, from the scheduling committee or through a deadlock breaking mechanism.

The Proposal

The proposal in this notice contains minimal requirements. It allows transfers for any compensation. It requires written submission to the FAA from both parties and written confirmation from the FAA before slots can be transferred and utilized, in order to ensure consistency with the slot transfer requirements. The FAA would like comments on the parameters that should apply if this proposal is adopted. The reqoirements may be modified after review of all comments.

It is proposed that this type of mechanism would apply to four high density airports (14 CFR Part 93, Subpart K). Those airports are Kennedy, LaGuardia, O'Hare and Washington National. It must be noted that both arrival and departure slots are necessary to operate at these airports.

The Aftermarket

Under this proposal, a carrier seeking to obtain additional slots at a high density airport would be able to do so only through a transfer of a slot from another carrier using a slot at these airports for any mutually acceptable consideration (or as outlined in the accompanying NPRM which deals with allocations when new or additional slots become available.) The aftermarket provides a method and an opportunity for incumbent air carriers to increase operations and for new entrants to gain entry at the high density airports. It has been suggested that, over the long term, the transfer of slots under this proposal could result in the most efficient allocation of slots among the carriers. Assuming a failure of the scheduling committees and absent a market mechanism, the only way that new entrants could gain slots would be if the Government forced the incumbent carriers to relinquish slots to the new entrants. As previously noted, this proposal is similar to one submitted by the air carriers serving National Airport for allocating slots at that airport.

A number of parties, however, have expressed the concern that a market in airport slots would result in additional costs being borne by the air carriers which would be passed through to the traveling public as higher air fares. On the other hand, slot sales would also result in revenues to the selling carrier, which might also be passed through to passengers as lower fares. Another concern is that the high costs of slots may well act as a barrier to new entry and result in the markets served by these airports being dominated by a few large, well financed carriers. On the other hand, existing procedures have been criticized for providing little opportunity for new entry or growth. Finally, some parties are concerned that permitting private transactions in slots may result in substantial "windfalls," either to carriers currently using slots at high density airports, or to carriers that receive new slots from scheduling committees or through a deadlock breaking mechanism proposed in the accompanying notice.

The FAA specifically invites comments on these issues. What would be the effect of permitting transfer of airport slots for any consideration on the air fares charged the traveling public? Would a market in slots have desirable or undesirable effects on entry barriers at affected airports, on market concentration in the airline industry, and on levels of service at major versus smaller cities? As compared to current allocation procedures, would direct transfer of slots for consideration create "windfalls" for carriers currently using slots or for carriers that obtain them in

the future? In deciding slot allocation issues where airport capacity is constrained, what if any consideration should be given to the policy of the Airline Deregulation Act favoring maximum reliance on competitive market forces and on actual and potential competition? The agency believes these issues should be thoroughly discussed in the record before a final policy is adopted. Commenters are invited to present alternative approaches to the redistribution of slots among incumbent and other carriers while balancing the interests of all involved.

A related question is whether the proposal would lead to a proliferation in service to major cities to the detriment of smaller cities.

Application of Aftermarket

The FAA is proposing that this policy apply to air carrier slots only. Since the passage of the Airline Deregulation Act of 1978, the air carrier scheduling committees have found it increasingly more difficult to reach agreement on slot allocations. These difficulties prompted the air carrier scheduling committee to expend considerable time and effort in the development of a "deadlock" mechanism. Unfortunately, these efforts were to no avail. Such has not been the case for the communter carrier scheduling committees. The commuter committee at National Airport has developed a "deadlock" mechanism which applies when the committee reaches an impasse. This mechanism has been successfully used on several occasions to allocate slots when the committee has reached an impasse. The FAA invites comments, however, on whether this proposal should extend to commuters as well as air carriers.

FAA is proposing that air carriers not be allowed to acquire commuter or general aviation slots. The separate categories of slots that have been in place at the high density airports since the inception of the rule have been intended to ensure that the several categories of airport users are given ample opportunity for access to these airports. The FAA is concerned that the commuter carriers and general aviation could not compete for slots with the air carriers. Since the commuters provide a vital link to the Nation's air transportation system for smaller, closer-in airports to these high density airports, FAA is reluctant to include such service in this proposal. On the other hand, it would seem to be unnecessary to protect air carriers from competition from commuters. Therefore, the agency solicits comments on whether to allow commuters to participate in the air carrier slot market and use air carrier slots (but not participate in the air carrier scheduling committees or lottery).

In the case of "other" slots, this category of slots in not allocated on a permanent basis. Therefore, FAA does not believe these slots should be subject to the provisions of this proposal. FAA invites comments on this issue.

Under the proposal only air carriers holding valid operating certificates can obtain or transfer slots; however, additional comments on this issue are invited. To that end, as to qualification to transfer slots, who should be eligible to purchase slots? How should the Government define who is eligible and what lead time should be allowed between the transaction and qualification (can you purchase before you are operating)? Should non-aviation entities (such as cities, banks) be allowed to participate? If they are precluded, how? It should be noted that this proposal would not restrict carriers and local governments from entering into contractual financial arrangements involving slots and service.

What provision should be made in the event of an air carrier strike or bankruptcy? The FAA also proposes that a slot obtained through a deadlock breaking mechanism proposed in the accompanying NPRM must be utilized for 90 days before it can be transferred. This would tend to prevent carriers from obtaining slots for speculative reasons.

To reflect their extensive expenditures and development plans and expectations of increased operations, the agency is proposing, in the accompanying NPRM, to permit larger airlines and commuter operators to select a limited number of additional slots in the first selection sequence of the allocation session at Kennedy, O'Hare and LaGuardia Airports and the second sequence at O'Hare. Treating the slots gained through these extra selections the same as other slots, with regard to transfers, would be inconsistent with the underlying reasons for the extra selections. Therefore, this proposal would prohibit the transfer of those slots until they have been used for a significant period of time. Comments on this provision are requested.

Slot Use Restrictions

In view of the slot restrictions at the high density airports, FAA believes that there should be a penalty for non-use of a slot in order to avoid "pocketing" of slots by carriers that have no intention of using the slot. Thus, FAA is proposing in the accompanying allocation NPRM that any slot not used five-sevenths or more of the days in any 2 consecutive months be withdrawn from the carrier to which it has been allocated. Slots withdrawn under this provision will be reallocated under existing allocation mechanisms (see related NPRM). This use-or-lose provision should help prevent speculation in the acquisition of slots.

Essential Air Service

FAA believes that this proposal should in no way jeopardize the statutory guarantees of Essential Air Service provided for by the Airline Deregulation Act. FAA is committed to ensuring that policies of the agency are consistent with this statutory requirement. Therefore, FAA proposes that the slots necessary for the provision of Essential Air Service could not be transferred. In this regard, FAA also proposes that slots being used by a carrier for the provision of Essential Air Service should, in the event that the carrier no longer provides that service, be transferred to the carrier that is designated to replace that carrier irrespective of what other markets are also being served by using that slot. In this manner, carriers will not be able to use the provision of Essential Air Service as a means of obtaining slots and then later shifting the use of those slots into other, more lucrative markets. FAA seeks comments on this aspect of the proposal.

International Operations

FAA would prefer that slots being used for the provision of international air service should be acquired in the same manner as all other slots. However, FAA recognizes that international convention and U.S. bilateral air service agreements may preclude application of this proposal for slots used in international service. FAA, therefore, proposes that slots being used for the provision of international air service not be subject to this proposal. In this connection, if foreign air carriers are not required to participate in this procedure for acquiring slots, the FAA asks for comments on whether U.S. air carriers, in providing international air service, should similarly be exempted from this provision in order that they may compete on an equal basis with their foreign competitors. FAA invites comments on how international slots should be administered under this proposal.

Other Policy Issues

There are a number of other related policy issues that FAA believes should be addressed by all parties. It should be clearly understood that the proposal outlined in this notice is not intended to

replace landing fees at Washington National or the other high density rule airports. Landing fees are administered by an airport proprietor and are used to recover costs related to maintaining and operating the airport. Such fees are in no way related to this proposal which is intended to allocate limited airspace capacity. Furthermore, it is the policy of the FAA to encourage airport and airspace development that precludes the need for capacity limitations. Slots are, in effect, a temporary creation of FAA regulations and do not confer on any carrier a long-term right. Slots can be taken from any carrier in accordance with FAA regulations and administrative procedures. Moreover, FAA does not guarantee that slots will be required at any airport for any particular period of time.

In *In Re Braniff Airways*, 700 F.2d. 935, 942, the Fifth Circuit Court of Appeals held slot allocation to be the product of Federal regulatory action and that slots are "not property in themselves." The court further stated that, even if it were assumed that some limited proprietary interest accompanied the allocation of slots, any action concerning transfer or other disposition of those slots would require FAA approval since the recipient was not vested with rights in these slots which they could unilaterally transfer. The FAA does not believe that this proposal would alter this holding. Comments are invited, however, on this issue. Comments are also invited on if the FAA must, for air traffic or airport reasons, reduce operations for a period of time, what effect would this action have on slots at the high density rule airports that have been purchased? Should FAA develop specific procedures to take into consideration such possibilities?

It is proposed that this allocation procedure only apply at the four high density rule airports. Another alternative would be to limit the mechanism to National Airport only. FAA believes that its authority over slots and slot allocation is well established in Court of Appeals decisions. Nevertheless, certain parties have suggested that adoption of this proposal might allow the development of similar slot allocation mechanisms at other airports by airport operators. In proposing this slot allocation procedure under FAA/DOT authority, the FAA does not believe that any other party has the statutory authority to regulate the use of the navigable airspace or to determine which party can use it. Thus, no party could authorize or "sell" arrival or departure "slots." Airport proprietors, however, do have authority to regulate the use of their airport in order to limit inverse noise condemnation liability or to manage legitimate airport concerns. These airport proprietors, therefore, might attempt to use a market allocation mechanism to resolve their valid airport problems. Furthermore, airport proprietors might attempt to implement market mechanisms which directly compensate the airport authority. Such procedures to directly compensate an airport authority are subject to certian constitutional, statutory, and contractual limitations; comments are invited on these issues. FAA also requests comments on the legality and the feasibility of limiting this proposal to the high density rule airports.

In general, comments are invited on whether this proposal is consistent with the Airline Deregulation Act. Also, would this proposal create a need for some governmental oversight mechanism (e.g., protection against competitive abuse)?

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Proposed Amendment

PART 93—[AMENDED]

In consideration of the above, it is proposed to amend Subpart K of Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

1. A new § 93.127 is added as follows:

§ 93.127 Transfer of reservation.

(a) An air carrier may transfer or obtain an air carrier reservation used at one of the High Density Airports for any consideration.

(b) Any reservation transferred must come from the transferor's FAA established base.

(c) All requests for confirmation must be submitted in writing to the Associate Administrator for Policy and International Aviation, API–1, Federal Aviation Administration, Washington, D.C. 20591, in the same format as slot requests submitted under SFAR No. 44–5.

(d) Written evidence of the transferor's consent to the transfer must be provided.

(e) A record of the transfer will be made available to the public.

(f) Reservations utilized for Essential Air Service as of [the effective date of amendment] shall not be transferred.

(g) A carrier may not utilize a transferred slot until written confirmation has been received from the FAA.

(h) No slot obtained through a deadlock breaking mechanism may be transferred unless it has been used by the transferor carrier for at least 90 days. In addition, no slots selected in the first two selection sequences of any allocation session held to distribute slots under the High Density Rule, other than the first two slots selected by a carrier in each selection sequence, may be transferred for monetary consideration until January 1, 1985.

Regulatory Evaluation

This proposal would allow operators to continue to use existing departure or arrival slots or to transfer them for any consideration. No carrier would be required to sell slots nor would any carrier be required to transfer them.

Regulatory Flexibility Determination

This proposal does not impose any new requirements on small entities.

(Secs. 103, 307, 313(a), and 601(a), Federal Aviation Act of 1958, as amended [49 U.S.C. 1303, 1348, 1354(a) and 1421(a); 49 U.S.C. 106(a) (Revised Pub. L. 97–449, January 12, 1983); and § 11.49 of the Federal Aviation Regulations (14 CFR 11.49))

Note.—For the reasons set forth in this notice: (1) The FAA has determined that the proposal dose not involve a major proposal under Executive Order 12291; (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft evaluation prepared for this action can be obtained from the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, D.C., on June 1, 1984.

J. E. Murdock III,

Acting Deputy Administrator.

[FR Doc. 84–15283 Filed 6–4–84; 1:48 pm]

BILLING CODE 4910–13–M

federal register

Thursday
June 7, 1984

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered Status and Critical Habitat for the Alabama Beach Mouse, Perdido Key Beach Mouse, and Choctawhatchee Beach Mouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Alabama Beach Mouse, Perdido Key Beach Mouse, and Choctawhatchee Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status and critical habitat for the Alabama beach mouse, Perdido Key beach mouse, and Choctawhatchee beach mouse. The three beach mice are endemic to the Gulf Coast of southern Alabama and northwestern Florida. They are restricted to sand dune habitat, which is being destroyed by residential and commercial development, recreational activity, and tropical storms. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for the three beach mice. The Service seeks relevant data and comments from the public.

DATES: Comments from the public and the States of Alabama and Florida must be received by August 6, 1984. Public hearing requests must be received by July 23, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The species *Peromyscus polionotus*, often known as the oldfield mouse, occurs in northeastern Mississippi, Alabama, Georgia, South Carolina, and Florida; 16 subspecies are currently recognized (Hall, 1981). Certain of the subspecies are endemic to the beaches and sandy fields of southern Alabama and northwestern Florida. Prior to a detailed study by Bowen (1968), involving the interrelationships of genetics, morphology, historical geology, and habitat, only 3 subspecies were recognized in the latter region. Bowen determined that variation was much more extensive than previously thought, and he described 5 new subspecies, including the 3 that are the subjects of this proposal: the Alabama beach mouse (*P. p. ammobates*), originally found on coastal dunes from Fort Morgan to Alabama Point, and on Ono Island, Baldwin County, Alabama; the Perdido Key beach mouse (*P. p. trissyllepsis*), originally found on much of Pedido Key, which extends along the Gulf Coast of Baldwin County, Alabama, and Escambia County, Florida; and the Choctawhatchee beach mouse (*P. p. allophrys*), originally found on the Gulf Coast of Florida from the East Pass of Choctawhatchee Bay, Okaloosa County, eastward to Shell Island, Bay County.

Beach mice have small bodies, haired tails, relatively large ears, protuberant eyes, and coloration that blends well with the sandy soils and dune vegetation of their habitat. In the Alabama beach mouse, also called the Alabama Gulf Coast beach mouse or white-fronted mouse, head and body length is 68 to 88 millimeters (mm) (2.7 to 3.4 inches (in.)), tail length is 42 to 60 mm (1.6 to 2.3 in.), the upper parts are pale gray with an indistinct middorsal stripe, the sides and underparts are white, and the tail is white with an incomplete dorsal stripe. In the Perdido Key beach mouse, also called the Perdido Bay beach mouse or Florala beach mouse, head and body length is 70 to 85 mm (2.7 to 3.3 in.), tail length is 45 to 54 mm (1.8 to 2.1 in.), the upper parts are grayish fawn to wood brown with a very pale yellow hue and an indistinct middorsal stripe, the white of the underparts reaches to the lower border of the eyes and ears, and the tail is white to pale grayish brown with no dorsal stripe. In the Choctawhatchee beach mouse, head and body length is 70 to 89 mm (2.7 to 3.5 in.), tail length is 43 to 64 mm (1.7 to 2.5 in.), the upper parts are orange-brown to yellow-brown, the underparts are white, and the tail has a variable dorsal stripe (Bowen, 1968; Ehrhart, 1978; Howell, 1920; Linzey, 1978).

The sand dune areas which the three subspecies of beach mice inhabit are not uniform. Several microhabitat differences occur. The depth of the habitat, from the beach inland, may vary depending on the configuration of the sand dune system and the vegetation. There are commonly several rows of dunes, paralleling the shoreline and occasionally ranging up to 14 meters (46 feet) in height. The frontal dunes are sparsely vegetated with widely scattered grasses including sea oats (*Uniola paniculata*), bunch-grass (*Andropogon maritimus*), and beach grass (*Panicum amarum* and *P. repens*), and with seaside rosemary (*Ceratiola ericoides*), beach morning glory (*Ipomoea stolonifera*), and railroad vine (*I. pes-caprae*). The interdunal areas contain cordgrass (*Spartina patens*), sedges (*Cyperus* sp.), rushes (*Juncus scirpoides*), pennywort (*Hydrocotyle bonariensis*), and salt-grass (*Distichlis spicata*). The dunes farther inland from the Gulf support growths of saw palmetto (*Serenoa repens*), slash pine (*Pinus elliotti*), sand pine (*P. clausa*), and scrubby shrubs and oaks including yaupon (*Ilex vomitoria*), marsh-elder (*Iva* sp.), scrub oak (*Quercus myrtifolia*), and sand-live oak (*Q. virginiana* var. *maritima*). Seaside goldenrod (*Solidago pauciflosculosa*), aster (*Heterotheca subaxillaris*), and *Paronychia* sp. may also be present.

Human and natural alteration of coastal ecosytems has resulted in severe declines of beach mice. Most suitable habitat has been lost because of residential and commercial development, recreational activity, beach erosion, an vegetational succession. Competition from introduced house mice (*Mus musculus*) and predation by domestic cats (*Felis catus*) also seem to be problems. Tropical storms are a constant threat to the remnant, fragmented populations of beach mice. Hurricane Frederick, in September 1979, was especially bad, destroying large areas of habitat for all three subspecies. Bowen (1968) observed that more than two-thirds of the habitat of *P. p. allophrys* had been lost since 1950, as a result of the coastal real estate boom.

Several recent status surveys and habitat analyses have indicated that the situation continues to worsen. Holliman (1982) found *P. p. ammobates* to still survive on disjunct tracts of the sand dune system from Fort Morgan State Park to the Romar Beach area, but to have apparently disappeared from most of its original range, including all of Ono Island. Working in various parts of the habitat of the subspecies, with a total length of 20.6 kilometers (km) (12.8 miles (mi.)), he live-trapped (and released after marking) an average of 13.4 beach mice per 100 trap-nights of effort. He estimated *P. p. ammobates* to contain a total of 875 individuals on 134.6 hectares (332.6 acres), a relatively low population size for a small mammal. A few months later, Meyers (1983), working in the same areas, live-trapped an average of only 3.6 *P. p. ammobates* per 100 trap-nights.

Humphrey and Barbour (1981) made a study of *P. p. trissyllepsis* in 1979, prior to Hurricane Frederick. They estimated that only 78 individuals of the subspecies survived, there being 52 at the Gulf Islands National Seashore on the eastern part of Perdido key and 26 at the Gulf State Park on the western part of the Key. Holliman (1982), working at Gulf State Park after Hurricane Frederick, caught only a single specimen of *P. p. trissyllepsis*. Subsequently, Meyers (1983) captured 13 individual *P. p. trissyllepsis* at Gulf State Park, but none at Gulf Islands National Seashore. He considered the subspecies to have been exterminated in the latter area by Hurricane Frederick. This drastic reduction to one population with barely two dozen individuals, occupying a restricted habitat that is highly vulnerable to destruction, probably makes the Perdido Key beach mouse the most critically endangered mammal in the United States.

As late as 1950, *P. p. allophrys* was widespread and abundant along the barrier beach between Choctawhatchee and St. Andrew Bays. In 1979, however, Humphrey and Barbour (1981) found that the subspecies had been extirpated at 7 of the 9 localities from which it had previously been known. They also discovered it on Shell Island. The subspecies was estimated to contain at least 515 individuals. Meyers (1983) confirmed the survival of *P. p. allophrys* on Shell Island.

On June 7, 1979, the Alabama Department of Conservation and Natural Resources, Game and Fish Division, responded to a Service inquiry regarding priority ratings for candidate species that might merit addition to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Department stated that the Alabama and Perdido Key beach mice should have the highest listing priority for mammals in Alabama. On October 26, 1982, Dr. Dan C. Holliman, Division of Science and Mathematics, Birmingham-Southern College, Birmingham, Alabama, petitioned the Service to add the Alabama beach mouse and Perdido Key beach mouse to the List. In the **Federal Register** of February 15, 1983 (48 FR 6752–6753), the Service published a notice of findings that accepted this petition.

On June 9, 1982, Dr. Stephen R. Humphrey, Associate Curator in Ecology, Florida State Museum, Gainesville, Florida, petitioned the U.S. Fish and Wildlife Service to add the Perdido Key and Choctawhatchee beach mice to the List of Endangered and Threatened Wildlife. The petition included a status report prepared under contract to the Florida Game and Fresh Water Fish Commission. Portions of the report were recently published (Humphrey and Barbour, 1981). On June 21, 1982, the Florida Game and Fresh Water Fish Commission stated its full support for Dr. Humphrey's petition and requested that listing be expedited. In the **Federal Register** of October 6, 1982 (47 FR 44125), the Service published a notice of petition acceptance and status review, and announced its intention to propose listing the two subspecies with critical habitat.

In the **Federal Register** of December 30, 1982 (47 FR 58454–58460), all three beach mice were included in the Service's Review of Vertebrate Wildlife. The Perdido Key and Choctawhatchee beach mice were placed in Category 1 of the Review, meaning that there was substantial information on hand to support the biological appropriateness of a listing proposal. The Alabama beach mouse was placed in Category 2, meaning that proposing to list was possibly appropriate, but substantial supporting data were not available. Such data were subsequently received, especially the the reports by Holliman (1982) and Meyers (1983).

On October 13, 1983, the petition finding was made that listing of all three beach mice was warranted but precluded by other pending listing measures, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such findings require a recycling of the petitions, pursuant to Section 4(b)(3)(C)(i) of the Act. Therefore a new finding must be made, and, now that the other pending measures have been processed, the publication of this proposed rule constitutes the finding that the petitioned action is warranted, in accordance with Section 4(b)(3)(B)(ii) 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 in 50 CFR Part 424; under revision to accommodate 1982 amendments to the Act—see proposal in **Federal Register** of August 8, 1983 (48 FR 36062–36069)) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered species or a threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the Alabama (*Peromyscus polionotus ammobates*), Perdido Key (*P. p. trissyllepsis*) and Choctawhatchee (*P. p. allophrys*) beach mice are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Alabama, Perdido Key, and Choctawhatchee beach mice historically ranged along approximately 166.0 km (103.1 mi.) of coastal sand dunes in Baldwin County, Alabama, and Escambia, Okaloosa, Walton, and Bay Counties, Florida. Based on recent status surveys (Holliman, 1982; Humphrey and Barbour, 1981; Meyers, 1983), and on observations by the primary author in July, 1983, the three beach mice are at present found on not more than 42.9 km (26.6 mi.) of Gulf Coast dunes. Thus, their range has been reduced to about a fourth of the original size.

The major threat to beach mouse habitat continues to be human destruction of the coastal sand dune ecosystem for commercial and residential development (Bowen, 1968; Ehrhart, 1978; Meyers, 1983). In addition, recreational use of the sand dunes by pedestrians and vehicles can destroy vegetation essential for dune development and maintenance. Such loss of vegetation results in extensive wind and water erosion, reducing the effectiveness of coastal dunes as a protective barrier and ultimately destroying beach mouse habitat.

Intensive commercial and residential development in Florida has restricted public use of beaches. Property owners are not required to provide access to the publicly owned wet sand beaches. This results in an increasing demand on accessible public beaches, causing increased erosion and loss of beach mouse habitat. If properly managed, however, public use of beaches is compatible with maintenance of beach mouse habitat (Meyers, 1983).

Residential and commercial development isolates small areas of beach mouse habitat, thereby fragmenting populations and upsetting gene flow. Low-density residential development does not necessarily create isolation of habitat, but high density multiple housing can act as a barrier to migration between populations. If any such population segment is extirpated, it cannot be replaced by natural immigration (Meyers, 1983).

Another problem might be the routine channel maintenance program conducted by the U.S. Army Corps of Engineers. The program involves the removal of accreted sand from channels and passes and the disposal of the sand in the vicinity of beach mouse habitat. If

measures were not taken to protect beach mouse habitat during the dredging and disposal activities, the habitat could be threatened. Based on the Corps' recent planning for a maintenance project at the Perdido Pass Channel, Alabama, however, it appears that with careful consideration of beach mouse requirements in developing and conducting the maintenance projects, habitat should not be threatened.

There is concern in Alabama that there may be pressure to locate natural gas extraction facilities on the publicly-owned Gulf Coast beaches on the Fort Morgan Peninsula. The development of such facilities could destroy beach mouse habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable.

C. *Disease or predation.* Bowen (1968) suggested that predation by feral house cats posed an imminent threat to beach mouse populations. The absence of a beach mouse population on Ono Island may be attributable to cat predation (Holliman, 1982). The presence of feral house cats and other predators in or near beach mouse habitat may be fostered by the existence of open refuse containers associated with residential and commercial development or recreational use (James N. Layne, Archbold Biological Station, Lake Placid, Florida, personal communication; Meyers, 1983).

D. *The inadequacy of existing regulatory mechanisms.* Current controls affecting development in Gulf Coast sand dunes include subdivision, building department, and coast high hazard construction regulations in Baldwin County, Alabama, and building codes, subdivision regulations, and coastal construction lines in Escambia, Walton, and Bay Counties, Florida. In addition, vehicular access to the dunes is controlled. None of these controls makes special provisions for beach mouse habitat protection. They do not prevent development in such habitat, or deal with the specific needs of the mice in relation to development, but simply establish general requirements for the siting and construction of buildings, utilities, and access corridors. These regulatory mechanisms have not prevented substantial loss of beach mouse habitat in the past, and, despite their existence and enforcement, the degradation and destruction of such habitat now continues.

In both Alabama and Florida, State laws protect sea oats from being picked. However, these laws do not prohibit the destruction of sea oats during construction activities.

The Federal Coastal Barrier Resources Act of 1982 prohibits the expenditure of most new Federal financial assistance in units of the Coastal Barrier Resources System (CBRS). The Act also amends and conforms the Federal Flood Insurance Provisions of the Omnibus Budget Reconciliation Act of 1981 pertaining to undeveloped coastal barriers. The statutory ban on Federal flood insurance went into effect on October 1, 1983. Within the range of *P. p. ammobates* is the Mobile Point Unit of the CBRS, which includes approximately 4.0 km (2.4 mi.) of beach mouse habitat. Within the historical range of *P. p. allophrys* are the Moreno Point, Four Mile Village, and St. Andrews Complex Units of the CBRS, which include approximately 12.3 km (7.6 mi.) of beach mouse habitat.

Despite all of these regulatory devices of the county, State, and Federal governments, beach mouse habitat continues to be rapidly destroyed by construction activities. In the Coastal Barrier Resources System Units, construction is still proceeding rapidly with non-Federal financing. While vehicular access to the dunes is prohibited in most cases, there is evidence that it still occurs intermittently.

In Alabama, *P. p. ammobates* and *P. p. trissyllepsis* have no legal status. The Alabama Department of Conservation and Natural Resources endorses the Alabama Museum of Natural History list which identifies *P. p. ammobates* as threatened and *P. p. trissyllepsis* as endangered (Dusi, 1976). However, there is no protection, except that a permit is required for scientific collecting. The Florida Endangered and Threatened Species Act of 1977 lists *P. p. trissyllepsis* and *P. p. allophrys* as threatened. Title 39–27.02 of the Administrative Code affords them protection from taking, possession, and sale, except by permit, but does not protect their habitat.

E. *Other natural or man-made factors affecting their continued existence.* Tropical storms periodically devastate Gulf Coast sand dune communities, dramatically altering or destroying habitat, and either drowning beach mice or forcing them to concentrate on high scrub dunes (Blair, 1951) where they are exposed to predators. The habitat of *P. p. ammobates* includes the Fort Morgan, Alabama area, which was severely flooded by Hurricane Frederick on September 13, 1979. Washovers completely destroyed the primary dune system at Fort Morgan, Gulf Highlands, Pine Beach, Gulf Shores, the Gulf State Park, and Romar Beach. Only remnants of the secondary and tertiary lines were left; most sand was moved inland beyond the beach dune complex. The habitat of *P. p. trissyllepsis* includes three areas on Perdido Key in Alabama and Florida. The western end of Perdido Key is part of the Gulf State Park and includes Florida Point, Alabama. It was completely covered by sand south of State Road 182 by Hurricane Frederick on September 13, 1979. Beach mouse habitat remained only on the unflooded elevations (Holliman, 1982). In the central part of Perdido Key is the Perdido Key State Preserve, which also contains beach mouse habitat, and which also was overwashed during Hurricane Frederick. The eastern end of Perdido Key is included in the Gulf Islands National Seashore, Escambia County, Florida. Eighty percent of the National Seashore was overwashed during Hurricane Frederick. The habitat of *P. p. allophrys* includes the Topsail Hill area of coastal Walton County and the Grayton Beach State Recreation Area, both of which were heavily damaged by Hurricane Eloise in 1975.

House mice (*Mus musculus*), which are associated with human development, may compete with beach mice for food and cover (Humphrey and Barbour, 1981). The significance of such competition is presently unknown, and some have doubted its significance (Holliman, 1982). Competition has been documented, however, between house mice and the subspecies *Peromyscus polionotus lucubrans* (Briese and Smith, 1973). Over-wintering savannah sparrows may also affect beach mice by competition for food (Holliman, 1982; Humphrey and Barbour, 1981).

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special managment considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon a determination by the Secretary that such

areas are essential for the conservation of the species.

The proposed critical habitat for the Alabama, Perdido Key, and Choctawhatchee beach mice totals 61.7 km (38.3 mi.) of coastline in Baldwin County, Alabama, and Escambia, Walton, and Bay Counties, Florida, divided into 10 separate parts. Of the total critical habitat, 42.9 km (26.6 mi.) are actually now inhabited by the beach mice and 18.8 km (11.6 mi.) are not currently occupied. In the case of the Alabama beach mouse, all 22.3 km (13.8 mi.) of the proposed critical habitat are now inhabited.

The proposed critical habitat of the Perdido Key beach mouse is 17.4 km (10.8 mi.) in total length, of which 2.9 km (1.8 mi.) are now inhabited and 14.5 km (9.0 mi.) are not occupied. The occupied portion is in the Gulf State Park at the western end of Perdido Key. The unoccupied portions are in the Perdido Key State Preserve on the central part of the key and in the Gulf Islands National Seashore on the eastern end of the key. The two unoccupied areas were originally within the range of the Perdido Key beach mouse, and their protection is essential for the conservation of the animal. If populations could not be reestablished in these areas, the beach mouse would survive only in a small stretch of suitable habitat, which would be constantly subject to obliteration by tropical storms and other deleterious factors. Prior to Hurricane Frederick in 1979, a population of *P. p. trissyllepsis* did exist in the Gulf Islands National Seashore. It was destroyed by the hurricane, but fortunately the population in Gulf State Park was not completely eradicated. This experience demonstrates the necessity of maintaining several currently or potentially suitable areas of habitat for the beach mouse, if it is to have a reasonable chance for survival and recovery.

The proposed critical habitat of the Choctawhatchee beach mouse is 22.0 km (13.7 mi.) in total length, of which 17.7 km (11.1 mi.) are now inhabited and 4.3 km (2.6 mi.) are not occupied. The occupied portions are in the Topsail Hill area of coastal Walton County and on the Shell Island portion of the St. Andrews State Recreation Area, Bay County. The unoccipied portions are in the Grayton Beach State Recreation Area and adjacent private land, and on the mainland portion of the St. Andrews State Recreation Area. The two unoccupied areas were originally within the range of the Choctawhatchee beach mouse, and their protection is essential for the conservation of the animal. The rationale is basically the same as given above for *P. p. trissyllepsis*. In the case of *P. p. allophrys*, Hurricane Eloise in 1975 had a severe impact. The population of beach mice at Grayton Beach State Recreation Area may have been extirpated at that time, and the Topsail Hill area was also heavily damaged.

In considering designation of critical habitat, 50 CFR 424.12(b) requires focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species involved. With respect to the Alabama, Perdido Key, and Choctawhatchee beach mice, the areas proposed as critical habitat currently or potentially satisfy known criteria for the physiological, behavioral, ecological, and evolutionary requirements of the animals. Meyers (1983) found optimal beach mouse habitat to be characterized by high maximum elevation of the coastal sand dunes, by relatively great difference between maximum dune height and minimum interdunal elevation, by close proximity of forest, by a sparse cover of ground vegetation with a moderate number (average 3.5) of plant species, and by a relatively low cover of sea oats. Such conditions of topography and vegetation provide necessary food and cover for populations of beach mice, and allow attainment of reproductive potential. Meyers also reported that the minimum area needed to maintain a population of beach mice is 50 hectares (124 acres), that preferable size is at least 100–200 hectares (247–494 acres), and that there should be natural corridors for migration between areas. Such requirements were considered in the delineation of the proposed critical habitat. The protection of several separate areas of habitat for each kind of beach mouse is essential for the conservation of these animals. Should a kind of beach mouse exist in only one small stretch of suitable habitat, it would be subject to extinction through the effects of tropical storms and other deleterious factors (see above discussion of Perdido Key beach mouse).

Section 4(b)(8) of the Act requires, to the maximum extent practicable, that any proposal to determine critical habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be affected by such designation. Activities most likely to adversely modify the critical habitat of the three beach mice are the continued destruction of sand dunes for residential and commercial development. Indiscriminate pedestrian and vehicular use also adversely impacts the sand dunes.

There are several Federal activities in the coastal parts of Alabama and Florida that may have involvement with the proposed critical habitat designation. One form of involvement is the flood insurance provided by the Federal Emergency Management Agency (FEMA). County regulations in Baldwin County, Alabama, and Escambia, Walton, and Bay Counties, Florida, qualify the coastal strand under the National Flood Insurance Program administered by this agency. Insurance is provided only for completed structures. This program has never been the subject of Section 7 consultation pursuant to the Endangered Species Act (see "Available Conservation Measures," below). Should the flood insurance program be restricted on parts of the Alabama and Florida Gulf Coasts, increased risk or increased insurance costs could result. Development would be less attractive in the area.

Planned activity in the coastal strand includes a variety of commercial and residential developments. It is unlikely that expensive luxury developments will be financed by the Federal Housing Administration, Veterans Administration, or Small Business Administration. However, single-family dwellings and some commercial developments may be financed by these agencies. If such developments were considered likely to adversely modify critical habitat, Federal loans might be affected, causing some borrowers to pay higher interest rates. In any case, Federal assistance is not now authorized for development in the 16.3 km (10.0 mi.) of beach mouse habitat in the CBRS (see part "D" of above "Summary of Factors Affecting the Species").

Another Federal involvement is the Coastal Energy Impact Program (CEIP) administered by the National Oceanic and Atmospheric Administration. The CEIP is a Federal assistance program to aid State and substate units. The CEIP provides grant and loan assistance that may be used for a variety of planning studies, public works construction, land acquisition, and environmental loss mitigation projects, all associated with energy-related facility sitings. Such assistance would not, however, be allowed within the CBRS (see above paragraph). In Alabama, CEIP funds have been spent more on construction than on planning. There is growing interest in siting natural gas extraction facilities on the coastal strand, possibly

in beach mouse habitat on public lands along the Fort Morgan Peninsula. At the present time there are gas extraction rigs in Mobile Bay. In Florida most of the CEIP Federal assistance has been for planning. There has been no indication to date of any demand to site energy facilities in Florida sand dune habitat, and it is unlikely that drilling would be permitted there, because strong public objection could be expected.

The U.S. Army Corps of Engineers has proposed a beach restoration project in the area from Phillips Inlet, Bay County, Florida, eastward to, and including, the mainland portion of the St. Andrews State Recreation Area (SRA). Legislation covering the project has been introduced in Congress. The project's objective would be to build a higher dune and a correspondingly wider beach along the intensely developed, approximately 28.6-km (18-mi.) stretch to improve protection from storms. The only remaining area of value to the Choctawhatchee beach mouse within the project area is the mainland portion of the St. Andrews SRA. In recent years the beach mouse has been extirpated from this portion, perhaps by a combination of severe storms and sand dune erosion, accelerated by public use. Suitable beach mouse habitat exists on the lee side of the foredunes. It is expected that the beach nourishment project could actually enhance the beach mouse habitat within the St. Andrews SRA by creating a foredune into which sea oats and bunch-grass could pioneer.

The Army Corps of Engineers also has a routine maintenance program for the Mobile Bay Main Channel, the Perdido Pass Channel, the Pensacola Bay Channel, and the St. Andrew Bay Entrance Channel. It is doubtful that these maintenance projects would be slowed by critical habitat protection. There might be a slight increased cost associated with close monitoring of dredging and spoiling activities at the Perdido Pass Channel, since the only population of the Perdido Key beach mouse is located at Florida Point which accretes into the Perdido Pass Channel.

Fish and Wildlife Service involvement in the critical habitat area would include the acquisition, management and development of the Bon Secour National Wildlife Refuge. The proposed acquisition boundary includes approximately 6.0 km (3.7 mi.) of Alabama beach mouse habitat, of which about 4.2 km (2.6 mi.) have been purchased to date by the Service. The urgency of acquiring sand dune areas within the refuge boundaries would be emphasized by the critical habitat designation, but few, if any, increased costs to the Refuge would result.

The Alabama Historical Commission has approached the Service about the possibility of entering into a cooperative management agreement regarding lands within the Fort Morgan State Park, including approximately 3.0 km (1.9 mi.) of beach mouse habitat. The Commission has no funding for wildlife management, and there is concern that habitat values within portions of the Park may be degraded in the future by pressures for increased public use and for natural gas extraction. Prime, though atypical, Alabama beach mouse habitat exists at the Park. It is expected that few, if any, increased costs to the Bon Secour National Wildlife Refuge, which would administer the cooperative management agreement, would result from the critical habitat designation.

Section 4(b)(2) of the Act requires the service to consider economic and other impacts of specifying a particular area as critical habitat. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposal. These agencies and other interested parties are requested to submit information on economic or other impacts of the proposed measure. The Service will reevaluate the geographic critical habitat designation at the time of the final rule after considering all additional information received.

It should be emphasized that critical habitat designation does not necessarily rule out Federal activities. If appropriate, the impacts will be addressed during consultation with the Service as required by Section 7 of the Endangered Species Act, as amended. Modification, and not curtailment, of the affected Federal activity has traditionally been the result of Section 7 consultations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm 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 that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29989). 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 or result in destruction or adverse modification of proposed critical habitat. When a species is subsequently 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 or to destroy or adversely modify its critical habitat. If a "may affect" situation is expected, the Federal agency must enter into formal consultation with the Service. Federal activities that may be affected in this regard, with respect to the listing of the Alabama, Perdido Key, and Choctawhatchee beach mice, are described above under "Critical Habitat."

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife species. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any Alabama, Perdido Key, or Choctawhatchee beach mouse in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

The National Park Service has already begun preliminary planning for a live trapping, captive breeding, and transplantation program that would attempt to reestablish beach mice at the Gulf Islands National Seashore. The

Mississippi State University Research Center at the National Space Technology Laboratory has been successful for the past 10 years in breeding *Peromyscus polionotus* in the laboratory. The Research Center and the National Park Service have begun discussions on captive breeding.

Public Comments Solicited

The Service intends that any rules finally adopted will be as accurate and effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the Alabama, Perdido Key, and Choctawhatchee beach mice;

(2) The location of any additional populations of these species and the reasons why any of their habitat should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species;

(4) Current or planned activities in the involved areas, and their possible impacts on the three beach mice; and

(5) The foreseeable economic and other impacts resulting from the proposed critical habitat designation.

Final promulgation of the regulations on the Alabama, Perdido Key, and Choctawhatchee beach mice will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ 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 Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580).

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act. *PLF. v. Andrus* 657 F. 2d 829 (6th Cir. 1981).

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Linzey, D. W. 1978. Perdido Bay beach mouse. *In* Layne, J. N. (ed.), Rare and endangered biota of Florida, Volume 1, Mammals, University Presses of Florida, Gainesville, pp. 19–20.

Meyers, J. M. 1983. Status, microhabitat, and management recommendations for *Peromyscus polionotus* on Gulf Coast beaches. Rept. to U.S. Fish and Wildl. Serv., Atlanta, 29 pp.

Author

The primary author of this rule is Ms. Robin H. Fields, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the 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 § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife, under "Mammals":

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* *	*	*	*		*		*
Mouse, Alabama beach	*Peromyscus polionotus ammobates.*	U.S.A. (AL)	Entire	E		17.95(a)	N/A.
Mouse, Choctawhatchee beach.	*Peromyscus polionotus allophrys.*	U.S.A. (FL)	Entire	E		17.95(a)	N/A.
Mouse, Perdido Key beach	*Peromyscus polionotus trissyllepsis.*	U.S.A. (AL, FL).	Entire	E		19.95(a)	N/A.
* *	*	*	*		*		*

3. It is further proposed to amend § 17.95(a), "Mammals," by adding the critical habitat of the Alabama, Choctawatchee, and Perdido Key beach mice, as follows. The position of these critical habitat entries under § 17.95 will be determined at the time of publication of a final rule.

§17.95 Critical habitat—fish and wildlife.

(a) * * *

Alabama beach mouse

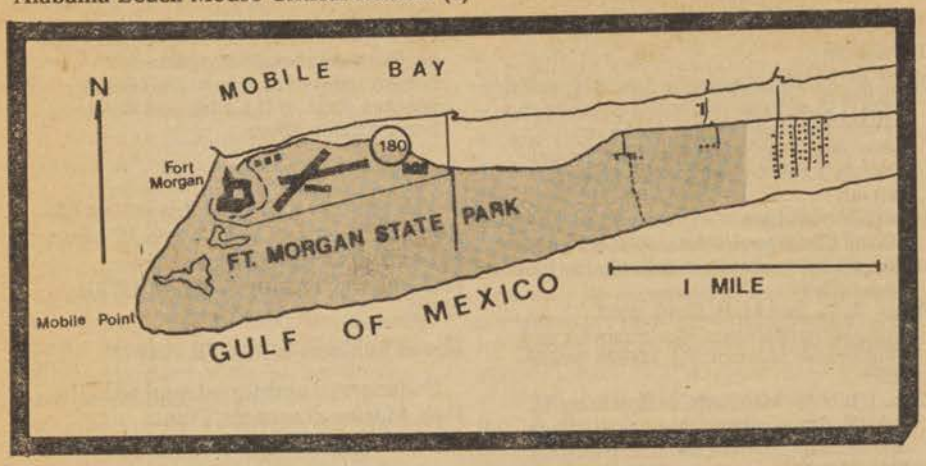
Peromyscus polionotus ammobates

Alabama. Areas of land, water, and airspace in Baldwin County with the following components (St. Stephens Meridian): (1) that part of the Fort Morgan Peninsula south of State Road 180 and west of 87°59'25" W; (2) those portions of T9S R3E Sec. 30 and T9S R2E Sec. 25–30 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) those portions of T9S R4E Sec. 13, S½ Sec. 14, NE¼ Sec. 21, N½ Sec. 22, and NW¼ Sec. 23, and T9S R5E W½ Sec. 18, south of State Road 182.

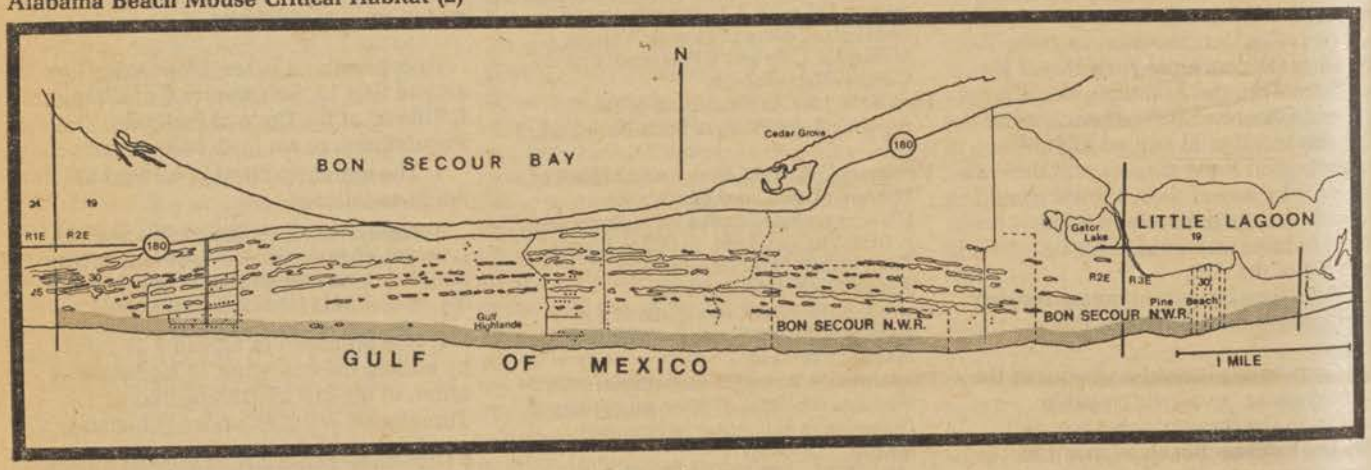
Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

BILLING CODE 4310-55-M

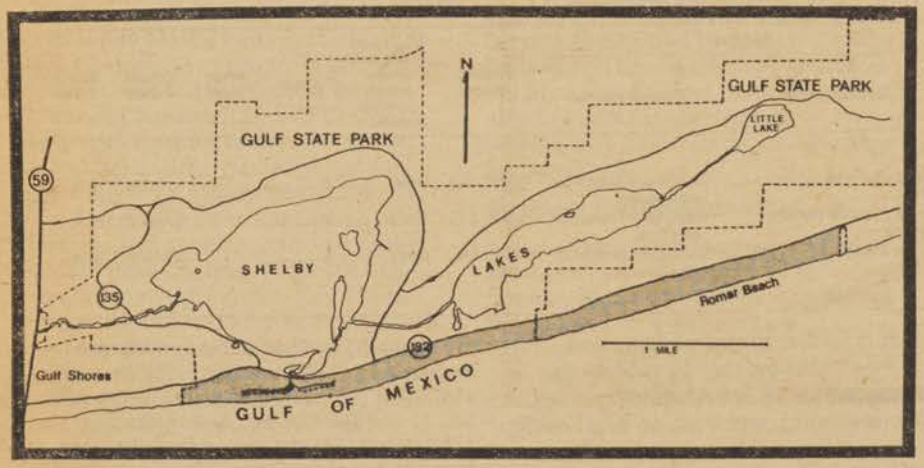
Alabama Beach Mouse Critical Habitat (1)



Alabama Beach Mouse Critical Habitat (2)



Alabama Beach Mouse Critical Habitat (3)



BILLING CODE 4310-55-C

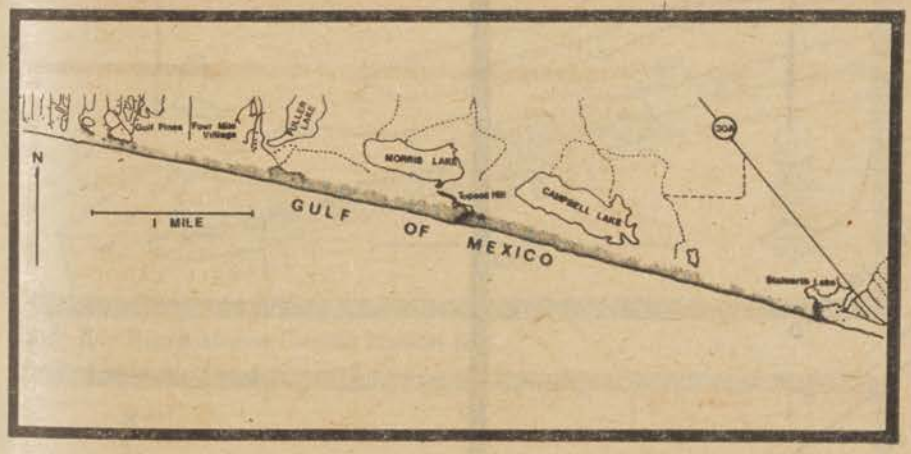
Choctawhatchee beach mouse

(Peromyscus polionotus allophrys)

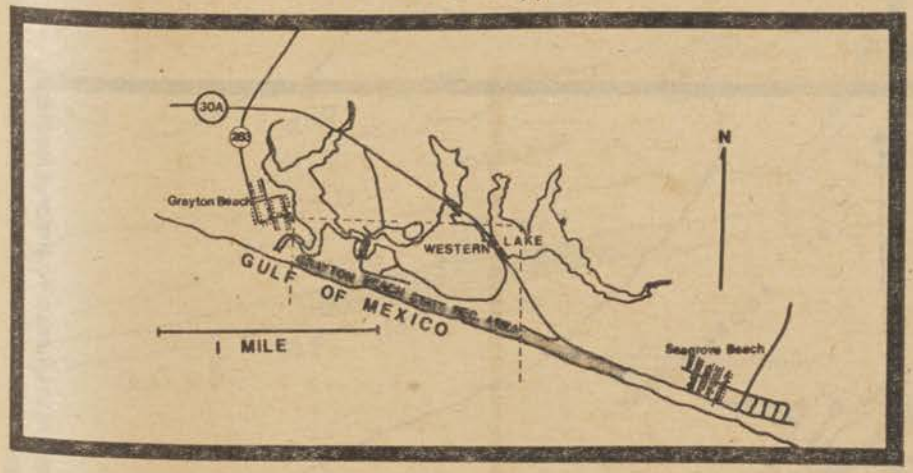
Florida. Areas of land, water, and airspace in Walton and Bay Counties with the following components (Tallahassee Meridian): (1) those portions of T2S R21W E¾ Sec. 34, Sec. 35–36, T2S R20W S¼ Sec. 31, and T3S R20W W⅛ Sec. 4, N½ Sec. 5, and NE¼ Sec. 6 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (2) those portions of T3S R19W W½ Sec. 15 and Sec. 16 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) those portions of the mainland part of the St. Andrews State Recreation Area in T4S R15W NE¼ Sec. 21 and Sec. 22 extending 152. 5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (4) those portions of Shell Island in T4S R15W Sec. 25–27 and Sec. 36, T4S R14W Sec. 31, and T5S R15W Sec. 4–6 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

Choctawhatchee Beach Mouse Critical Habitat (1)

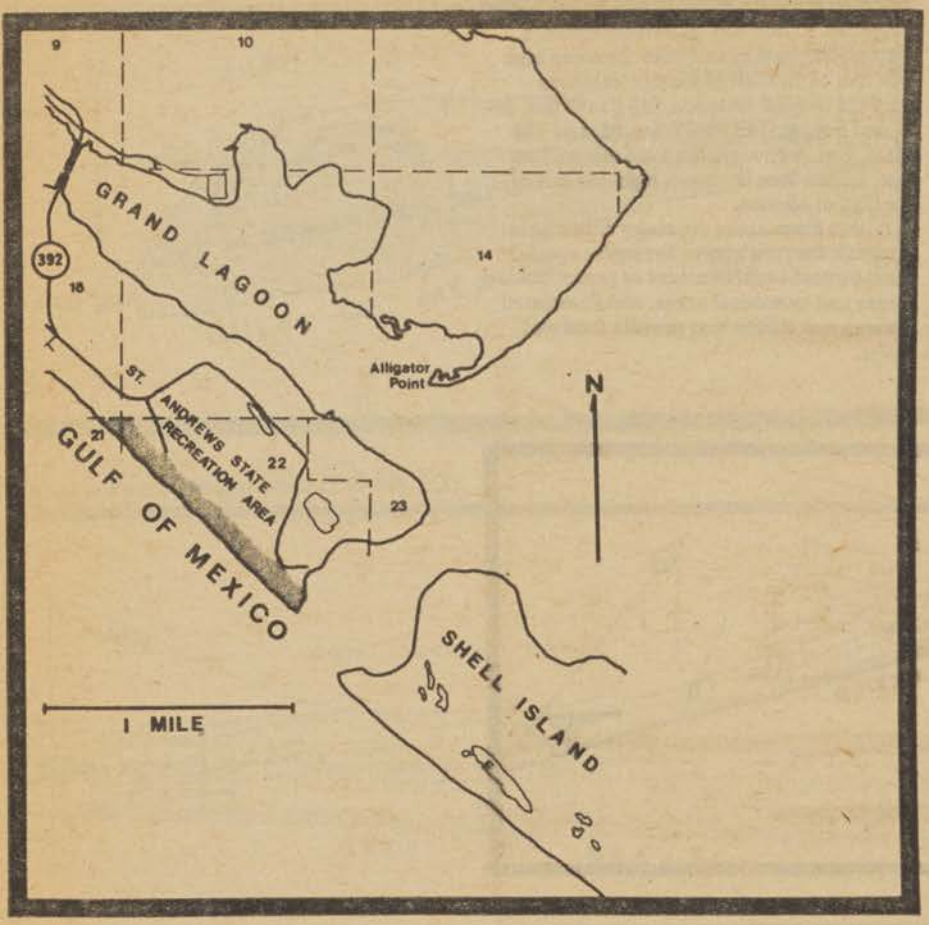


Choctawhatchee Beach Mouse Critical Habitat (2)

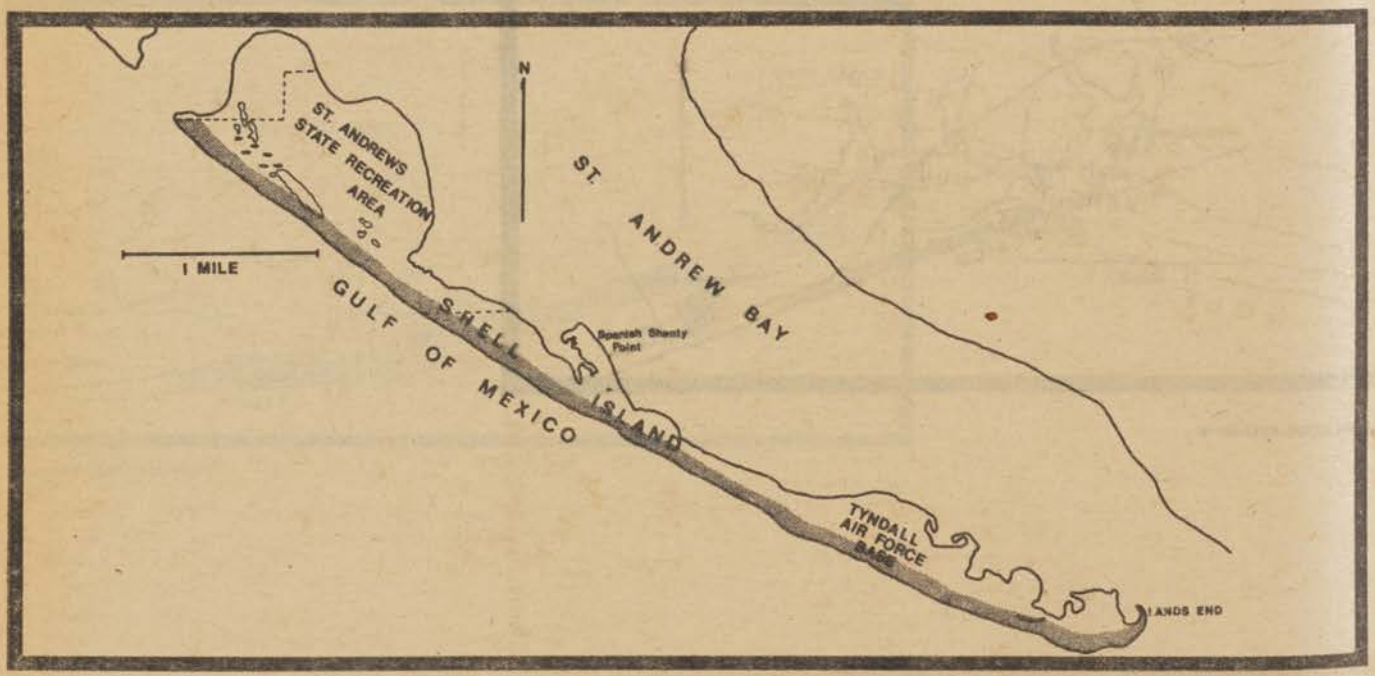


BILLING CODE 4310-55-M

Choctawhatchee Beach Mouse Critical Habitat (3)



Choctawhatchee Beach Mouse Critical Habitat (4)



BILLING CODE 4310-55-C

Perdido Key beach mouse

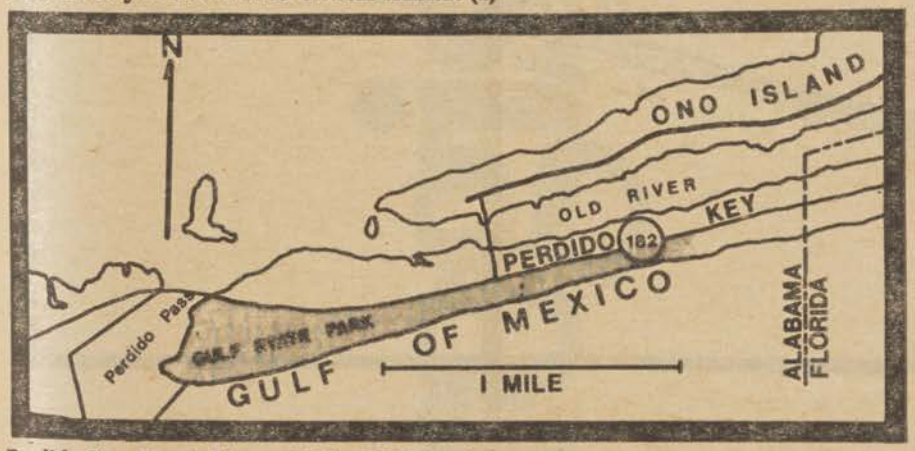
(Peromyscus polionotus trissyllepsis)

Alabama. An area of land, water, and airspace in Baldwin County with the following components (Tallahassee Meridian): those portions of T9S R33W W¾ Sec. 2 and Sec. 3 south of South Road 182.

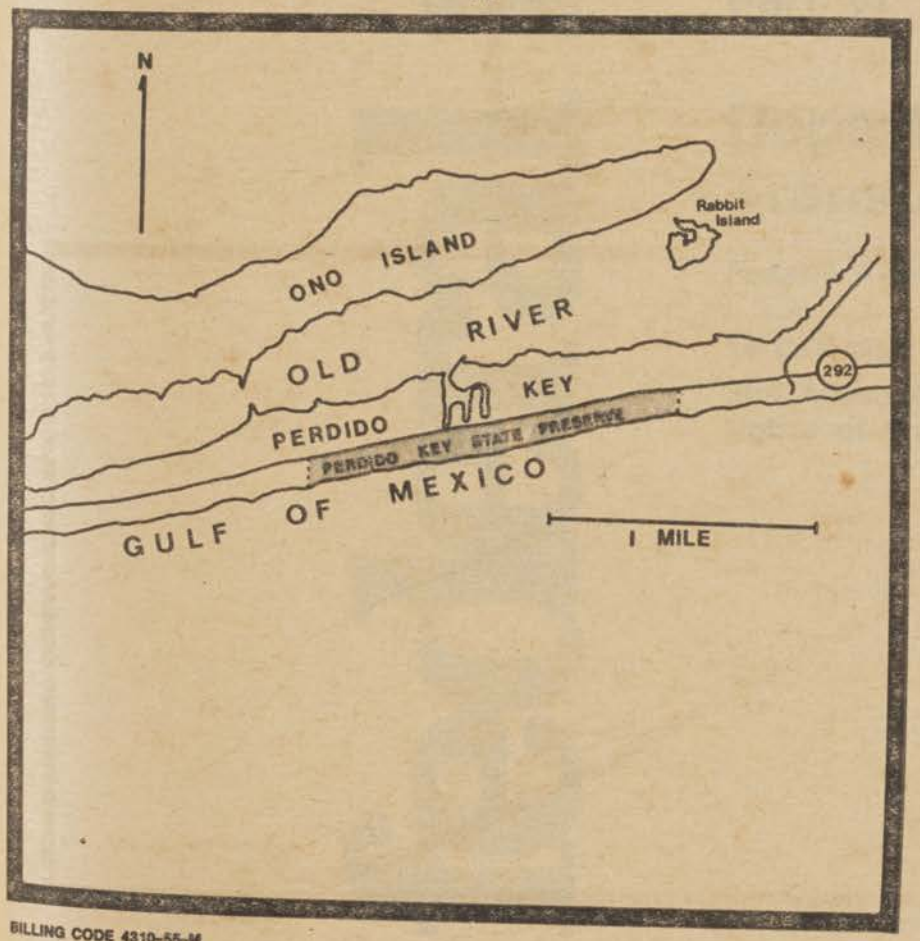
Florida. Areas of land, water, and airspace in Escambia County with the following components (Tallahassee Meridian): (1) those portions of T3S R32W Sec. 32–33 and T4S R32W Sec. 5 south of State Road 292; (2) those portions of Perdido Key in T3S R31W Sec. 25–26 and Sec. 28–34, in T3S R32W E½ Sec. 36, and in T3S R32W Sec. 35 and W½ Sec. 36 south of the entrance road and parking lot of the Gulf Islands National Seashore.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

Perdido Key Beach Mouse Critical Habitat (1)

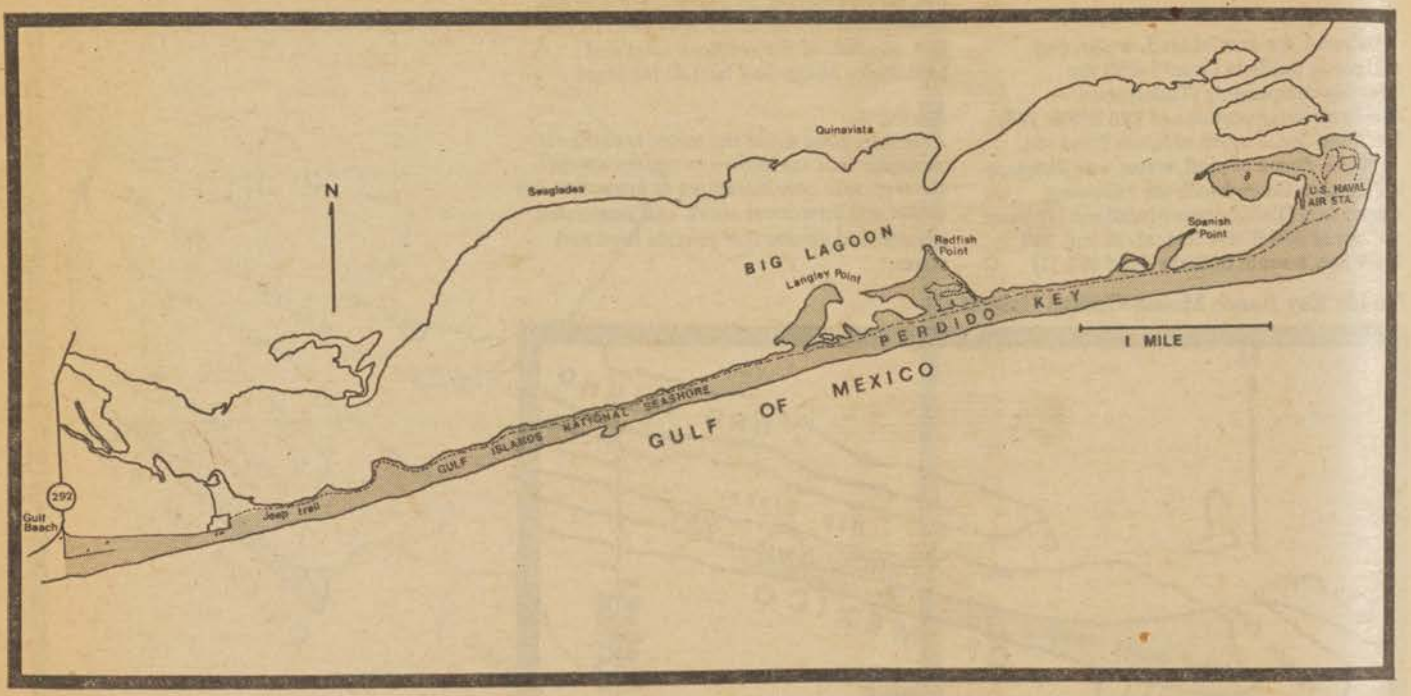


Perdido Key Beach Mouse Critical Habitat (2)



BILLING CODE 4310-55-M

Perdido Key Beach Mouse Critical Habitat (3)



Dated: April 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-11573 Filed 6-6-84; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
June 7, 1984

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Slot Allocation Alternative Methods; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24110; Notice 84-7]

Slot Allocation Alternative Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth a procedure to be used if the scheduling committees are unable to allocate newly available slots at the high density airports. The proposal is, in part, a response to the recommendations made by a number of air carriers and commuters in response to the FAA's High Density Rulemaking. These commenters stated that they are concerned that the scheduling committees may deadlock. A separate NPRM on the transfer of slots has been issued on this date.

DATE: Comments must be received on or before July 9, 1984.

ADDRESS: Send comments on the proposal in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24110, 800 Independence Avenue, SW., Washington, D.C. 20591

or deliver comments in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

See **SUPPLEMENTARY INFORMATION** for location of the public hearing.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, AGC-2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426-3773.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this regulatory action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submtited in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24110." The postcard will be dated/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. Also, this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the notice number of the document.

Related Rulemaking

This NPRM concerns the initial allocation of slots to operators at High Density Airports. On this date, a separate NPRM was issued concerning the transfer of slots between operators. These two NPRM's should be read together for a full discussion of the issues involved. It should also be noted that, as stated in the interim final rule issued on March 1, 1984, the high density rule will be reviewed again in 6 to 9 months with all unwarranted restrictions being eliminated, effective January 1, 1985.

Background

Federal Aviation Regulations (FAR) Amendment No. 93-13, effective April 27, 1969 (33 FR 17896; December 3, 1968), designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was imposed on a trial basis with the general support of the air carriers in response to rapidly growing problems of congestion and delays at those airports. The rule established limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators—primarily general aviation operators but also charter operators. In 1973, the High Density Rule was made permanent, subject to continuing FAA review (38 FR 29463; October 25, 1973).

The hourly quotas were set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. In accordance with the policy announced by the FAA at the time the High Density Rule was adopted, the rule has been periodically reviewed to ascertain whether a continuing need for the quotas existed and whether the quotas should be modified to reflect changing circumstances. In the course of these reviews the quotas at Kennedy and O'Hare Airports were removed, except for a peak period from 3:00 p.m. to 7:59 p.m., local time. In addition, the entire quota at Newark was suspended indefinitely, and the procedures applicable to Washington National Airport were modified.

On March 1, 1984, the FAA issued an amendment to the High Density Rule (Amendment 93-46). The amendment increased the hours in which limitations at O'Hare Airport are applicable and increased the number of operations permitted at the airport. The amendment slightly increased the number of operations allowed at LaGuardia and Kennedy Airports. The distribution of the operations among the various classes of users was also amended.

Since 1969 when the High Density Rule was first issued, operations at these airports have been allocated by scheduling committees. These committees have been formed by air carriers and commuters. The Civil Aeronautics Board approved the Air Carrier Scheduling Agreement (Order 68-12-11) and the commuter agreement (Order 69-2-52).

On October 21, 1980, the Acting Secretary of Transportation issued Notice No. 80-16 (45 FR 67103; October 9, 1980) which proposed alternative procdures for slot allocation. The alternatives proposed included administrative allocation, slot auctions and variations thereof. In addition, the notice solicited comments on the continued use of the Airline Scheduling Committee. The notice also proposed

variations of each alternative to assure that small- and medium-sized communities do not lose nonstop service to National Airport to larger markets. Comments submitted on the NPRM are in the Docket (Docket No. 70, Docket Clerk, Office of the General Counsel, Room 10105, 400 Seventh Street, SW., Washington, D.C. 20590.) Notice 80–16 focused on allocation at Washington National Airport; it did not contain proposals for other high density airports. In addition, it did not propose to allow direct slot transfer between operators for any consideration.

During the past several years, the scheduling committees have had a difficult time in reaching agreement. On October 29, 1980, the Acting Secretary of Transportation issued Special Federal Aviation Regulation No. 43 (45 FR 72640; November 3, 1980) which allocated slots at Washington National Airport after the scheduling committee advised that it was deadlocked and unable to reach an agreement.

A number of parties submitting comments on Amendment No. 93–46 suggested that an essential aspect of any allocation at the high density airports must be a mechanism that would be available if the scheduling committee failed.

The Air Transport Association of America (ATA) in its comments stated:

> When the complexities of the new rule, especially at LaGuardia and O'Hare, are added to the increased burdens imposed on the voluntary committee system by deregulation, the possibility of a committee impasse cannot be ignored. Therefore, the FAA should act promptly to establish a regulatory deadlock-breaking mechanism to be used in the event of such an impasse.
>
> * * * FAA should issue a notice of proposed rulemaking forthwith with a view of having the regulation in place as early as possible but, no later than mid-April, so that it can be utilized in the event of an impasse.

United Airlines in its comments stated that the Airline Scheduling Committee should be abolished. They state that the scheduling committee should be permitted to seek airline agreement until the deadline of March 30, 1984. If final agreement is not reached by that date, a lottery allocation would automatically become effective.

Several other commeters, including Provincetown-Boston Airlines (PBA), Midwest Express, Jet Express, and Jet America also expressed concern about the Interim Final Rule's lack of an alternative method for slot allocation if the scheduling committee should reach an impasse. Indeed, PBA stated that it saw no reason to continue to allocate slots through a scheduling committee.

As stated earlier in this document, scheduling committees at the high density airports have had increasing problems with allocation of slots. They have deadlocked a number of times with the Department having to allocate slots through rulemaking once, and the Department has been faced with allocation problems a number of other times. Each time a committee has had a problem, the Department is faced with a time-consuming effort to develop an allocation mechanism. If there is a delay in the institution of such a mechanism, it would result in inefficient use of the available system capacity. For this reason and at the request of the carriers and commuters, the Department believes it advisable that regulatory alternatives to the scheduling committee be considered at this time. The agency, of course, hopes that the respective scheduling committees do function in order to minimize the need for government involvement and to minimize possible inconvenience to the public and the industry as a whole.

The Proposal

If a scheduling committee fails, the Department believes that a two-step process should be utilized in the allocation of slots. The first step would be to continue the assignment of all previously allocated slots to the carriers and commuters currently utilizing them.

Since the initial approval of the scheduling committees, slots have been allocated at high density airports by the committees (except in 1980 as explained earlier in this document) until the air traffic controllers strike in August 1981. After the strike, a percentage of slots were taken away from carriers and through a variety of mechanisms (including a lottery) some were returned. Thus, carriers holding slots at high density airports today obtained them from the scheduling committees or from the FAA strike-related allocation procedures.

As mentioned above, FAA is proposing that the initial allocation of slots be accomplished by allocating all existing slots to the carriers utilizing them on the date of the scheduling committee deadlock. This approach has been used by the Government in analogous situations in the past, and recognizes the investments and commitments in personnel, equipment, terminal development, and planning by existing carriers. For example, the Illinois Department of Transportation, in their comments on the high density rulemaking, emphasized the importance of the $1 billion upgrade of existing facilities at O'Hare by the incumbent carriers and the City of Chicago. That upgrade is being accomplished in conjunction with new 35 year leases entered into by the city and incumbent carriers and an Airport Development Program which runs through 1995. As part of this upgrade, the Delta Airlines terminal is nearing completion while the United Airlines terminal is in the developmental process. Any method, other than allocating existing slots to the carrier utilizing them that might be used for accomplishing the initial allocation, whether it be a lottery, auction, or some other procedure, has the potential of considerably disruping operations and service patterns at the high density airports. FAA does not believe that such a result would be in the public interest.

The second step in the process would be a lottery mechanism in which carriers and commuters would be able to select any available slots. The lottery mechanism is proposed to operate as follows:

1. After a scheduling committee notifies the FAA that it is deadlocked or unable to allocate newly-available slots, a random lottery would be held to determine the order of slot selection for the allocation session(s) to be held. Some commenters have urged that if the scheduling committee does not accomplish allocation by a certain date then the lottery mechanism would automatically take place. Comments are invited as to whether the lottery mechanism should apply on a specific date unless the scheduling committee has reached agreement.

All carriers and/or commuters operating at the airport at which the deadlock has occurred would be included in the lottery. In addition, a carrier or a commuter not operating at the airport but wishing to initiate service would be included if the carrier notified, in writing, the Office of the Chief Counsel, Docket Section, AGC–204, 800 Independence Avenue, SW., Washington, D.C. 20591. The notification would have to be in duplicate and would have to be received prior to the declaration of a deadlock. (The FAA will issue a notice to be published in the Federal Register announcing the deadlock and the date of the allocation session.) Air carrier and commuter carrier scheduling committees and allocation procedures would proceed along separate, although parallel and similar tracks.

2. An allocation session would be held approximately 7 days after the lottery. Prior to the allocation session, if the total number of operations in any 30- or 60-minute period exceeds the limitations contained in the High Density Rule, the appropriate air carrier or commuter

scheduling committee would be asked to adjust schedules to bring operations into compliance with the rule. If they are unable to do so, individual carriers or commuters would be given the opportunity to exchange slots for any other slots available. If that cannot be accomplished, then slots to be shifted to other time periods would be determined randomly in accordance with paragraph 14 below.

3. Air carrier slots and commuter slots would be in separate pools. At the allocation session air carriers or commuters would select slots from a high density airport in which a deadlock has occurred. A carrier or commuter would make its selection within 5 minutes or it would lose its turn. If capacity still remains after each air carrier on the selection list has had an opportunity to select slots, the allocation sequence would be repeated in the same order. An air carrier or commuter would select any two slots available at each airport deadlocked during each sequence except in the first sequence of each session at LaGuardia and Kennedy and the first and second sequences at O'Hare Airport during which the number of slots an air carrier or commuter would select at each deadlocked airport would be as set forth in the chart below:

The number of slots which a carrier or commuter could select in the first and second sequences at a "deadlocked" airport would be based upon the number of slots held by the operator during the High Density Rule hours at the time of the lottery. An equitable slot distribution system requires some recognition of differences between types and size of operators. As discussed above, many operators have made large expenditures and adopted development plans based on their expectations of expanded operations at the high density airports. For this reason, larger operators would be given some additional selections during the first slot selection sequence in each session as well as in the second sequence at O'Hare. It should be noted that only a limited number of additional slots would be allocated under this special procedure. Comments on this procedure are requested.

O'Hare Airport

Air carriers not operating at O'Hare on date of allocation—4 slots
Air carriers operating less than 20 slots—2 slots
Air carriers operating more than 19 but less than 50 slots—4 slots
Air carriers operating more than 49 but less than 100 slots—6 slots
Air carriers operating 100 or more slots—8 slots
Commuters not operating at O'Hare on date of allocation—4 slots
Commuters operating less than 30 slots—2 slots
Commuters operating more than 29 slots—4 slots

LaGuardia

Air carriers not operating at LaGuardia on date of allocation—4 slots
Air carriers operating less than 30 slots—2 slots
Air carriers operating more than 29—4 slots
Commuters not operating at LaGuardia on date of allocation—4 slots
Commuters operating less than 20 slots—2 slots
Commuters operating more than 19 slots—4 slots

Kennedy

Air carriers not operating at Kennedy on date of allocation—4 slots
Air carriers operating less than 30 slots—2 slots
Air carriers operating more than 29—4 slots
Commuters not operating at Kennedy on date of allocation—4 slots
Commuters operating less than 20 slots—2 slots
Commuters operating more than 19 slots—4 slots

New entrants would be given additional selections, as noted above, in the first and second sequences at O'Hare and the first sequence at Kennedy and LaGuardia, after which they would select the same number of slots as other carriers. This would be consistent with the intent of deregulation.

If an operator is both an "air carrier" and "commuter," as those terms are defined in Part 93, the number of slots to be selected would be determined by adding all operations conducted at the airport by the operator. The number of slots selected would be consistent with the air carrier distribution. Slots selected may be utilized only by aircraft of the size consistent with the air carrier and commuter definitions.

If a lottery is held for more than one airport, each carrier or commuter would be entitled to select the total number of slots it is eligible to select at each airport. Slots available for selection would only be utilized for the particular airport. (For example, O'Hare selections could not be utilized to select slots at LaGuardia.)

4. In order to select slots, a carrier or a commuter would need appropriate CAB authority and an appropriate FAA certificate 14 CFR Part 121 or 135).

5. Separate lists of slots would be created for air carriers and commuters for each airport. In addition, during the first sequence, 15 percent of each classification of slots would only be available for new entrants. Further, as a result of concerns expressed for the need to provide slots for future EAS determinations, 15 slots at O'Hare would be designated as EAS slots. Those slots would only be available for selection by commuters. If selected, each of those slots would be utilized until the commuter is notified that it must be returned to the FAA for allocation for EAS service. Any such notification would be given at least 60 days prior to the required return date.

6. If an air carrier has more than a 50-percent ownership or control of one or more other air carriers, the carriers would be considered to be a single air carrier. In addition, if a single company has more than a 50-percent ownership or control of two or more air carriers, those air carriers would be considered to be a single air carrier.

7. Slots may be traded at or between any high density airports. Each slot obtained at an allocation session could not be traded until the carrier selecting the slot utilized it for at least 90 days. Comments are invited on whether trades should be limited to a one-for-one basis.

8. Each slot selected would have to be utilized within 60 days of the lottery or the slot would be lost. An operator not operating at the airport on the date of the lottery would have to utilize those slots within 90 days or would lose the slots.

9. Any slot that is not utilized at least 71 percent of any 2-month period will be withdrawn by the FAA.

10. Prior to any allocation under this lottery mechanism, slots would be assigned to fulfill Essential Air Service determinations made by the Civil aeronautics Board. Slots assigned for EAS purposes would be withdrawn if the operator ceases EAS service. They would then be made available to any newly designated EAS carrier.

11. It is anticipated that scheduling adjustments (slides) would be handled by the respective scheduling committees. It is also anticipated that slot trades would be reported through the scheduling committee which would then forward information to the FAA. In addition, the agency expects that the scheduling committees will maintain current lists of slots held by each carrier and commuter. Comments are invited on alternative tracking mechanisms.

12. Another issue to be addressed concerns how the agency would retrieve slots if that need arises for EAS service, international operations or for other reasons. One suggestion would be to have all slots at O'Hare, Kennedy and LaGuardia Airports numbered. As transactions occur involving each slot, the assigned number for the slot would be cited. If slots must be returned or

adjusted as required by the agency, the highest-number slot could be used.

13. After all slots are allocated, the FAA will, approximately every 30 days thereafter, notify the air carrier through the scheduling committees of the availability of any additional slots (slots lost under use or lose, slots returned, etc.). Those slots will then be offered to the next operator eligible for slots in the lottery sequence.

14. In the event a scheduling committee is unable to make the necessary adjustments in existing schedules to accommodate the half-hour limits contained in the interim final high density rule, the FAA believes that a mechanism should be in place to accomplish these adjustments. The FAA proposes that:

A. After a scheduling committee notifies the FAA that it is unable to reach agreement on schedule adjustments to accommodate the half-hour slot limits, each carrier holding slots in a half-hour period in which the limit is exceeded would have a capsule placed in a drum for each of the slots it holds in that half-hour period.

B. Capsules would be randomly drawn, each time a capsule is drawn the named carrier would have to "slide" an operation into a half-hour during which the limit is not exceeded.

C. Capsules would be drawn and slides would continue until the number of operations in each of the half-hour periods does not exceed the established limits.

D. These schedule adjustments or "slides" would be accomplished before the deadlock mechanism is used to allocate new or additional capacity.

Comments are solicited on this proposed allocation mechanism. It may be changed after analysis of those comments.

The primary issues and questions mentioned above are those that the Department feels must be addressed in connection with this proposal. It is hoped that all commenters will provide comments on them as well as on related points.

Because of positions taken by a large number of commenters as to the urgency of this proposal during the High Density Rulemaking, the Department believes that the effective date of the final rule should be 10 days after issuance of the rule. Comments on the effective date are invited.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Proposed Amendment

PART 93—[AMENDED]

In consideration of the above, it is proposed to amend Subpart K of Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

1. A new § 93.126 is added as follows:

§ 93.126 Slot allocation mechanism.

(a) After a scheduling committee notifies the Department that it is deadlocked or unable to allocate newly-available slots, a random lottery will be held to determine the order of slot selection for the allocation session to be held. Existing slots will continue to be allocated to the carriers currently operating them. All carriers and/or commuters operating at the airport at which the deadlock has occurred will be included in the lottery. In addition, a carrier not operating at the airport but wishing to initiate service will be included if the carrier notifies, in writing, the Office of the Chief Counsel, Docket Section, AGC–204, 800 Independence Avenue, SW., Washington, D.C. 20591. The notification must be in duplicate and must be received prior to the declaration of the deadlock. (The FAA will issue a notice to be published in the **Federal Register** announcing the deadlock and the date of the allocation session.)

(b) At the allocation session air carriers and/or commuters may select newly-available slots at the high density airport in which a deadlock has occurred. A carrier must make its selection within 5 minutes or it will lose its turn. If capacity stil remains after each air carrier on the selection list has had an opportunity to select slots, the allocation sequence will be repeated in the same order. A carrier may select any two slots available, as listed, at the airport deadlocked during each sequence except in the first sequence at LaGuardia and Kennedy Airports and the first and second sequences at O'Hare Airport of each session, during which the number o;f slots an air carrier may select at each deadlocked airport is as follows:

O'Hare Airport

Air carriers not operating at O'Hare on date of allocation—4 slots
Air carriers operating less than 20 slots—2 slots
Air carriers operating more than 19 but less than 50 slots—4 slots
Air carriers operating more than 49 but less than 100 slots—6 slots
Air carriers operating 100 or more slots—8 slots
Cummuters not operating at O'Hare on date of allocation—4 slots
Air carriers operating less than 30 slots—2 slots
Air carriers operating more than 29 slots—4 slots

LaGuardia

Air carriers not operating at LaGuardia on date of allocation—4 slots
Air carriers operating less than 30 slots—2 slots
Air carriers operating more than 29—4 slots.
Commuters not operating at LaGuardia on date of allocation—4 slots
Commuters operating less than 20 slots—2 slots
Commuters operating nore than 19 slots—4 slots

Kennedy

Air carriers not operating at Kennedy on date of allocation—4 slots
Air carriers operating less than 30 slots—2 slots
Air carriers operating more than 29 slots—2 slots
Commuters not operating at Kennedy on date of allocations—4 slots
Cummuters operating less than 20 slots—2 slots
Cummuters operating more than 19 slots—4 slots

(c) In order to select slots, a carrier or commuter must have appropriate CAB authority and an appropriate FAA certificate (14 CFR Part 121 or 135).

(d) Separate pools of slots will be created for air carriers and commuters at each airport. In addition, during the first sequence 15 percent of each classification of slots will only be available for new entrants. At O'Hare Airport, a number of slots will be designated as EAS slots. Each of those slots may be selected by commuters and may be operated until notice is received by the operator that it must be returned to the FAA.

(e) If an air carrier or commuter has more than a 5-percent ownership or control of one or more other air carriers or commuters, the carriers or commuters shall be considered to be a single air carrier or commuter. In addition, if a single company has more than a 50-percent ownership or control of two or more air carriers and/or commuters or any combination thereof, those air carriers and/or commuters shall be considered to be a single air carrier.

(f) No slot obtained through the lottery may be traded until the carrier or commuter selecting the slot has utilized it for at least 90 days.

(g) Any slot not utilized at least 71 percent of the time in any 2-month period will be withdrawn by the FAA.

Regulatory Evaluation

This proposal would allow operations to continue to use existing departure or arrival slots. This document would

distribute additional capacity at high density airports if scheduling committees fail. No carrier or commuter would lose slots or transfer them and most would be able to obtain some.

Regulatory Flexibility Determination

This proposal does not impose any new requirements on small entities.

(Secs. 103, 307, 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348, 1354(a) and 1421(a); 49 U.S.C. 106(a) (Revised Pub. L. 97–449, January 12, 1983); and 11.49 of the Federal Aviation Regulations (14 CFR 11.49)))

Note: For the reasons set forth in this notice: (1) The FAA has determined that the proposal does not involve a major proposal under Executive Order 12291; (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft evaluation prepared for this action can be obtained from the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on June 1, 1984.

J. E. Murdock III,

Acting Deputy Administrator.

[FR Doc. 84–15284 Filed 6–4–84; 1:49 pm]

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June 7, 1984

Part VII

Federal Trade Commission

16 CFR Part 13

Socal Inc. and Gulf Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 841-0109]

Socal Inc. and Gulf Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The Federal Trade Commission has provisionally accepted a consent agreement with Standard Oil Company of California, "Socal", and Gulf Corporation, "Gulf", in settlement of a complaint alleging violations of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The consent agreement, accepted subject to final Commission approval, would require Socal to sell ("divest") within six months all Gulf assets listed in Schedule A to a Commission-approved buyer(s). Specifically, the proposed consent order would require Socal (among other things) to divest certain of Gulf's petroleum-related assets, including: (a) Gulf's petroleum product wholesale and retail marketing assets in all or part of seven southeastern states; (b) one of Gulf's two refineries on the Gulf Coast; (c) Gulf's interest in the Colonial Pipeline (which transports refined light products to much of the eastern United States); and (d) more than half of Gulf's crude oil pipeline interests in western Texas. The Commission may require Socal to add certain additional assets to any divestiture package. Further, if necessary to achieve effective divestiture, Socal must supply or divest crude oil to the buyer(s) of the divested assets to ensure that the divested entities can be operated as viable, ongoing enterprises, engaged in the same businesses in which the properties are presently employed.

In addition to provisional acceptance of the proposed consent order, the Commission has entered into an "Agreement to Hold Separate" with Socal and Gulf. This agreement will require Socal and Gulf to maintain the separate identity and individual viability of Gulf's oil and gas assets during the public comment period. The consent order extends the Agreement to Hold Separate until Socal has completed all of the required divestitures.

Socal would be prohibited for 10 years from acquiring, without prior Commission approval, any interest in any pipeline transportation, refining, or wholesale marketing assets in Tennessee, Kentucky, the East Coast, the Gulf Coast, the Caribbean, or the Bahamas.

DATE: Comments must be received on or before August 6, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-4, Marc G. Schildkraut, Washington, D.C. 20580, (202) 724-1424.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Gasoline, Mergers, Petroleum products, Trade practices.

Before Federal Trade Commission

[File No. 841-0109]

Agreement Containing Consent Order

In the matter of Standard Oil Company of California, a corporation, and Gulf Corporation, a corporation.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of shares of Common Stock of Gulf Corporation ("Gulf") by Standard Oil Company of California ("Socal") and Socal and Gulf having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration, and which, if issued by the Commission, would charge Socal and Gulf with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that Socal and Gulf are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between Socal and Gulf, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Socal is a corporation organized under the laws of Delaware with its executive offices at 225 Bush Street, San Francisco, California 94101.

Gulf is a corporation organized under the laws of Delaware with its executive offices at Gulf Building, Pittsburgh, Pennsylvania 15320.

2. Socal and Gulf admit all jurisdictional facts set forth in the attached draft of complaint.

3. Socal and Gulf waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Federal Access to Justice Act.

4. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Socal or Gulf, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Socal and Gulf that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Socal and Gulf, (1) issue its complaint corresponding in form and substance with the draft of the complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Socal's and Gulf's addresses as stated in this agreement shall constitute

service. Socal and Gulf waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Socal and Gulf have read the draft of complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Socal and Gulf further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order the following definitions shall apply:

(a) "Acquisition" means Socal's acquisition of shares of the Common Stock of Gulf.

(b) "Oil and gas assets and businesses" means all Gulf's domestic crude oil and gas, and assets and operations relating to oil and gas exploration, production and transportation, as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States.

(c) "Schedule A Properties" means the assets and businesses listed in Schedule A of this agreement.

(d) "Gulf" means Gulf Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by Gulf and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(e) "Socal" means Standard Oil Company of California, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Socal and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(f) "Wholesale distribution of gasolines and middle distillates" includes but is not limited to terminals, bulk plants, warehouses, and package plants.

(g) "Marketing" includes but is not limited to the properties described in paragraph (f) above, together with tank trucks, service station properties, and product inventories.

II

It is ordered that:

(A) Socal shall divest, absolutely and in good faith, within six months from the date this order becomes final, the Schedule A Properties, as well as any additional oil and gas assets and businesses relating to oil and gas transportation, and petroleum and petrochemical processing, refining, transportation, and marketing that (i) Socal may at its discretion include as a part of the assets to be divested and are acceptable to the acquirer, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed.

(B) Socal shall provide prospective acquirers of the Schedule A Properties petroleum product exchanges, crude oil supply arrangements, or equity crude oil arrangements if necessary to ensure divestiture of the Properties as ongoing viable enterprises engaged in the same businesses in which the Properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Schedule A Properties have been divested, and Socal and Gulf shall comply with all terms of said Agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) Socal and Gulf shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that, within sixty days after the date of service of this order, and every sixty days thereafter until Socal has fully complied with the provisions of paragraph II of this order, Socal shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Socal shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in paragraph II of this order, including the identity of all parties contacted. Socal also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV

It is further ordered that for a period commencing on the date of service of this order and continuing for ten years from and after the date of service of this order, Socal shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in refining, the wholesale distribution of gasolines or middle distillates, or pipeline transportation, in Tennessee, Kentucky, PAD Districts I or III, or the West Indies, including the Bahamas and the Caribbean Islands; provided, however, that, except for the Borco refinery, these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which Socal is a participant on the date of service of the order.

One year from the date of service of this order and annually thereafter Socal shall file with the Commission a verified written report of its compliance with this paragraph.

V

For the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Socal or Gulf made to its principal office, Socal and Gulf shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Socal or Gulf relating to any matters contained in this order; and

2. Upon five days' notice to Socal or Gulf and without restraint or interference from them, to interview

officers or employees of Socal or Gulf, who may have counsel present, regarding such matters.

VI

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

Schedule A

Assets to be divested as provided above are the following:

1. All of Gulf's marketing assets, including the Gulf brand name and trademark, located in the States of Kentucky, Tennessee, Alabama, Mississippi, Georgia and Florida, and the area of South Carolina served by Gulf's Spartanburg, South Carolina terminal and either the Port Arthur or Alliance refinery, including all associated on-site facilities and dedicated pipelines and terminals. (Socal may elect to divest either refinery, provided that the divestiture of that particular refinery is approved by the Commission).

2. Gulf's stock interest in Colonial pipeline.

3.a. If Socal divests the Port Arthur refinery, then along with the paragraph 1 assets of this Schedule, 51 percent of Gulf's interest in (i) the West Texas Gulf Pipeline Company, (ii) the Mesa Pipeline, and (iii) any other pipeline attached to the West Texas Gulf or Mesa pipleines.

b. If Socal divests the Alliance refinery, then a 51 percent of Gulf's interest in the West Texas Gulf Pipeline Company.

Before Federal Trade Commission

[File No. 841-0109]

Agreement To Hold Separate

In the Matter of Standard Oil Company of California, a corporation, and Gulf Corporation, a corporation.

Agreement dated as of April 26, 1984 (the "Agreement"), by and between Standard Oil Company of California ("Socal"), a corporation organized and existing under the laws of Delaware, whose executive offices are located at 225 Bush Street, San Francisco, California 94104, Gulf Corporation ("Gulf"), a corporation organized and existing under the laws of Delaware, whose executive offices are located at the Gulf Building, Pittsburgh, Pennsylvania 15320, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. section 41, et seq. (collectively, the "Parties").

Premises

Whereas, Socal commenced on March 7, 1984, a tender offer for all of the outstanding shares of Common Stock of Gulf Corporation, a Delaware corporation ("Gulf"), with the intent of effecting a merger of Socal Acquisition Corporation, a Delaware corporation wholly owned by Socal ("Subsidiary"), into Gulf, pursuant to which Gulf would become a wholly owned subsidiary of Socal, all as contemplated and provided for in that certain Merger Agreement entered into among Socal, Subsidiary and Gulf on March 5, 1984 (the "Merger Agreement"); and

Whereas, simultaneously with the execution of the Merger Agreement, on March 5, 1984, Socal and Gulf also entered into a Stock Option Agreement (the "Stock Option Agreement" pursuant to which Gulf granted Socal an option to purchase 30,500,000 authorized but unissued shares of Gulf's Common Stock, constituting approximately 15.6 percent of the shares of Gulf's Common Stock that would be outstanding after such issuance; and

Whereas, the Commission is now investigating the transactions contemplated by the Merger Agreement and the Stock Option Agreement (which transactions are hereinafter referred to as the "Acquisition") to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") the Commission must place it on the public record for a period of at least sixty and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante of Gulf's oil and gas assets and businesses during the period prior to the divestiture of the properties described on Schedule A of the Consent Order ("Schedule A Properties") along with such other assets as may be required under paragraph II of the Consent Order, or the Acquisition is not preliminarily enjoined, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in paragraph II of the Consent Order in addition to the Schedule A Properties, and the Commission's rights to seek to restore Gulf as a viable competitor.

Whereas, the purpose of this Agreement and the Consent Order is to preserve Gulf as a viable, integrated petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve Gulf as a viable, integrated petroleum company in the event that divestiture is not achieved; and

Whereas, Socal's and Gulf's entering into this Agreement shall in no way be construed as an admission by Socal or Gulf that the Acquisition is illegal; and

Whereas, Socal and Gulf understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Socal with respect to the Acquisition, except that the Commsission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of all Gulf's oil and gas assets and businesses held separate pursuant to this Agreement, as follows:

1. Socal and gulf agree to execute and be bound by the attached Consent Order.

2. Socal agrees that, until (i) three business days after the Commsission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the **Federal Register** of the Consent Order finally accepts such order, unitl all of the divestitures required by Schedule A of the Consent Order are approved by the Commsssion, Socal will hold Gulf's oil and gas assets and businesses, as defined in 2(a),

separate and apart on the following terms and conditions:

a. All Gulf's domestic crude oil and gas assets and operations relating to domestic crude oil and gas exploration and production, and transportation as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States ("oil and gas assets and businesses") shall be operated independently of Socal.

b. Socal shall not exercise direction or control over, or influence directly or indirectly, any of Gulf's oil and gas assets and businesses; provided, however, that Socal may exercise only such direction and control over Gulf as is necessary to assure compliance with this Agreement.

c. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending litigation, or negotiating agreements to dispose of assets, Socal shall not receive or have access to, or the use of, any "material confidential information" relating to Gulf's oil and gas assets and businesses not in the public domain, except as such information would be available to Socal in the normal course of business if the Acquisition had not taken place. Any such information that is obtained prusuant to this subparagraph shall only be used for the pruposes set out in this subparagraph. ("Material confidential information" as used herein means competitively sensitive or proprietary information not independently known to Socal from sources other than Gulf and includes, but is not limited to, customer lists, price lists, marketing methods, geological and geophysical data, patents, technologies, processes, or other trade secrets.)

d. Socal shall not change the composition of the management of Gulf's oil and gas assets and businesses except that the current Gulf directors serving on the "New Board" (as defined in paragraph f) shall have the power to remove employees for cause; Socal shall maintain the viability and marketability of Gulf's oil and gas assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in the normal course of business or pursuant to paragraph h).

e. All material transactions, out of the ordinary course of business and not precluded by paragraph 2(a)-(d), shall be subject to a majority vote of the New Board (as defined in paragraph f).

f. Socal may adopt new articles of incorporation and by-laws (provided that they are not inconsistent with other provisions of this Agreement) and may elect a new Board of Directors of Gulf ("New Board") once it is a majority shareholder of Gulf. Socal may elect any number of directors to the Board; provided, however, that such Board shall consist of at least six current Gulf directors and no more than two Socal directors, officers, employees, or agents. Except as permitted by this agreement, the directors of Gulf who are also Socal directors, officers, employees or agents, shall not receive in their capacity as directors of Gulf material confidential information relating to Gulf's oil and gas assets and businesses and shall not disclose any such information they may receive under this agreement to Socal or use it to obtain any advantage for Socal. Said Directors of Gulf who are also Socal directors, officers, employees, or agents, shall enter a confidentiality agreement prohibiting disclosures of confidential information. Such directors shall participate in matters which come before the New Board only for the limited purpose of considering a capital investment or other transactions exceeding $50,000,000 and carrying out Socal's and Gulf's responsibility to assure that the Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets. Except as permitted by this agreement, such directors shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Socal and Gulf were separate independent entities. Meetings of the board during the term of this Agreement shall be stenographically transcribed and the transcripts retained until two years after the termination of this Agreement.

g. The New Board may transfer the properties described in Schedule A of the Consent Order ("Schedule A Properties") into a wholly owned Gulf subsidiary or division.

h. Nothing herein shall prevent the current Gulf Board or the New Board from negotiating or entering into agreements to dispose of Gulf's assets, provided that any such agreements with respect to oil and gas related assets and businesses are conditioned on and not consummated prior to final approval by the Commission.

i. Nothing contained in this Agreement shall be construed to limit the sale of Gulf's nonpetroleum related assets by majority vote of the full current Gulf Board or New Board. Socal shall have the right to borrow all proceeds from any such sale in exchange for an interest bearing note (calculated at the General Motors Acceptance Corporation short term thirty day rate) made payable to Gulf and falling due fourteen days after any denial of final approval of the Consent Order by the Commission.

j. A majority of the New Board may declare a dividend and payment no greater than the amount paid in the same quarter in 1983. Except for such dividend payment, all earnings and profits of Gulf shall be retained separately in Gulf. Socal shall have the right to borrow monies from Gulf upon approval by the majority of the New Board on the same terms and conditions as described in paragraph (i); provided, however, Socal shall not borrow funds if the result would be to impair Gulf's ability to operate its oil and gas assets and businesses at its 1983 levels of expenditure on an annualized basis.

k. Should the Federal Trade Commission seek in any proceeding to compel Socal to divest itself of the shares of Gulf Common Stock it shall acquire, or to compel Socal or Gulf to divest themselves of any oil and gas assets that may be held by either company, or to seek any other injunctive or equitable relief, neither Socal nor Gulf shall raise an objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting periods or the fact that the Commission has permitted the Gulf Common Stock to be acquired and a formal merger concluded pursuant to the terms of this Agreement. Socal and Gulf also waive all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Socal or Gulf made to its principal office, Socal and Gulf shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Socal and Gulf, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Socal or Gulf relating to compliance with this agreement.

b. Upon five days notice to Socal or Gulf and without restraint or interference from them, to interview officers or employes of Socal or Gulf, who may have consel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal

proceedings to which the Commission is a party, or for the purpose of securing compliance with this Consent Order, or as otherwise required by law.

If, at any time information or documents are furnished by Socal and Gulf and Socal or Gulf identify same as "Confidential," then the Commission shall provide to Socal and Gulf ten days notice or, if ten days is not possible, as many days notice as possible prior to divulging such material in any legal proceeding to which that entity is not a party.

4. This Agreement shall not be binding until approved by the Commission.

John H. Carley,

General Counsel, Federal Trade Commission, Washington, D.C. 20580.

Charles B. Renfrew,

Director and Vice President, Legal, Standard Oil Company of California, 225 Bush Street, San Francisco, California 94104.

Samuel W. Murphy, Jr.,

Senior Vive President and General Counsel, Gulf Corporation.

Before Federal Trade Commission

Complaint

In the matter of Standard Oil Company of California, a corporation, and Gulf Corporation, a corporation.

The Federal Trade Commission, having reason to believe that respondent, Standard Oil Company of California, a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent Gulf Corporation, in violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to section 11 of the Clayton Act (15 U.S.C. 21) and section 5(b) of the Federal Trade Commission Act (15 U.S.C. Section 45(b), stating its charges as follows:

I. Definitions

1. For purposes of this complaint, the following definitions shall apply:

a. "Socal" means Standard Oil Company of California, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present director, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Socal is a participant. The words "subsidiary," "affiliate" and "joint venture" refer to any partial (10 percent or more) as well as total ownership or control.

b. "Gulf" means Gulf Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Gulf is a participant. The words "subsidiary," "affiliate" and "joint venture" refer to any partial (10 percent or more) as well as total ownership or control.

c. "The acquisition" means the transaction described, in whole or in part, in paragraph 14 of this Complaint.

d. "Gasoline" means motor gasoline as defined in connection with Department of Energy Form EIA–810, Monthly Refinery Report, product codes 132 and 133.

e. "Kerosene jet fuel" means kerosene-type jet aircraft fuel, as defined in connection with Form EIA–810, Monthly Refinery Report, product code 213.

f. "Fuel oil" means the products commonly known as number two fuel oil (home heating, diesel), as defined in connection with Department of Energy Form EIA–810, Monthly Refinery Report, product code 411.

g. "Terminal" means a facility used for recipt, storage, and distribution of gasoline, fuel oil, or kerosene jet fuel, and which receives product directly via pipeline, navigable waterway or from an adjacent refinery.

h. "Refined light products" means gasoline, fuel oil, kerosene jet fuel, and aviation gasoline.

i. "PADD" means Petroleum Administration for Defense District.

II. Respondents

A. Socal. 2. Respondent Socal is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 225 Bush Street, San Francisco, California 94104.

3. Respondent Socal is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

4. In 1982, respondent Socal has revenues of about $34 billion and assets of about $23 billion.

5. In 1982, respondent Socal ranked seventh in the United States in crude oil production, seventh in domestic crude oil reserves, first in refining capacity, and seventh in gasoline sales.

6. Respondent Socal has refineries located at Pascagoula, Mississippi; Perth Amboy, New Jersey; Baltimore, Maryland; El Paso, Texas; Salt Lake City, Utah; Richmond, California; El Segundo, California; Kenai, Alaska; Bakersfield, California; Honolulu, Hawaii; Willbridge, Oregon; and Seattle, Washington, with a combined refining capacity of 1381 thousand barrels per day.

7. At all times relevant herein, respondent Socal has been and is now engaged in commerce as "commerce" is defined section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. Gulf. 8. Respondent Gulf is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at Pittsburgh, Pennsylvania.

9. Respondent Gulf is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

10. In 1982, respondent Gulf had revenues of about $28 billion and assets of about $20 billion.

11. In 1982, respondent Gulf ranked eight nationally in crude oil production, tenth in United States crude oil reserves, seventh in United States refining capacity, and sixth in United States motor gasoline sales.

12. Respondent Gulf has refineries located at Port Arthur, Texas; Alliance, Louisiana; Philadelphia, Pennsylvania; and Cincinnati, Ohio, with a combined refining capacity of about 829 thousand barrels per day.

13. At all times relevant herein, respondent Gulf has been and is now engaged in commerce as "commerce" is defined in section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. The Acquisition

14. On or about March 7, 1984, Socal commenced a cash tender offer for up to 100 percent of the outstanding shares of Gulf common stock at a price of $80 per share with the intent of effecting a merger of Socal Acquisition Corporation, a Delaware corporation wholly-owned by Socal, into Gulf, pursuant to which Gulf would become a wholly-owned subsidiary of Socal, all as

contemplated in that certain merger Agreement entered into among Socal, its subsidiary, and Gulf, on March 5, 1984. Gulfs Board of Directors has approved the tender offer and recommended its acceptance by Gulf shareholders. If all the currently outstanding Gulf common shares are tendered to Socal, the total value of the transaction is about $13.2 billion and, if consummated, it would result in the second largest petroleum company and the second largest industrial corporation in the United States in terms of assets.

IV. Trade and Commerce

A. Kerosene Jet Fuel. 15. One relevant line of commerce in which to evaluate the effects of the acquisition is the manufacture and distribution of kerosene jet fuel.

16. One relevant section of the country is PADDs I and III combined (excluding New Mexico and the following counties in the state of Texas: Hansford, Hutchinson, Carson, Armstrong, Briscoe, Floyd, Crosby, Carza, Borden, Howard, Glassock, Reagan, Crockett, Terrell, and all countries west thereof) and the West Indies and Caribbean Islands.

17. The kerosene jet fuel market described in paragraphs 15 and 16 are concentrated.

18. Conditions of entry into the manufacture of jet fuel in the relevant section of the country are difficult.

19. Socal and Gulf are direct and substantial competitors in the manufacture and sale of jet fuel in the relevant sections of the country. Socal makes kerosene jet fuel at its refinery at Pascagoula, Mississippi. Gulf makes kerosene jet fuel at its refineries at Port Arthur, Texas; Alliance, Louisiana; and Philadelphia, Pennsylvania.

B. Transportation of Refined Light Products. 20. One relevant line of commerce in which to evaluate the effects of the acquisition is the business of transporting refined light petroluem products from refineries into consuming regions. Within this market, petroleum product pipelines represent another relevant line of commerce.

21. One relevant section of the country is the inland Southeast region composed of portions of Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina and of Virginia.

22. Transportation of refined light petroleum products into the inland Southeast is highly concentrated.

23. Conditions of entry into the business of the transporting refined light products by pipeline into the inland Southeast are difficult.

24. Colonial and Plantation are direct competitors in the business of transporting refined light products by pipeline into the inland Southeast.

25. Gulf owns the largest ownership share of Colonial (16.78 percent).

26. Socal owns the second largest ownership share of Plantation (27.13 percent).

27. Because Gulf owns a share of Colonial and Socal owns a share of Plantation, Socal and Gulf are direct and substantial competitors in the business of transporting refined light product by pipeline into the inland Southeast.

C. Marketing of Gasoline and Middle Distillate. 28. Another relevant line of commerce in which to evaluate the effects of the acquisition is the wholesale distribution of gasoline and middle distillate and submarkets thereof.

29. The relevant sections of the country are the areas served by terminal clusters in or near the following cities and areas:

a. Louisville, Kentucky;

b. Lexington, Kentucky;

c. Huntington, West Virginia; Ashland, Kentucky (combined);

d. Evansville, Indiana; Owensboro, Kentucky (combined);

e. Knoxville, Tennessee;

f. Chattanooga, Tennessee;

g. Mobile, Alabama; Biloxi, Gulfport, Pascagoula, Moss Point, Mississippi; Pensacola, Florida (combined);

h. Montgomery, Alabama;

i. Birmingham, Gadsden, Anniston, Tuscaloosa, Alabama (combined);

j. Atlanta, Georgia;

k. Macon, Georgia;

l. Savannah, Georgia;

m. Greenville, Spartanburg, South Carolina (combined);

n. Panama City, Florida;

o. Tallahassee, Florida;

p. Jacksonville, Gainesville, Florida (combined);

q. Tampa, St. Petersburg, Bradenton, Sarasota, Ft. Meyers, Lakeland, Winterhaven, Florida (combined);

r. Daytona Beach, Orlando, Melbourne, Titusville, Cocoa, Florida (combined);

s. Miami, Ft. Lauderdale, West Palm Beach, Florida (combined).

30. The wholesale gasoline and fuel oil markets described in paragraphs 28 and 29 are concentrated.

31. Conditions of entry into the wholesale distribution of gasoline and fuel oil are difficult.

32. Respondents Socal and Gulf are direct and substantial competitors in the wholesale distribution of gasoline and fuel oil in the relevant sections of the country.

D. Transportation of Crude Oil. 33. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation of crude oil from producing fields to refineries.

34. One relevant section of the country is the West Texas/New Mexico region, composed of "producing districts 8, 8A and 7C" as defined by the Texas Railroad Commission and "New Mexico-East" as defined by the U.S. Department of Energy.

35. Refinery capacity in the West Texas/New Mexico region is substantially below production in the area, with the result that much production in the area is transported over long distances to refineries on the Gulf Coast and in the mid-continent area.

36. The business of transporting crude oil by pipeline out of West Texas/New Mexico is concentrated.

37. Conditions of entry into the business of the transportation of crude oil by pipeline out of the West Texas/New Mexico region are difficult.

38. Socal is the sole owner of a 20 inch diameter pipeline that runs from the West Texas/New Mexico producing area to El Paso, Texas and supplies crude oil to the Socal refinery and the Texaco refinery at El Paso.

39. Gulf is the largest owner of stock in the West Texas Gulf Pipeline Company and therefore controls the West Texas Gulf Pipeline, a 26 inch and 20 inch diameter pipeline that connects the West Texas/New Mexico producing area with both the Gulf Coast and the Mid-Valley Pipeline at Longview, Texas.

40. Respondents Socal and Gulf are direct and substantial competitors in the business of transporting crude oil by pipeline out of the West Texas/New Mexico region.

V. Effects

41. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant lines of commerce and relevant sections of the country in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. Actual competition between respondents Socal and Gulf in the relevant lines of commerce and relevant sections of the country will be eliminated;

b. Actual competition between competitors generally in the relevant lines of commerce and relevant sections of the country will be lessened;

c. Concentrations in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion; and

d. Coordination between existing competitors in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion.

VI. Violation Charged

42. The proposed acquisition of the stock and assets of Gulf by Socal as set forth in paragraph 14 herein, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Wherefore, the premises considered, the Federal Trade Commission on this day of , A.D. 1984, issues its complaint against respondents Standard Oil Company of California and Gulf Corporation.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement containing a proposed consent order with Standard Oil Company of California ("Socal") and Gulf Corporation ("Gulf").

On April 26, 1984, the Commission entered into a provisional agreement, also containing the proposed consent order, with Socal and Gulf in settlement of a proposed complaint. The proposed complaint states that the Commission has reason to believe that consummation of Socal's acquisition of Gulf ("Acquisition") would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The proposed complaint specifically alleges that the Acquisition may substantially lessen competition in several markets: (1) The manufacture of kerosene jet fuel (used by commercial airlines utilizing jet or turboprop aircraft) in the East Coast and Gulf Coast portions of the United States; (2) the wholesale distribution of gasoline and middle distillates (home heating oil and diesel fuel) in a number of cities and areas in the southeastern United States; (3) the transportation of refined light products (distillate fuel oil, aviation gasoline, gasoline, jet fuel, and kerosene) into the southeastern United States; and (4) the transportation of crude oil out of western Texas and eastern New Mexico.

To remedy these alleged anticompetitive results of the Acquisition, the agreement's proposed consent order would (among other things) require Socal to sell ("divest") certain of Gulf's petroleum-related assets, including: (a) Gulf's petroleum product wholesale and retail marketing assets in all or part of seven southeastern states; (b) one of Gulf's two refineries on the Gulf Coast; (c) Gulf's interest in the Colonial Pipeline (which transports refined light products to much of the eastern United States); and (d) more than half of Gulf's crude oil pipeline interests in western Texas. As described in greater detail below, the Commission may require Socal to add certain additional assets to any divestiture package. Further, if necessary to achieve effective divestiture, Socal must supply or divest crude oil to buyers of the divested assets to ensure that the divested entities can be operated as viable, ongoing enterprises, engaged in the same businesses in which the properties are presently employed.

The Commission has placed the proposed complaint and the provisionally accepted consent order on the public record for sixty (60) days so that interested parties may comment on it. Comments received during this period will become part of the public record, unless commentors request confidential treatment. *Commentors desiring confidential treatment must do so by printing "Confidential Treatment Requested" across the top of the first page of their comments.* After the end of the sixty day comment period, the Commission will review the proposed complaint and consent order and the comments received thereon, and will decide whether it should withdraw from the consent agreement on make final the agreement's proposed consent order.

If the Commission withdraws from the agreement, it may: (1) Determine that no relief is required; (2) attempt to negotiate with Socal and Gulf any necessary modifications in the proposed consent order; or (3) initiate litigation to compel Socal to divest certain assets or seek any other injunctive or equitable relief consistent with section 7 of the Clayton Act or section 5 of the Federal Trade Commission Act.

In addition to provisional acceptance of the proposed consent order, the Commission has entered into an "Agreement to Hold Separate" with Socal and Gulf. This agreement will maintain the separate identity and individual viability of Gulf's domestic oil and gas assets during the public comment period. The proposed consent order expressly makes the Agreement to Hold Separate a part of the consent order. The consent order extends the Agreement to Hold Separate until Socal has completed the required divestitures.

If, at the end of the comment period, the Commission believes further enforcement action is warranted and withdraws from the proposed consent agreement, the Commission may seek any relief it deems appropriate, including a federal court order under section 13(b) of the Federal Trade Commission Act. In such a court action, the Commission may request (among other things) an extension of the "Hold Separate" provisions in order to prevent any commingling of Gulf's petroleum operations or assets with Socal's until a final adjudication on the merits of any administrative action the Commission may intitiate.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed complaint, consent order, or Agreement to Hold Separate, or to modify in any way their terms. To further assist commentors, the Commission has also placed on the public record copies of a report summarizing the results of its recent in-depth study of mergers in the petroleum industry. [1] That report discusses many of the competitive issues raised by the Acquisition.

The Consent Order

Paragraphs I and II. The introductory paragraph of the proposed consent order defines the terms used in the order. [2] Of particular importance, "Schedule A Properties" are defined to include the assets and businesses that are listed in the Schedule A appendix to the proposed consent order.

Paragraph II of the proposed consent order requires Socal to divest all of the Schedule A Properties, and prescribes some of the terms and conditions for selling the Schedule A Properties. The Schedule A Properties are: (1) Gulf's wholesale and retail marketing assets (including the Gulf trade name) in Kentucky, Tennessee, Alabama, Mississippi, Georgia, Florida, and the Spartanbury area of South Carolina, as well as one of Gulf's two Gulf Coast refineries, located at Port Arthur, Texas and Belle Chase (Alliance), Louisiana;[3] (2) Gulf's interest in the Colonial Pipeline; and (3) 51 percent of Gulf's interest in the West Texas Gulf Pipeline Company (as well as 51 percent of Gulf's interest in all the pipelines

[1] Report of the Federal Trade Commission, *Mergers in the Petroleum Industry* (1982) [hereinafter *"Mergers Study"*].

[2] The proposed complaint also contains several definitions of standard industry terms.

[3] Socal has the option of divesting eigher one of these two Gulf refineries.

connected to the West Texas Gulf Pipeline if Socal should divest the Port Arthur refinery).

Subparagraph A of the proposed consent order would require Socal to divest the Schedule A Properties within six (6) months from the date the consent order is given final acceptance by the Commission. The Commission may also require Socal to divest additional oil and gas refining, marketing, transportation, and petrochemical processing assets to ensure that the purchaser of divested properties can operate than as ongoing, viable enterprises engaged in the same businesses in which they are presently used.

Subparagraph B would require Socal to provide prospective buyers with product exchanges or crude oil supply arrangements, or to divest crude oil properties, if necessary to ensure that the properties are divested as ongoing, viable enterprises engaged in the same businesses in which they are presently used.

Subparagraph C makes the Agreement of Hold Separate part of the proposed consent order. Subparagraph C would require Socal to maintain Gulf's oil and gas assets as an independent entity, and would prohibit Socal from exercising control over or consolidating the Gulf operations and properties into Socal until Socal has divested the Schedule A Properties. Subparagraph C extends the duration of the provisions of Paragraph 2 of the Agreement to Hold Separate.

Subparagraph D would require Socal to seek and obtain prior Commission approval of any proposed divestiture required by the consent order. The public at that time would have an opportunity to comment on such divestiture proposals. Finally, Subparagraph E would require Socal and Gulf to maintain the viability and marketability of the assets to be divested, and would prohibit the destruction or impairment of any of those assets.

Paragraphs III and V. Paragraphs III an V of the proposed consent order would permit access by Commission representatives to records and documents of Socal and Gulf to assure compliance with the proposed order.

Paragraph IV. Paragraph IV of the proposed consent order would require prior Commission approval for ten years of any acquisition by Socal of any pipeline transportation, refining, or wholesale marketing assets in Tennessee, Kentucky, the East Coast, the Gulf Coast, the Caribbean, or the Bahamas.

Paragraph VI. Paragraph VI of the proposed consent order would require Socal and Gulf to notify the Commission of any change in corporate structure that may affect their compliance with the order.

Analysis of Potential Competitive Problems.

The divestitures in the proposed consent order (summarized above) are designed to remedy a number of potential competitive problems discussed below.

A. Kerosene Jet Fuel ("Kerojet"). Under Schedule A(1) of the proposed consent order, Socal would have to divest one of Gulf's two Gulf Coast refineries. As alleged in Paragraph IV. A of the proposed complaint, Socal and Gulf are direct and substantial competitors in the manufacture and sale of kerosene jet fuel or "Kerojet" in the Gulf Coast and East Coast. Socal supplies jet fuel in this region from its refineries in Pascagoula, Mississippi and the Bahamas. Gulf supplies the affected region from its refineries at Port Arthur, Texas; Alliance, Louisiana; and Philadelphia, Pennsylvania.

Kerojet is the fuel used by all commercial jet and turboprop aircraft. Kerojet must meet stringent performance and quality specifications. Commercial airlines have no practical substitutes for kerojet.

One important question in measuring the competitive impact of the Acquisition in this kerojet market is whether smaller manufacturers of kerojet may be able to increase supply in response to (and thereby frustrate) any increase in price by large kerojet manufacturers that resulted from the Acquisition. Refiners may have some flexibility to reduce the production of other petroleum products in favor of increased production of kerojet. In practice, however, the types of crude oil inputs used in a particular refinery—the "crude oil slate"—as well as the refinery design may limit this flexibility. Technical and economic constraints that may limit this flexibility include: (1) The fraction from a given type of crude oil that is suitable for the production of kerojet; (2) the difficulty in switching crude oil slates to increase the fraction suitable for the production of kerojet; (3) the need for additional processing facilities to manufacture kerojet; (4) the substantial economic cost penalty of foregoing the alternative use of the fraction suitable for kerojet, such as heating oil.

Because there may be such limits on refiners' flexibility and because commercial airlines have no alternative to kerojet, refiners manufacturing kerojet may be able to raise prices above competitive levels if concentration is high enough in any region of the country that forms a separate economic market.

One such region of the country appears to consist of Petroleum Administration for Defense Districts ("PADDs") I and III. This roughly corresponds to an area including states along the eastern seaboard (PADD I) and the states along the Gulf Coast (PADD III). (PADD III excludes western Texas and New Mexico.) PADDs I and III are connected by product pipelines that transport kerojet and other refined light products (such as gasoline and heating oil) from the Gulf Coast to East Coast and Southeast markets. Most kerojet consumed in PADDs I and III is produced in that region. However, imports do account for about 6 percent of kerojet consumed in that area. Most of these imports originate in the Bahamas and Caribbean Islands.

For PADDs I and III alone (including imports), Socal has an 8.8 percent share of the kerojet market and Gulf has 11.1 percent.[4] The post-acquisition Herfindahl-Hirschman Index ("HHI")[5] for this market would be in excess of 1200 with an increase of approximately 200 points.[6] Including all Caribbean

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[4] Socal and Gulf data submitted in response to the Commission's Request for Additional Information under the Hart-Scott-Rodino Act of 1976 [hereinafter "Response to Commission Request"].

This and additional citations to Socal and Gulf data refer to confidential materials submitted to the Commission for the Commission's competitive review of the Acquisition. Socal and Gulf have waived confidential treatment for the limited purpose of permitting the Commission to cite relevant Socal and Gulf information and data in this analysis.

[5] The Commission has found the HHI to be preferable to four and eight firm concentration ratios for analyzing market structure. One advantage of the index over traditional four-firm concentration ratios is that HHIs " 'reflect both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms.' " Grand Union, 3 Trade Reg. Rep. (CCH) ¶ 4500, at 4503.10 (June 14, 1982) (hereinafter "DOJ Merger Guidelines").

The HHI is calculated by summing the squares of th individual market share of each firm. DOJ Merger Guidelines, *supra*, at ¶ 4503.10. To place in context the HHI estimtes used in this Analysis, it is helpful to note that the Department of Justice has indicated that it is unlikely to challenge an acquisition where the post-acquisition HHI is below 1000. The Department is likely to challenge an acquisition if the acquisition increases the HHI more than 100 points and the postacquisition increases the HHI more than 100 points and the post-acquisition HHI is between 1000 and 1800. The Department is likely to challenge acquistions that increase the HHI more than 50 points if the postacquisition HHI is above 1800. *Id.* at ¶ 4503.101.

[6] Department of Energy, Forms EIA–810 "Refinery Reports"; Department of Energy, Energy Data Reports, "Supply Disposition, and Stocks of All Oils by Petroleum Administration for Defense Districts and Imports Into the United States, By Country," 1983.

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kerojet production would not significantly alter the HHI because the major refiners in the Bahamas and the Caribbean—including Socal—are also major manufacturers of kerojet in PADDs I and III.

The Commission gives considerable weight to the DOJ Merger Guidelines in its evaluation of horizontal mergers and acquisitions. *See* "Statement of Federal Trade Commission Concerning Horizontal Mergers," Trade Reg. Rep. No. 546 (CCH) (Jun. 14, 1982).

There are a number of additional market factors that may affect the ability of refiners to raise kerojet prices above, PADD III excludes West Texas and New Mexico.

There are a number of additional market factors that may affect the ability of refiners to raise kerojet prices above competitive levels after the Acquisition.[7] In balancing these factors, the Commission determined that the merger presented an unacceptable risk that kerojet producers' ability to collude would be enhanced by the Acquisition as originally proposed. To remedy any such competitive problems created by the Acquisition, the proposed consent order would require Socal to divest one of Gulf's two Gulf Coast refineries. Gulf's Port Arthur, Texas, refinery is a large producer of kerojet. Gulf's Alliance, Louisiana refinery, also produces kerojet and some potential buyers may find it a more attractive component of a divestiture package. Granting Socal the option of selling either refinery, therefore, should facilitate compliance with the proposed consent order and help insure the continuation of the divested assets as a viable refining and marketing business.

B. Transportation of Refined Light Products. The Colonial Pipeline ("Colonial") is the largest refined light product pipeline serving the Southeast, with a capacity of about 2.1 million barrels per day. The mainline of Colonial extends from Houston, Texas to Linden, New Jersey (near New York Harbor). Colonial Pipeline is a joint stock company owned by ten oil companies. Gulf owns the largest share.

The only other product pipeline serving the Southeast is the Plantation Pipeline ("Plantation"). Plantation has a capacity of 559,000 barrels per day and extends from Baton Rouge, Louisiana to Washington, D.C. Plantation is also a joint stock company owned by three oil companies. Socal owns the second largest share of Plantation.

Both Colonial and Plantation are vertically integrated through their owners, which all operate refineries.

Because much of the inland Southeast has negligible local refining capacity, and because moving waterborne refined products inland is not cost-effective, this area is dependent on Colonial and Plantation for products such as gasoline and heating oil. Colonial and Plantation directly compete to transport such products to much of the Southeast. The Acquisition would leave Socal as a major owner of the only two major pipelines of this type in the Southeast.

Tariffs (shipping rates) on these pipelines may have been constrained in the past by a combination of federal regulation and by competition. However, a great deal of uncertainty now exists concerning the degree of constraint on oil pipeline tariffs that federal regulation will provide in the future. The Federal Energy Regulatory Commission ("FERC") in its *Williams Pipeline Co.* decision [8] suggested that greater reliance should be placed on competition in tariff setting. Although a federal Court of Appeals has recently remanded the *Williams* case to FERC,[9] it is unclear at this point how FERC will resolve the regulatory issues on remand.

There has always been an element of tariff competition between Colonial and Plantation. As a Plantation study has commented:

> The level of Colonial's tariffs has generally exerted a downward pressure on Plantation's since the competing system began operating and it will likely do so again in the future.[10]

The two pipelines also compete on the basis of non-tariff factors. For instance, the minimum size per shipment on Plantation is smaller, and Plantation offers special services for the small shipper. Colonial also competes on the basis of services and believes that "shippers may be willing to pay a slightly higher cost to transport products on the Colonial system in preference to the Plantation system because Colonial offers service that better meets their needs.[11]

A third area of competition is for new pipeline connections, which can be more profitable if other pipelines are unlikely to build a lateral ine to the same area. Only Plantation, for example, serves the Charlotte, North Carolina, Airport, having constructed a lateral line in 1982. Perhaps because it is the sole line to the airport, Plantation's tariff to that airport from Baton Rouge is 73.85 cents per barrel, a charge of 16 cents per barrel more than its tariff to the city of Charlotte, where Plantation competes with Colonial.[12]

If Socal were to become a major owner of both pipelines, competition between Plantation and Colonial could be unacceptably reduced in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, as set forth in Paragraph IV.B of the proposed complaint. To remedy such a violation of law, the proposed consent order would require Socal to divest Gulf's ownership interest in Colonial, as specified in Schedule A(2) of the proposed consent order.

C. Marketing of Gasoline and Middle Distillates. Paragraph IV.C of the Commission's proposed complaint alleges that the Acquisition may tend to lessen competition in the wholesale distribution of gasoline and middle distillates in numerous areas in the Southeast United States. To remedy this concern, Schedule A(1) of the proposed consent order would require Socal to divest Gulf's wholesale and retail marketing assets in a number of southeastern states.

"Wholesale distribution" as used in the proposed complaint means sales from petroleum product "terminals," rather than bulk cargo sales at the refinery or retail sales. These terminals store petroleum products received from pipelines or waterborne vessels and dispense the products into tank trucks for further distribution. The wholesale market consists of an identifiable set of services including the storing, transporting, and dispensing of petroleum products from these terminals.

The relevant geographic markets for wholesale marketing appear to depend on the location of terminals and the distance that gasoline or middle distillates may be shipped economically from these terminals. Terminals tend to cluster in or near urban centers. The areas served by each of these "clusters" are generally smaller than a state but larger than a city. One cluster of terminals is often not in competition

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Figures include foreign imports. Because of incomplete data on the source of imports from the Bahamas and the Netherlands Antilles, an ad hoc allocation was made among the refiners operating in those countries. As noted above, PADD III excludes West Texas and New Mexico.

[7] For instance, substantial new entry into kerojet refining is unlikely because demand for kerojet is relatively "inelastic" (*i.e.*, insensitive to price changes) and the product is homogenous as it is produced to rigid specifications.

[8] Dkt. No. GR-79-1-100, *et al.*, 21 F.E.R.C. § 61,160 (Nov. 1982).

[9] No. 82-2412, slip op., at 7 (Mar. 9, 1984); 52 U.S.L.W. 2549 (Apr. 3, 1984).

[10] Response to Commission Request.

[11] Response to Commission Request.

[12] Plantation Pipeline Co., FERC tariff 57, effective Dec. 9, 1982.

with other terminal clusters because the cost of trucking product from one cluster to another may be prohibitive. For this reason, Socal and Gulf each deliver on average 75 percent of their product in the Southeast by tank truck within areas less than 50 miles of such terminal clusters.[13]

The Commission has identified a number of potential terminal cluster markets where concentration would increase significantly as a result of the Acquisition, using terminal capacity for gasoline and middle distillate in various terminal cluster areas as the basis for measuring concentration. Based on data submitted to the Commission by the parties, Socal's and Gulf's estimated shares of terminal capacity and post-acquisition HHIs for selected Southeast terminal groups are set forth in Table I:[14]

TABLE I.—SOUTHEAST WHOLESALE TERMINAL CONCENTRATION MEASURES

Terminal location	Socal share [1]	Gulf share [1]	HHI change	Post-acq. HHI
Louisville, KY	22.4	7.2	232	1890
Paducah, KY	27.6	24.5	1352	3658
Ashland, KY	8.9	13.6	242	2786
Knoxville, TN	3.8	13.0	99	1169
Chattanooga, TN	3.6	14.3	103	1870
Meridian, MS	13.4	12.7	340	1748
Collins, MS	12.0	17.8	427	3919
Mobile, AL	47.1	2.6	245	2949
Birmingham, AL	13.5	9.6	259	1119
Montgomery, AL	12.9	22.4	576	2511
Atlanta, GA	19.4	22.5	873	2217
Athens, GA	32.7	42.2	2760	6240
Macon, GA	62.8	37.2	4672	10000
Spartanburg, SC	8.5	34.1	580	2507
Miami, FL	9.5	8.3	158	1138
Jacksonville, FL	10.3	16.4	338	1060
Tampa, FL	14.4	10.2	294	1319

[1] In percent.

A number of studies of wholesale gasoline marketing suggest a positive relationship between prices and concentration.[15] To remedy the possibility of a greater likelihood of collusively or monopolistically determined prices as a result of any increase in concentration caused by the Acquisition, Schedule (A)(1) of the proposed consent order requires divestiture of Gulf's wholesale and retail marketing assets— including terminals, bulk plants, warehouses, package plants, tank trucks, service stations, product inventories, storage tanks, and Gulf brand names and trademarks—in Kentucky, Tennessee, Alabama, Mississippi, Georgia, Florida, and the Spartanburg area of South Carolina.

[13] Response to Commission Request.

[14] Response to Commission Request.

[15] *See Merger Study, supra,* n. 1, at 286, and studies cited therein. The Commission concluded that the "evidence may indicate the presence of market power in concentrated markets, but the interpretation of such evidence is fraught with difficulties." *Id.*

Gulf's retail marketing assets in this region would be required to be sold to the buyer of the wholesale marketing assets to ensure successful divestiture of a viable marketing entity. The proposed consent order also contemplates that these wholesale and retail marketing assets will be sold in a package with either Gulf's Port Arthur or its Alliance refinery. In the proposed consent order, the Commission reserves the right to include either refinery as well as any additional pipeline, refining, or marketing assets, to ensure that the properties are divested as ongoing, viable enterprises, engaged in the same businesses in which they were used prior to the Acquisition. Further, as noted above, Socal is required to provide prospective buyers with product exchanges or crude oil supply arrangements, or to divest crude oil properties, if necessary to ensure that the properties are divested as ongoing, viable enterprises engaged in the same businesses in which they are presently used.

D. Transportation of Crude Oil. Schedule A(3) of the proposed consent order would require the divestiture of 51 percent of Gulf's interests in certain crude oil pipelines in western Texas. These proposed divestitures are designed to remedy the antitrust concerns set forth in Paragraph IV.D of the proposed complaint. That paragraph alleges that Socal's and Gulf's combined ownership of these pipelines would lessen competition, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

Both Socal and Gulf own trunk pipelines that transport crude oil out of the West Texas and eastern New Mexico ("West Texas") area to various refining centers. Gulf owns 57 percent of one of the several major pipelines that transports crude oil out of the area, the West Texas Gulf Pipeline. Socal owns 100 percent of another major pipeline that runs from West Texas crude oil fields to El Paso.

Most of the pipelines in the West Texas area are physically interconnected so that crude oil produced in the area can reach their ultimate market by multiple routes. As a result, crude oil trunk pipelines in that geographic area are competitors for transporting the crude oil produced in the West Texas region. Because other modes of transportation are too costly to be a significant competitive threat to these pipelines, it is possible that a coordinated tariff increase by the pipelines' owners could successfully be imposed on West Texas crude producers. These trunk pipelines are in large part owned by refiners who have alternative sources of crude oil. Other firms that are solely crude oil producers and that ship their crude out of West Texas fields on these pipelines may have no alternative but to lower the wellhead price of their West Texas crude oil if it is to remain price competitive with other crudes at the eventual location of sale. This lowered wellhead price could possibly discourage investment either in new sources of West Texas crude oil, or in enhancing recovery from existing wells.

As a result of the Acquisition, the HHI in this transportation market would increase almost 140 points to nearly the 1300 level.[16] The combined Socal-Gulf share would exceed 22 percent.[17]

These figures may, however, understate the anticipated impact on competition, because smaller pipelines in the West Texas market may not be able to increase their throughput substantially enough to displace the larger trunk pipelines if the latter raised tariffs following the Acquisition. At greater throughput levels, the cost of the small pipelines would rise steeply in comparison to the declining costs of the large pipelines. As pipeline diameter increases in size, a more-than-proportional volume of crude oil may be sent through the pipeline, causing costs to decline significantly at higher throughput levels. The larger pipelines may to some extent, therefore, be effectively insulated from offsetting competition from smaller pipelines. Assuming the absence of this competitive "fringe," the post-acquisition HHI would approach 1700 with a change of more than 250 point.[18]

For the reasons described above in discussing the Colonial and Plantation product pipelines, FERC regulation may not act as an effective constraint against supracompetitive tariff increases. Tariff revenues, however, are not the pipeline's only incentive to behave in an anticompetitive manner. This is because Gulf and Socal are fully backward integrated into crude oil production, and forward integrated into refining and marketing. By raising tariffs and lowering crude oil prices, integrated oil firms can reduce their Windfall Profit Tax[19] liabilities, by transferring profits

[16] Response to Commission Request.

[17] Response to Commission Request.

[18] *Id.*

[19] 26 U.S.C. 4 986–98. The Act imposes a tax on domestic crude oil production (with certain exceptions). The tax is imposed on the holder of the economic interest when the crude oil is removed from the ground. The Commission discussed oil company incentives to maintain below market crude oil prices in its recent notice for public

Continued

from their production subsidiaries to their lower-taxed pipeline and refinery subsidiaries. For non-integrated, independent producers who cannot make such transfers, however, lowering crude oil prices would result in a loss of income that may retard or delay investments in crude oil production.

The proposed consent order would remedy the anticompetitive consequences of the acquisition by requiring divestiture of certain of Gulf's West Texas pipeline interests, depending upon which refinery is actually divested. Gulf's Port Arthur refinery is connected to the West Texas Gulf Pipeline, which is connected through the Mesa Pipeline to additional pipelines that gather crude oil in West Texas. If Socal should divest Port Arthur, 51 percent of Gulf's share of all the above West Texas pipelines must be divested. The new buyer would, thus, be able to rely on Gulf's entire West Texas system to supply crude oil to the Port Arthur refinery. However, if Socal should divest Gulf's alliance refinery in Louisiana, only 51 percent of Gulf's share of the West Texas Gulf Pipeline need be divested; Socal's ability to retain the other Gulf pipeline interests will avoid any disruption of crude oil supplies for the Port Arthur refinery.

Comments Requested

The Commission is interested in receiving public comments on all competition-related issues concerning the Commission's proposed disposition of this matter. Is the antitrust analysis—including the alleged facts and premises underlying this analysis—valid? Are there any antitrust violations other than those identified in the proposed complaint and this analysis that should be addressed? Is the proposed relief appropriate? Are any aspects of the relief too narrow or too broad? Are the competitive problems discussed in this analysis serious enough to justify the proposed remedies?

With regard to specific provisions of the proposed consent order, is it appropriate to require divestiture of Gulf's refining and marketing assets listed in Schedule A(1) as a package? Are there any additional assets that should be included in the package to ensure the divestiture of the properties as ongoing, viable enterprises engaged in refining and marketing, as contemplated by Paragraph II.A of the proposed consent order? Are there any assets that may be excluded from the package without jeopardizing the viability of the divested properties?

If the Commission finally accepts the proposed consent order in its present form or after modification, the Commission will decide then whether to approve any proposed divestiture of the Schedule A Properties following a review of written comments concerning the proposed divestituture submitted during a separate, 30-day public comment period. What criteria should the Commission use to judge the viability of any proposed divestiture and to determine whether additional pipeline, refining, or marketing assets should be added to the proposed divestiture? Paragraph II.B of the proposed consent order requires Socal to provide product exchanges, crude oil supply arrangements, or equity crude oil arrangements if necessary to ensure a viable divestiture. Is this an appropriate provision for the proposed consent order? What criteria should the Commission use to determine whether the product and crude oil arrangements offered by Socal are sufficient?

Is it appropriate to permit divestiture of Gulf's interest in the Colonial Pipeline Company to a third party, or should it be divested in a package with the Schedule A(1) Properties (consisting of Gulf's Southeast marketing assets and one of the two designated Gulf refineries)? Is there any reason to prohibit present owners of the Colonial Pipeline Company from buying Gulf's share of the line?

Is it appropriate to divest Gulf's share of all Gulf's West Texas Pipeline interests in a package with the Port Arthur refinery? Is is appropriate to require a divestiture of only an interest in the West Texas Gulf Pipeline Company if Socal divests the Alliance refinery?

The proposed consent order requires Socal to hold Gulf's oil and gas assets separate until Socal has accomplished all divestitures required by the proposed consent order. Is this an appropriate method of ensuring that the divestitures are accomplished quickly and in a manner that will preserve competition and permit the affected assets to remain ongoing, viable operations?

Does maintaining effective competition at the refined product wholesale level in the Southeast require Socal to divest all terminals set out in Schedule A(1)? Would an economically viable refinery, distribution, and marketing divestiture require selling this complement of terminals or some other set?

Are there any efficiencies in refining, marketing, or distribution that would result from this Acquisition that would be lost or undone by the proposed divestitures? Would alternative divestitures retain these efficiencies while eliminating any anticompetitive consequences that may result from the Acquisition?

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Pertschuk Concerning Social-Gulf Acquisition, File No. 841–0109, April 26, 1984

I find the decision on this consent agreement to be a far closer question that the *Texaco-Getty* consent agreement or the failure of the Commission to pursue an adequate remedy in the *Mobil-Marathon* case, primarily because the staff has negotiated an agreement which gives some hope that the divested Gulf properties will emerge in an economically viable and competitive posture. For this, credit must be given to the skill and determination of key staff members as well as to the healthy expressions of concerns about past Commission actions by those outside the Commission. Yet I find myself compelled to vote against the agreement and in favor of seeking to enjoin the merger for a number of reasons.

First, it has become increasingly obvious that there are major weaknesses in our procedures for addressing the antitrust problems of huge mergers in a limited period of time and for negotiating massive and compex divestitures. Under the terms of the Hart-Scott-Rodino Act, we have as little as ten days before the Commission must decide whether to challenge a merger after requested information is received from the merging companies. In this case, the largest merger in history, the staff analysis of the consent agreement—the principal document describing the consent agreement and its rationale—was provided to the Commission at about 2:00 P.M. yesterday. Bureau of Economic analyses on key points arrived at 6:00 P.M., and the Bureau Director's memo was furnished at 6:30 P.M. These memos deal with exceedingly complex issues of restructuring Gulf assets and attempting to solve major horizontal overlaps in a series of markets. I do not believe that a responsible evaluation of these issues can be done, including resolving the competing claims of various staff and interested private groups, in the few hours available.

Second, although the consent agreement represents a major improvement over our approach in

comment concerning Texaco Inc.'s proposed acquisition of Getty Oil Co., 49 FR 8550, 8561–62 (Mar. 7, 1984).

Texaco-Getty, I am still concerned that the divestitures we have in mind risk the selling off and eventual demise of assets which have up till now been viable. A major advantage of this agreement is that it provides for holding Gulf separate until the divestitures are approved and, more importantly, for providing the Commission authority to order *additional* divestitures, including crude oil, to insure the divested assets are continued as "ongoing, viable enterprises." This provision, as well as the staff analysis, recognize the crucial importance of access to crude oil in maintaining viability for refiners and marketers. It is a principle we could have put to better use in the *Texaco-Getty* and *Mobil-Marathon* matters.

However, this hold separate agreement is not the ordinary hold separate procedure employed to preserve the Commission's opportunity to enjoin a merger entirely after a period of investigation or litigation. This hold separate provision is a lever to encourage Socal to divest properties as well as a way of facilitating sale of assets in viable "packages," but it is not a guarantee to the Commission that it can conclude later that the only way the assets can be viable is that the merger itself be rescinded.

The staff candidly admits that "despite the strong guarantees in the consent a refinery-marketing divestiture is not without risks." These risks arise because of the importance of regular access to crude and refined products as well as the powerful incentive Socal has to sell off or close down the least desirable properties it acquires from Gulf. In order to insure that the divested properties remain viable, the Commission will have to oversee complex negotiations between Socal and potential buyers, to make predictions about what the buyers intend to do with purchased assets, and to determine what additional assets, particularly crude supply contracts, are necessary for "viability." As far as I know, the Commission has never assumed responsibility for overseeing such a major restructuring of assets, and it remains to be seen how effective and vigorous it will be in carrying out this difficult job over the coming months.

At the very least, we can expect temporary supply contracts of one sort or another to be negotiated as a part of these sales. Are Socal temporary supply agreements sufficient to get a refinery or marketing assets permanently over some survival threshold, or will they be temporary lifelines only? Further, will such supply contracts in reality be agreed to by potential buyers because they are able to get crude oil at a bargain price, not because they actually intend to operate assets for the long term? Moreover, if this complex divestitute plan begins to fall apart some months from now, what are the Commission's options? As I interpret the agreement, we do have a fair amount of discretion in requiring Socal to put additional assets in the divestiture package, but we do *not* have the discretion to throw up our hands and say the only solution is preserving an independent Gulf. By accepting this agreement we are committed to a course in which most of Gulf is absorbed by Socal and some of its least desirable assets are parceled out. There will be no turning back from the basic decision.

I realize that there are limits to how certain we can be about the success of divestitures, but I do not believe the law requires us to take any significant risks once a merger has been recognized as a likely violation of the law. All the Commissioners agree that this merger is likely to harm competition and violate the antitrust laws; otherwise there would be no need for a consent agreement. The question is what degree of risk that our remedies are insufficient are we to assume. In answering the question, it is reasonable to ask: What are the social benefits of this merger? It is fairly clear that there are no significant "efficiencies" in any ordinary use of the word. While Socal argues that acquiring Gulf will give Socal access to Gulf's technology, few specifics are offered, and Socal's president conceded that Socal can acquire industry technology in other ways. In a survey of possible acquisitions, Socal could not identify synergies with Gulf's upstream assets. Socal's principal basis for any future cost savings appears to be closing down facilities. Based on this and other evidence, the staff concludes that "this acquisition does not present the efficiencies which might have flowed from several earlier mergers in this industry, notwithstanding Socal's statements that it does." In short, I believe the Commission is accepting substantial risks in relying on a complex, uncertain remedy in a case where a merger clearly appears to be unlawful, and offers few, if any, benefits other than to the private parties.

Other Provisions

I am also troubled by a number of other provisions and omissions in the agreement. For example, the agreement provides an option to Socal to divest one of Gulf's two refineries in the Gulf Coast area. Depending on which refinery Socal chooses, the Herfindahl index would still increase about 100 points in kerojet production (less in the case of a divestiture of Port Arthur, more if Alliance is sold). Second, the staff identified an overlap in the sale of aviation gasoline in the Gulf and East coast regions that would exceed the Justice guidelines in increasing the Herfindahl index, but did not address it in the agreement. Each of these issues alone would not justify rejecting the entire agreement but, taken together with the considerations mentioned above, they strengthen the argument against it.

Non-Antitrust Issues

However close the antiturst issues are here, and I believe they are closer than in some previous cases on which I disagreed with the majority, we should keep in mind that issues we cannot address under the antitrust laws remain of major, perhaps overriding, importance. This merger is driven by Socal's desire for crude oil. Despite protestations to the contrary by company officials, I find it very difficult to conclude that this merger will not diminish exploration for crude oil. One major company, which has needed additional crude reserves, has now disappeared. A second major competitor, which has had strong incentives to drill, has now won control of 2 billion barrels of crude oil reserves along with a huge debt burden. We may not understand precisely how much this acquisition will reduce exploration but to assume it will affect it little or none at all flies in the face of common sense.

Conclusion

Even though I believe staff has done a commendable job in negotiating this agreement under severe time constraints, in particular, by giving the Commission a greater ability to insure the divestitures achieve their stated prupose, I cannot help but conclude that there are too many unanswered questions and too many risks to endorse this agreement. The law does not require that we go out of our way to restructure acquisitions that violate the antitrust laws, particularly when there is a cloud of uncertainty as to whether our restructuring will or will not work and when the merger, which we are struggling so hard to preserve, offers no significant efficiencies. While the public comment period on this case can be particularly useful, because of the scope and significance of the acquisition and divestitures, I must vote against the agreement based on what has been presented to the Commission.

Statement of Commissioner Patricia P. Bailey; Standard Oil of California Acquisition of Gulf Oil Corporation, April 26, 1984

The hold separate and consent agreements tentatively accepted by the Commission in this matter to my mind propose solutions to the measurable, or even reasonably foreseeable anticompetitive consequences of this merger. Substantial divestitures have been ordered, and even additional and contract relief is also available under these agreements, if necessary to facilitate sale of these assets and insure their continuation as competitively viable entities.

Any calculated risk that the relief proposed will not result in the creation of viable new competitive forces in refining and marketing is reduced by a novel requirement that SoCal keep Gulf's domestic petroleum assets as an independent entity until all divestitures acceptable to the Commission have been actually achieved. This means that the Commission maintains substantial legal leverage to insure SoCal's incentive to divest, in accord with the procompetitive intentions implicit in the Commission's order. I believe that this feature of the relief in this matter will ensure that the Commission can continue to act in the best interests of the public during the divestiture phase of this difficult case.

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