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Wednesday
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 960

Federal Executive Boards

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules for the organization and functions of Federal Executive Boards. Federal Executive Boards were established pursuant to a Presidential directive of November 10, 1961, which charged the Chairman of the former Civil Service Commission to arrange for the establishment of a Board in each of the Commission's administrative regions and to continue similar associations in other centers of Federal activity. Since then the Boards have been the responsibility, variously, of the Civil Service Commission and its successor, the Office of Personnel Management, and the Bureau of the Budget and its successor, of the Office of Management and Budget. On June 7, 1982, the Executive Office of the President transferred authority for Federal Executive Board functions to the Office of Personnel Management. These rules are intended to carry into effect the directive of the President that Federal Executive Boards be organized and operated to achieve better interagency coordination of Federal activity and to better communications between Government officials in Washington and in the field.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, Assistant to the Deputy Director for Regional Operations, (202) 632-5544 .

SUPPLEMENTARY INFORMATION: Federal Executive Boards were created by the President to improve Federal management activities within major metropolitan centers across the country. Currently established in 26 cities that are major centers of Federal activity, the Boards are composed of the highest local officials of each Federal agency in those metropolitan areas. For several years, the Boards were jointly administered by the Civil Service Commission and the Bureau of the Budget. On June 7, 1982, the Executive Office of the President transferred authority for all Federal Executive Board functions to the Office of Personnel Management.

Federal Executive Boards are important organizational structures for outreach from Washington to Federal Government operations in the field. They function in four general areas: (1) Provision of a forum for the exchange of information between Washington and the field about programs, management methods, and administrative problems; (2) coordination of local approaches to national programs and such local interagency programs as may be approved by the Director; (3) communication from Washington to the field of management initiatives and other concerns for the improvement of coordination; and (4) referral to the national level of problems that cannot be resolved locally. These rules reflect a new emphasis upon and will provide a clear structure for the efficient organization and operation of Federal Executive Boards as well as eliminate ambiguities and unnecessary activities that might interfere with the full development of the Boards as instruments of effective Government management and communication.

On March 4, 1983, the Office of Personnel Management published for comment in the **Federal Register** proposed rules on the organization and functions of Federal Executive Boards. The comment period closed on April 4, 1983.

Comments were received from twenty-six sources including individuals, Federal agencies, Federal employee unions, and Federal Executive Boards. These comments have been carefully considered by the Office of Personnel Management. The comments received were generally supportive of the published proposed regulations.

Several commentators requested the inclusion of provisions for Federal Executive Board support for the American Veteran. As a result of these comments, and in view of the emphasis that the Office of Personnel Management has now generally determined to place upon the government's veterans programs, a new section has been added to the proposed regulations at 5 CFR 960.107(c)(7) which provides for recognition and dissemination of information with regard to American Veterans.

The funding of Federal Executive Boards and their staffs was the subject of several comments. There has been no change in the regulations on this subject. Congress has not provided central funding authority for the Federal Executive Boards or their staffs. The Office of Personnel Management believes that the future effectiveness of the Federal Executive Boards depends upon the commitment of the member Federal agencies to the Boards and their initiatives. In order to promote a feeling of responsibility and commitment, the regulations do not alter the current funding arrangements which emphasize local agency responsibility.

Other comments suggested, variously, greater or lesser rigidity of structure for the Federal Executive Boards or greater or lesser degrees of involvement by the Office of Personnel Management in their operations. The Office of Personnel Management, after considering these comments, concludes that the proposed arrangements reflect a judicious mix of definition and flexibility, and therefore proceeds now to make them final. If subsequent experience demonstrates a need for change, ample opportunities will arise for future proposals for change to be aired within the Federal Executive Board program.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

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

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

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects the organization and operation of Federal Executive Boards.

List of Subjects in 5 CFR Part 960

Government employees, Organization and functions (government agencies).

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM amends 5 CFR by adding Part 960 to read as follows:

PART 960—FEDERAL EXECUTIVE BOARDS

Sec.

Authority: Memorandum of the President for Heads of Departments and Agencies (November 10, 1961).

§ 960.101 Definitions.

For purposes of this part:

(a) The term "Director" means the Director of the United States Office of Personnel Management.

(b) The term "Executive agency" means a department, agency, or independent establishment in the Executive Branch.

(c) The term "metropolitan area" means a geographic zone surrounding a major city, as defined and delimited from time to time by the Director.

(d) The term "principal area officer" means, with respect to an Executive agency, the senior official of the Executive agency who is located in a metropolitan area and who has no superior official within that metropolitan area other than in the Regional Office of the Executive agency. Where an Executive agency maintains facilities of more than one bureau or other subdivision within the metropolitan area, and where the heads of those facilities are in separate chains of command within the Executive agency, then the Executive agency may have more than one principal area officer.

(e) The term "principal regional officer" means, with respect to an Executive agency, the senior official in a Regional Office of the Executive agency.

(f) The term "special representative" means, with respect to an Executive agency, an official who is not subject to the supervision of a principal regional officer or a principal area officer and who is specifically designated by the head of the Executive agency to serve as the personal representative of the head of the Executive agency.

§ 960.102 Authority and status.

Federal Executive Boards are established by direction of the President in order to strengthen the management and administration of Executive Branch activities in selected centers of field operations. Federal Executive Boards are organized and function under the authority of the Director.

§ 960.103. Location.

Federal Executive Boards have been established and shall continue in the following metropolitan areas: Albuquerque-Santa Fe, Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Dallas-Fort Worth, Denver, Detroit, Honolulu, Houston, Kansas City, Los Angeles, Miami, Minneapolis-St. Paul, New Orleans, New York, Newark, Philadelphia, Pittsburgh, Portland, St. Louis, San Francisco, and Seattle. The Director may, from time to time, dissolve, merge, or divide any of the foregoing Federal Executive Boards, or establish new Federal Executive Boards, as he may deem necessary, proper or convenient.

§ 960.104 Membership.

(a) *Presidential Directive.* The President has directed the heads of agencies to arrange for the leading officials of their respective agencies' field activities to participate personally in the work of Federal Executive Boards.

(b) *Members.* The head of every Executive agency shall designate, by title of office, the principal regional officer, if any, and the principal area officer or officers, if any, who shall represent the agency on each Federal Executive Board; and by name and title of office, the special representative, if any, who shall represent the head of the agency on each Federal Executive Board. Such designations shall be made in writing and transmitted to the Director, and may be transmitted through the Chairmen of the Federal Executive Boards. Designations may be amended at any time by the head of the Executive agency.

(c) *Alternate Members.* Each member of a Federal Executive Board may designate an alternate member, who shall attend meetings and otherwise serve in the absence of the member. An alternate member shall be the deputy or principal assistant to the member or another senior official of the member's organization.

§ 960.105 Officers and organization.

(a) *By-Laws.* A Federal Executive Board shall adopt by-laws or other rules for its internal governance, subject to the approval of the Director. Such by-laws and other rules may reflect the particular needs, resources, and customs of each Federal Executive Board, provided that they are not inconsistent with the provisions of this part or with the directives of the President or the Director. To the extent that such by-laws and other rules conflict with these provisions or the directives of the President or the Director, such by-laws and other rules shall be null and void.

(b) *Chairman.* Each Federal Executive Board shall have a Chairman, who shall be elected by the members from among their number, and who shall serve for a term of office not to exceed one year.

(c) *Staff.* As they deem necessary and proper, members shall, from time to time, designate personnel from their respective organizations to serve as the staff, or otherwise to participate in the activities, of the Federal Executive Board. Other personnel may be engaged, by appointment, contract, or otherwise, only with the approval of the Director.

(d) Unless otherwise expressly provided by law, by directive of the President or the Director, or by the by-laws of the Federal Executive Board, every committee, subcommittee council, and other sub-unit of the Federal Executive Board, and every affiliation of the Federal Executive Board with external organizations, shall expire upon expiration of the term of office of the Chairman. Such a committee, subcommittee, council, other sub-unit, or affiliation may be reestablished or renewed by affirmative action of the Federal Executive Board.

(e) *Board Actions.* Actions of a Federal Executive Board shall be taken only with the approval of a majority of the members thereof. This authority may not be delegated. All activities of a Federal Executive Board shall conform to applicable laws and shall reflect prudent uses of official time and funds.

§ 960.106. OPM leadership.

(a) *Role of the Director.* The Director is responsible to the President for the organizational and programmatic activities of the Federal Executive Boards. The Director shall direct and oversee the operations of Federal Executive Boards consistent with law and with the directives of the President.

He may, from time to time, consult with, and require the advice of, the Chairman, members, and staff of the Federal Executive Boards.

(b) *Role of the Director's Regional Representatives.* The Chairman of each Federal Executive Board shall report to the Director through the Director's Regional Representative, an official of the Office of Personnel Management. The Director's Regional Representatives shall oversee the activities of, and periodically visit and meet with, the Federal Executive Boards.

(c) *Communications.* The Office of Personnel Management shall maintain channels of communication from the Director through the Director's Regional Representatives to the Chairmen of the Federal Executive Boards, and between and among the Federal Executive Boards through the Director and the Director's Regional Representatives. Any Executive agency may use these channels to communicate with the Director Federal Executive Boards. Chairmen of Federal Executive Boards may communicate with the Director on recommendations for action at the national level, on significant management problems that cannot be addressed at the local level, and on other matters of interest to the Executive Branch.

(d) *Reports.* Each Federal Executive Board shall transmit to the Director, over the signature of its Chairman, an annual work plan and an annual report to the Director on the significant programs and activities of the Federal Executive Board in each fiscal year. Each work plan shall set forth the proposed general agenda for the succeeding fiscal year. The work plan shall be subject to the approval of the Director. Each annual report shall describe and evaluate the preceding fiscal year's activities. The work plan for Fiscal Year 1985 shall be submitted on or before July 1, 1984, and the annual report for Fiscal Year 1984 shall be submitted on or before January 1, 1985. Subsequent annual reports shall be submitted on or before January 1 and subsequent annual work plans shall be submitted on or before July 1 in every year thereafter. In addition, members of Federal Executive Boards shall keep the headquarters of their respective Executive agencies informed of their activities by timely reports through appropriate agency channels.

(e) *Conferences.* The Director may, from time to time, convene regional and national conferences of Chairmen and other representatives of Federal Executive Boards.

§ 960.107. Authorized activities.

(a) Each Federal Executive Board shall serve as an instrument of outreach for the national headquarters of the Executive Branch to Executive Branch activities in the metropolitan area. Each Federal Executive Board shall consider common management and program problems and develop cooperative arrangements that will promote the general objectives of the Government and of the several Executive agencies in the metropolitan area. Efforts of members, alternates, and staff in those areas shall be made with the guidance and approval of the Director; within the range of the delegated authority and discretion they hold; within the resources available; and consistent with the missions of the Executive agencies involved.

(b) Each Federal Executive Board shall: (1) Provide a forum for the exchange of information between Washington and the field and among field elements in the metropolitan area about programs and management methods and problems; (2) develop local coordinated approaches to the development and operation of programs that have common characteristics; (3) communicate management initiatives and other concerns from Washington to the field to achieve better mutual understanding and support; and (4) refer problems that cannot be solved locally to the national level.

(c) Subject to the guidance of the Director, the Federal Executive Boards shall be responsible for:

(1) Presidential initiatives on management reforms; personnel initiatives of the Office of Personnel Management; programs led by the Office of Management and Budget, such as Reform '88 and the President's Council on Integrity and Efficiency; and facilities planning led by the General Services Administration;

(2) The local Combined Federal Campaign, under the direction of the Director;

(3) The sharing of technical knowledge and resources in finance, internal auditing, personnel management, automated data processing applications, interagency use of computer installations, and similar commonly beneficial activities;

(4) The pooling of resources to provide, as efficiently as possible, and at the least possible cost to the taxpayers, common services such as employee first-aid, cardiopulmonary resuscitation ("CPR"), CPR training, preventative health programs, assistance to the aging, blood donor programs, and savings bond drives;

(5) Encouragement of employee initiative and better performance through special recognition and other incentive programs, and provision of assistance in the implementation and upgrading of performance management systems;

(6) Emergency operations, such as under hazardous weather conditions; responding to blood donation needs; and communicating related leave policies;

(7) Recognition of the service of American Veterans and dissemination of information relating to programs and benefits available for veterans in the Federal service; and

(8) Such other programs, projects, and operations as may be set forth in the annual work plan approved by the Director.

(d) The Office of Personnel Management shall advise Federal Executive Boards on activities in the areas of performance appraisal and incentives, interagency training programs, the educational development of Government employees, improvement of labor-management relations, equal employment opportunity, the Federal Women's Program, the Federal Equal Opportunity Recruitment Program, the Hispanic Employment Program, the Veterans Employment Program, and selective placement programs for handicapped individuals.

(e) The Director may, from time to time, direct one or more of the Federal Executive Boards to address such specific programs or undertake such cooperative activities as he may deem necessary or proper.

§ 960.108. Additional rules and directives.

The Director may, from time to time, issue further rules and guidance for, and directives to, the Federal Executive Boards through the Federal Personnel Manual System and other appropriate instruments.

[FR Doc. 84-22737 Filed 8-28-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 84-309]

Hawaiian Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Hawaiian Fruits and Vegetables" quarantine and regulations by adding a new approved treatment for certain papayas using a double hot water dip. The regulations require, among other things, that papayas be treated in accordance with an approved treatment as a condition of interstate movement from Hawaii. This amendment is necessary to provide an approved treatment for certain papayas that is commercially feasible to continue to allow the interstate movement of certain papayas from Hawaii.

EFFECTIVE DATE: August 27, 1984. Written comments concerning this interim rule must be received on or before October 29, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: C.M. Amyx, Senior Staff Officer, Technology Assessment and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8896.

SUPPLEMENTARY INFORMATION:

Background

The "Hawaiian Fruits and Vegetables" quarantine and regulations (contained in 7 CFR 318.13 *et seq.* and referred to below as the regulations) quarantine the State of Hawaii and regulate the interstate movement from Hawaii of, among other things, papayas in a raw or unprocessed state. The regulations require, as a condition of interstate movement from Hawaii, that papayas, among other things, be treated in accordance with an approved treatment specified in the regulations. The approved treatments are designed to destroy the life stages of the following fruit flies which infest papayas in Hawaii: the Mediterranean fruit fly (*Ceratitis capitata* (Wied)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendl)). These fruit flies are commonly referred to as the "Trifly." This document amends the "Hawaiian Fruits and Vegetables" quarantine and regulations by adding a new approved treatment for certain papayas.

Prior to the effective date of this document, the regulations provided the following four treatments for papayas:

(1) *Ethylene dibromide (EDB) fumigation for papayas in open containers*—Fumigation in an approved fumigation chamber for a period of 2 hours at a minimum temperature of 21.1°C (70°F) with a dosage of ½ pound of EDB per 1,000 cubic feet of space, including the load;

(2) *Ethylene dibromide (EDB) fumigation for prepacked papayas*—Fumigation in an approved fumigation chamber for a period of 2 hours at a minimum temperature of 21.1°C (70°F) with a dosage of 1½ pounds of EDB per 1,000 cubic feet of space including the load;

(3) *Vapor heat for papayas*—Treatment of papayas by heating with a saturated vapor at 43.3 °C (110 °F) with the temperature of the papayas raised to 43.3 °C (110 °F) at the approximate center of the fruit for a period of 8¾ hours; or

(4) *"Quick run-up" vapor heat for papayas*—Treatment of papayas by heating with a saturated vapor until the temperature at the approximate center of the papayas reaches a minimum of (47.2 °C) 117 °F.

Double Hot Water Dip Treatment for Certain Papayas

This document amends the regulations by adding the following double hot water dip treatment for papayas that are ¼ ripe or less, that are treated within 18 hours of being picked, and are kept in an ambient temperature of 18.3 °C (65 °F) or above until treated:

Section 318.13–4(g) Administrative instructions approving a double hot water dip treatment as a condition for certification of papayas ¼ ripe or less from Hawaii.

(a) Papayas that are determined from measurements taken from an approved colorimeter to be ¼ ripe or less may be treated with the following double hot water dip if the treatment is completed within 18 hours of the papayas being picked and if the papayas are kept at an ambient temperature of 18.3 °C (65 °F) or above until treated: Papayas must be submerged in an approved hot water tank with 4 inches of water above the top layer of papayas and with the water heated to a temperature of 41 °C to 43 °C (107.6 °F to 109.4 °F) for 40 minutes. The temperature of the water must be attained within five minutes of dipping the papayas in the first hot water tank. Within three minutes after completion of the first hot water dip, the papayas must be transferred and submerged in a second approved hot water tank with 4 inches of water above the top layer of papayas and with the water heated to a temperature of 48 °C to 50 °C (118.2 °F to 121.8 °F) for 20 minutes. The temperature of the water must be attained within 3 minutes of dipping the papayas in the second hot water tank.

(b) A colorimeter will be approved for use if found by an inspector to be able to determine whether the papayas are ¼ ripe or less. A hot water tank will be approved for use if found by an inspector to be adequate to meet the requirements of this treatment.

Based on research, the Department has determined that this double hot water dip treatment is adequate to destroy any life stage of Trifly found in papayas that are ¼ ripe or less, that are treated within 18 hours of being picked, and that are kept at an ambient temperature of 18.3 °C (65 °F) or above until treated. Further, it appears that the double hot water dip approved treatment is commercially feasible and will have little or no adverse effect on the treated article.

Specifically, papayas that are ¼ ripe or less are rarely found to be infested with any Trifly. However, when such papayas are found to be infested, research has shown that the infestations are almost always in the egg stage, and, occasionally, in the early larvae stage during the first 18 hours after being picked. Based on research, the Department has determined that the double hot water dip treatment is adequate to destroy the egg and early larvae life stages of Trifly found in papayas only if the papayas have been kept at an ambient temperature at least of 18.3 °C (65 °F) after being picked. Therefore, the double hot water dip treatment has been approved for papayas ¼ ripe or less, that have been treated within 18 hours after being picked and have been kept at an ambient temperature of at least 18.3 °C (65 °F).

The regulations in § 318.13–4 also contain general provisions concerning treatments that apply to the new double hot water dip treatment for papayas. These provisions concern observation of treatments by an inspector, subsequent handling of treated articles, compliance agreements, costs of treatments, and a Departmental disclaimer for loss or damage resulting from treatments.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. As noted above, the regulations previously provided only four approved treatments for papayas, two approved treatments using vapor heat and two approved treatments using

EDB. The two vapor heat methods of treatment are no longer commercially feasible because of the high energy and labor costs associated with using the vapor heat treatments. Further, because of action recently taken by the Environmental Protection Agency (49 FR 22083 through 22085), the EDB treatments will no longer be available for use on or after September 1, 1984. Therefore, it is necessary to add the new approved treatment to the regulations on an emergency basis in order to continue to allow the interstate movement of papayas from Hawaii.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not 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.

As explained above, the regulations previously provided four approved treatments for papayas, two of which are not commercially feasible and two of which will no longer be available for use on papayas on or after September 1, 1984. The addition of this new approved treatment for papayas will allow the interstate movement of papayas from Hawaii to continue. Further, the Department is not aware of any other treatment alternatives which are commercially feasible for papayas.

Presently, there are seven business entities in Hawaii that process and treat papayas for interstate movement. However, it appears that none of the seven entities are small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under the circumstances referred to above, Mr. Bert W. Hawkins, Administrator, Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 318

Agricultural commodities, Plant pests, Plants (agriculture), Quarantine, Hawaii, Papayas.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, "Subpart—Hawaiian Fruits and Vegetables" quarantine and regulations in 7 CFR subpart 318.13 (7 CFR 318.13 *et seq.*) is amended by adding a new section 318.13–4g to read as follows:

§ 318.13–4g Administrative instructions approving a double hot water dip treatment as a condition for certification of papayas ¼ ripe or less from Hawaii.

(a) Papayas that are determined from measurements taken from an approved colorimeter to be ¼ ripe or less may be treated with the following double hot water dip if the treatment is completed within 18 hours of the papayas being picked and if the papayas are kept at an ambient temperature of 18.3 °C (65 °F) or above until treated: Papayas must be submerged in an approved hot water tank with 4 inches of water above the top layer of papayas and with the water heated to a temperature of 41 °C to 43 °C (107.6 °F to 109.4 °F) for 40 minutes. The temperature of the water must be attained within five minutes of dipping the papayas in the first hot water tank. Within three minutes after completion of the first hot water dip, the papayas must be transferred and submerged in a second approved hot water tank with 4 inches of water above the top layer of papayas and with the water heated to a temperature of 48 °C to 50 °C (118.2 °F to 121.8 °F) for 20 minutes. The temperature of the water must be attained within 3 minutes of dipping the papayas in the second hot water tank.

(b) A colorimeter will be approved for use if found by an inspector to be able to determine whether the papayas are ¼ ripe or less. A hot water tank will be approved for use if found by a inspector to be adequate to meet the requirements of this treatment.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); Secs. 105, 106, 71 Stat. 32, 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 27th day of August 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–23041 Filed 8–27–84; 12:16 pm]

BILLING CODE 3410–34–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 524 and 525

[No. 84–450]

Collateral for Bank Advances

August 24, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: To implement a provision of the Garn-St Germain Depository Institutions Act of 1982 amending the Federal Home Loan Bank Act, the Federal Home Loan Bank Board ("Board") is adopting regulations prescribing eligible collateral for Federal Home Loan Bank ("Bank") advances. The amendment expands the types of collateral eligible to secure advances in order to reflect the expanded investment authority of members.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Susan C. Evans, Senior Financial Analyst, Office of District Banks (202–377–6658), or Nancy L. Feldman, Associate General Counsel, Office of General Counsel (202–377–6440), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–930, 96 Stat. 1469 (October 15, 1982) ("DIA"), eliminated restrictions on eligible collateral for Bank advances contained in Section 10 of the Federal Home Loan Bank Act ("Act"), 12 U.S.C. 1430 (1982), and authorized each Bank "to make secured advances to its members upon such security as the Board may prescribe." As an initial step in this regard, the Board, on February 13, 1983, directed the Banks to establish a program of advances which would be secured by a written guarantee of repayment from the Federal Savings and Loan Insurance Corporation ("FSLIC") and authorized the Banks to make loans which may be secured or unsecured directly to the FSLIC. *See* FSLIC-Guaranteed Advances; Loans to the Federal Savings and Loan Insurance Corporation, 48 FR

8040 (1983) (to be codified at 12 CFR 531.2). The Board is now adopting regulatory provisions which provide the Banks with significant flexibility in determining acceptable advances collateral from members. Such expansion in acceptable collateral for Bank advances, in the Board's opinion, will refine the process by which members provide security for their borrowings from their district Banks as well as ensure that collateral requirements not become an inhibitor to thrift utilization of new powers.

In keeping with the spirit of deregulation, the Board is delegating to the banks the determination of acceptable collateral other than certain residential mortgages, government securities, and deposits of a Bank, and is also delegating collateral valuation, because the Banks are in the best position to determine the quality and value of the assets of their members for purposes of securing advances. As prescribed in new § 525.7, eligible collateral for securing advances shall include any property which is an authorized investment for a member institution and falls within one of the following categories: (1) Fully disbursed, whole first mortgages on improved residential property; (2) U.S. Government and Agency securities; (3) deposits of a district Bank; or (4) other property which the Banks accept, so long as it has a value readily ascertainable by the Bank and a security interest can be perfected in such property.

Section 10(d) of the Act provides that a Bank when deemed necessary for its protection may require its members to deposit and assign additional or substituted collateral. Pursuant to this section and the powers conferred in section 8 of the Act, new § 525.7 clarifies that a bank at any time may take action to perfect its interest in collateral in order to protect its financial interest in the advances.

New § 525.8 provides that each Bank may decide the method of determining the value of collateral securing advances. Such method shall be consistently applied, and the valuation shall be conclusive. The intent of this section is to provide maximum flexibility and protection to the district Banks for ensuring the adequacy of collateral.

Finally, previous provisions regarding collateral which do not reflect the more liberal authority conferred by the DIA have been removed. In addition, the Board takes this opportunity to amend § 524.7 to simplify the administrative process for the Banks in maintaining surety bonds.

The Board finds that notice and public procedure with respect to the amendments contained herein are unnecessary pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 because the amendments relieve regulatory restrictions which previously existed regarding eligible collateral for Bank advances. The Board also finds that the thirty-day delay of the effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reason.

List of Subjects

12 CFR Part 524

Federal home loan banks, Securities.

12 CFR Part 525

Credit, Federal home loan banks.

Accordingly, the Board hereby amends Parts 524 and 525, Subchapter B, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 524—OPERATIONS OF THE BANKS

1. Revise § 524.1(c), as follows:

§ 524.1 Investments.

* * * * *

(c) Secured advances to members maturing within five years are investments in compliance with 11(g) of the Act.

* * * * *

2. Revise § 524.7, as follows:

§ 524.7 Surety bonds.

Each Bank shall maintain surety bonds covering all officers, employees, attorneys, or agents having control over, or access to, monies or securities owned by the Bank or in its possession.

PART 525—ADVANCES

3. Remove the undesignated headings preceding §§ 525.1, 525.10, and 525.25, and add a new undesignated heading preceding § 525.1, as follows:

Advances to Members

§ 525.7 [Redesignated as § 525.5]

4. Redesignate § 525.7 as § 525.5.

5. Redesignate § 525.10 as § 525.6 and revise as follows:

§ 525.6 Terms of advances.

Banks may, under section 10 of the Act, make advances to members for periods of up to 20 years.

6. Add a new § 525.7, as follows:

§ 525.7 Collateral securing advances.

(a) A Bank shall require each borrowing member to pledge collateral sufficient, in the judgment of the Bank, to secure advances obtained from the Bank under sections 10(a), or 11(g) of the Act. A Bank at any time may take action to perfect its interest in collateral.

(b) Eligible collateral shall consist of any property which is an authorized investment for the member institution and which falls within one of the following categories:

(1) Fully disbursed, whole first mortgages on improved residential property, not more than 90 days delinquent;

(2) Securities issued, insured or guaranteed by the United States Government or any agency thereof (including, without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Government National Mortgage Association);

(3) Deposits of a Bank; or

(4) Property which is acceptable to the Bank: *Provided*, that the Bank determines that such property has a readily ascertainable value and the Bank is able to perfect a security interest in such property.

7. Redesignate § 525.11 and § 525.8 and revise as follows:

§ 525.8 Determination of value of collateral.

Each Bank shall determine the value of collateral. Methods used shall be consistently applied to all borrowers, and valuations shall be conclusive.

§§ 525.12—525.20 [Removed]

8. Remove §§ 525.12 through 525.20.

§ 525.21 [Redesignated as § 525.9]

9. Redesignate § 525.21 as § 525.9.

§§ 525.25, 525.26, 525.30 and 525.31 [Removed]

10. Remove §§ 525.25, 525.26, 525.30 and 525.31.

11. Redesignate § 525.32 as § 525.10 and revise the last sentence thereof as follows:

§ 525.10 Short-term advances.

* * * Except with the prior approval of the Board, the aggregate unpaid principal of advances made under this section and any other advances having an unexpired maturity of more than 30 days, excluding advances pursuant to § 525.6 of this part, shall not exceed five percent of the member's withdrawable accounts.

(Sec. 10, 47 Stat. 731, as amended (12. U.S.C. 1430); Reorg. Plan No. 3 of 1947; 3 CFR 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84–22969 Filed 8–28–84; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

In the matter of publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978; Docket No. RM79–14.

Issued: August 24, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of September 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Calender year 1984								
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774
NGPA section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421
13 percent of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650

[FR Doc. 84–22985 Filed 8–28–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 6, 12, 18, 19, 141, 143, 144, and 146

[T.D. 84–190]

Customs Regulations; Amendments Relating to Textiles and Textile Products; Exception to Effective Date

AGENCY: U.S. Customs Service, Treasury.

ACTION: Exception to Effective Date.

SUMMARY: On August 3, 1984, the Customs Service published interim regulations in the **Federal Register** (49 FR 31248), relating to textiles and textile products pursuant to section 204 of the Agricultural Act of 1956, as amended, which are effective for all textiles and textile products subject to section 204, exported from the country of origin, as defined by § 12.130, of the interim regulations on or after September 7, 1984.

In order to alleviate unnecessary hardships to persons (individuals, partnerships, or corporations) in the United States who has made binding commitments for a fixed quantity of merchandise prior to publication of the interim regulations, the effective date as it relates to the provisions of § 12.130 has been modified, subject to the terms and conditions as set forth in this document, to October 31, 1984.

EFFECTIVE DATE: For a revision of the effective date provision of the interim Customs Regulations published August 3, 1984 (49 FR 31248), See

SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Ronald W. Gerdes: Assistant Chief Counsel (Administration and Legislation), Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; (202) 566–2482.

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854), provides authority for the President to negotiate agreements with foreign governments limiting exports of textiles and textile products from such countries into the U.S. The Act also grants authority to issue regulations governing entry of textiles and textile products. Executive Order 12475 of May 9, 1984, was issued by the President to prevent circumvention or frustration of textile product quotas or visa requirements contained in multilateral and bilateral agreements to which the U.S. is a party and to facilitate the efficient and equitable administration of the U.S. Textile Import Program. By the Executive Order the President delegated the authority to issue regulations to the Secretary of the Treasury and directed that the regulations be promulgated within 120 days of the May 11, 1984, effective date of the Executive Order.

Accordingly, on August 3, 1984, interim Customs Regulations were published in the **Federal Register** (49 FR 31248) to prevent circumvention or frustration of multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program.

These interim regulations are effective for all textiles and textile products subject to section 204, exported from the country of origin as defined by the interim regulations on or after September 7, 1984.

Written comments were solicited from the public on the interim regulations. The document invited public comments on the interim regulations until October 2, 1984. During this 60-day comment period, Customs has been reviewing and will continue to review comments as they are received to determine if any problem arises which requires immediate action before the interim regulations become effective on September 7, 1984. Numerous comments have been received which state that severe hardships may be experienced by persons in the United States who have binding contracts or purchase orders which were in existence prior to the August 3, 1984, publication date of the interim regulations. The commenters have stated it is not possible for this previously ordered merchandise to be shipped prior to the September 7, 1984, effective date of the interim regulations and that severe financial hardship will result. In order to address these concerns while still maintaining the effectiveness of the program, it has been determined advisable to grant a limited exception to the effective date provisions as they relate to the country of origin and declaration requirements contained in § 12.130. However, importers are reminded that consistent with existing regulatory requirements, district directors retain the authority to require the production of information to prove compliance with all requirements of the Customs Regulations relating to entry of merchandise.

Accordingly, for textiles and textile products subject to section 204, sold to a person in the United States pursuant to a written and binding contract or purchase order, for a fixed quantity of merchandise, which was executed prior to August 3, 1984, and which has not been materially modified, the provisions of § 12.130 of the interim regulations are not effective for such merchandise exported from the country of origin as defined by section 12.130 before October 31, 1984. A copy of the contract or purchase order must be presented to Customs at the time of entry, along with the certification of the United States importer or consignee that the textiles and textile products are being imported pursuant to that agreement.

In light of the foregoing, the effective date provision of the interim Customs Regulations is amended to grant a limited exception as set forth below.

Amendment to Effective Date To Grant Limited Exception

The effective date provision of the interim Customs Regulations published in the **Federal Register** on August 3, 1984 (49 FR 31248), is amended by inserting in its place the following:

Dates:

Effective Date

Other than as provided herein these interim regulations are effective for all textiles and textile products, subject to section 204, Agricultural Act of 1956, as amended, exported from the country of origin, as defined by § 12.130, on or after September 7, 1984. For textiles and textile products, subject to section 204, sold to a person in the United States pursuant to a written and binding contract, or written purchase order, which was executed prior to August 3, 1984, for a fixed quantity of merchandise and which has not been materially modified on or after that date, the provisions of § 12.130 of the interim regulations are effective for such merchandise exported from the country of origin as defined by § 12.130 on or after October 31, 1984. A copy of such contract or purchase order shall be presented to Customs at the time of entry, along with the certification of the United States importer or consignee that the textiles and textile products are being imported pursuant to that agreement.

William von Raab,

Commissioner of Customs.

Approved: August 24, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-22995 Filed 8-28-84; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[T.D. 7969]

Requirement To Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement that organizers and sellers of potentially abusive tax shelters maintain a list identifying investors in such shelters. This requirement was added to the Internal Revenue Code by the Tax Reform Act of 1984. The regulations affect all organizers and sellers of potentially abusive tax shelters, and provide them with the guidance needed to comply with the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATE: The regulations apply with respect to any interest in a potentially abusive tax shelter other than an interest that was acquired by an investor before September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules relating to the requirement to maintain a list of investors in a potentially abusive tax shelter imposed by section 6112 of the Internal Revenue Code of 1954, and to the penalty for failing to maintain such list that is imposed by section 6708 of the Code. The regulations reflect the addition of sections 6112 and 6708 to the Code by section 142 of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 681).

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter. The list also must contain any other information required by regulations.

A potentially abusive tax shelter under section 6112 includes any investment that is required to be registered with the Internal Revenue Service as a tax shelter under section 6111, and any other entity, plan, or arrangement, if specified in regulations, that has a potential for tax avoidance or evasion. The temporary regulations, however, do not specify any entities, plans, or arrangements that have a

potential for tax avoidance other than tax shelters required to be registered under section 6111. Thus, until further temporary or final regulations are published, only organizers and sellers of tax shelters that must be registered under section 6111 are required to maintain lists of investors under this section. The requirement to maintain a list, however, may be expanded in future regulations to cover a broader class of situations than those subject to tax shelter registration. If the requirement to maintain a list is extended in future regulations to tax shelters other than those required to be registered under section 6111, the extension of the requirement would not apply to interests acquired by investors before the publication of those regulations.

Any person who is required to maintain a list under section 6112 must make the list available for inspection upon request by the Secretary, and generally must retain any information required to be included on the list for 7 years. The temporary regulations provide guidance regarding the application of section 6112, including the manner in which the required lists shall be maintained and the information that must be included on such lists.

Section 6708 provides that any person who fails to meet any requirement under section 6112 shall be subject to a penalty of $50 for each person with respect to whom there is such a failure, unless it is shown that the failure is due to reasonable cause and not to willful neglect. The penalty imposed by section 6708 on a person who fails to meet the requirements of section 6112 may not exceed $50,000 for any calendar year. The penalty imposed by section 6708 is in addition to any other penalty provided by law.

The requirement of maintaining a list under section 6112, and the penalty for failing to maintain such list under section 6708, apply with respect to any interest in a potentially abusive tax shelter, other than an interest acquired by an investor before September 1, 1984.

The temporary regulations have been drafted in the form of questions and answers. No inference should be drawn, however, regarding issues not expressly raised or because certain questions and not others are included. In particular, additional requirements applicable to foreign tax shelters may be prescribed in additional temporary or proposed regulations. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control No. 1545–0865.

Drafting Information

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

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

Paragraph 1. The following new § 301.6112–1T shall be added to the appropriate place:

§ 301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).

The following questions and answers relate to the requirement to maintain a list of investors in potentially abusive tax shelters that is imposed by section 6112 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 681):

In General

Q–1: What requirements are imposed by section 6112 on persons who organize potentially abusive tax shelters ("organizers") and persons who sell interests in such tax shelters ("sellers")?

A–1: Any organizer of a potentially abusive tax shelter generally must prepare and maintain for a specified period a list identifying certain persons who acquire interests in the tax shelter. Any seller of an interest in such a tax shelter generally must maintain a list identifying each person who acquires an interest in the tax shelter from the seller. The lists also must contain the other information required by this section. The organizer or seller also is required to make the list available for inspection upon request by the Internal Revenue Service. For the definition of a potentially abusive tax shelter, see A–3 of this section. For the definition of an organizer of a potentially abusive tax shelter, see A–5 of this section. For the definition of a seller of an interest in a potentially abusive tax shelter, see A–6 of this section. For rules relating to the designation of one organizer to maintain a list in cases in which two or more organizers or sellers would be required to maintain the same list or portion of a list, see A–11 through A–13 of this section. For the information that must be included on a list, see A–17 of this section. For the requirements relating to the retention of lists and making lists available for inspection, see A–19 through A–21 of this section.

Q–2: What sanctions apply to an organizer or seller who fails properly to comply with the requirements of section 6112 and this section?

A–2: Any organizer or seller who fails to comply with the applicable requirements shall be subject to the penalty imposed by section 6708. For rules relating to section 6708, see § 301.6708–1T.

Definition of Potentially Abusive Tax Shelter

Q–3: What is the meaning of the term "potentially abusive tax shelter"?

A–3: A potentially abusive tax shelter ("tax shelter") means (a) any investment that is a tax shelter required to be registered with the Internal Revenue Service under section 6111, and (b) any other entity, plan, or arrangement that is treated by regulations as a tax shelter for purposes of the list requirement. An investment that is required to be registered under section 6111 is a tax shelter even if the investment has not been properly registered with the Internal Revenue Service. See § 301.6111–1T for rules relating to tax shelter registration.

Q–4: Are any entities, plans, or arrangements other than those required to be registered with the Internal

Revenue Service under section 6111 treated as tax shelters for purposes of the list requirement?

A–4: Not at this time. The extent, if any, to which any entity, plan, or arrangement that is not required to be registered will be treated as a potentially abusive tax shelter for purposes of the list requirement will be prescribed in future regulations.

Persons Required To Maintain Lists of Investors

Q–5: Who is an organizer of a tax shelter?

A–5: An organizer is any person who is a principal organizer of a tax shelter under A–27 of § 301.6111–1T. Thus, an organizer, for purposes of the list requirement, means any person who discovers, creates, investigates, or initiates the tax shelter investment, devises the business or financial plans for the tax shelter, or carries out those plans through negotiations or transactions with others.

Q–6: Who is a seller of an interest in a tax shelter?

A–6: For purposes of the list requirement, a seller is—

(a) Any organizer, underwriter, broker, or dealer (or other similar person) who transfers any interest in a tax shelter;

(b) Any agent who negotiates the transfer of any interest in a tax shelter for the tax shelter, an organizer, or other person described in paragraph (a) of this A–6; and

(c) Any investor (*i.e.*, a person not described in paragraph (a) of this A–6) who transfers any interest in a tax shelter.

For example, if a broker or underwriter purchases a block of interests in a tax shelter from an organizer and in turn sells those interests to individual investors, the broker or underwriter, under paragraph (a) of this A–6, is a seller for purposes of the list requirement. Moreover, if a broker or underwriter who purchases a block of interests in a tax shelter engages other brokers or agents to negotiate sales of interests, such other brokers or agents, under paragraph (b) of this A–6, are sellers for purposes of the list requirement. Similarly, if an organizer engages a broker or other agent to negotiate sales of interests in a tax shelter to investors, the broker or other agent, under paragraph (b) of this A–6, is a seller for purposes of the list requirement. If, on the other hand, an individual investor engages a broker or other agent to negotiate a sale of the investor's interest to another investor, the broker or other agent is not a seller for purposes of the list requirement. The individual investor who transfers the interest, however, would be a seller for purposes of the list requirement under paragraph (c) of this A–6.

Q–7: What is the meaning of the term "an interest" in a tax shelter?

A–7: An interest in a tax shelter includes any right to participate in the tax shelter by reason of (a) a partnership interest, a shareholder interest, or a beneficial interest in a trust, (b) any interest in property (including a leasehold interest), or (c) the entry into a leasing arrangement or a consulting, management, or other agreement for the performance of services.

Persons Required To Be Included on a List

Q–8: What persons are required to be included on a list maintained by an organizer?

A–8: An organizer of a tax shelter must include on a list all persons who acquire interests in the tax shelter by reason of—

(a) Any transfer of an interest made by the organizer (*i.e.*, a transfer with respect to which the organizer, under paragraph (a) of A–6 of this section, is also a seller) or through an agent of the organizer described in paragraph (b) of A–6 of this section;

(b) Any transfer of an interest made by the tax shelter or through an agent of the tax shelter described in paragraph (b) of A–6 of this section (provided the organizer is involved in the tax shelter on the date of the transfer);

(c) Any transfer of an interest made by or through a person related (within the meaning of section 168 (e)(4)) to the organizer or the tax shelter (provided the organizer is involved in the tax shelter on the date of the transfer);

(d) Any transfer of an interest of which the organizer is informed (regardless of whether the organizer is so informed under A–15 of this section for the specific purpose of maintaining a list); and

(e) Any other transfer of which the organizer knows or has reason to know whether on account of the duty of inquiry described in A–9 of this section or for any other reason.

Example (1). Assume that A, an organizer, offers partnership interests in a tax shelter for sale through Y, a broker. In 1985, ten individual investors purchase partnership interests from A through Broker Y. A must include on A's list the ten individual investors, because organizers must include on their lists persons who acquire interests by reason of transfers with respect to which the organizers also are sellers within the meaning of paragraph (a) of A–6 of this section. Broker Y, who is a seller within the meaning of paragraph (b) A–6 of this section, also would be required to maintain a list containing the names of the ten individual investors (see A–10 of this section). See A–17 of this section for the other information required to be included on a list. See A–11 through A–13 of this section for rules relating to the designation of a single organizer to maintain a list for multiple organizers and sellers.

Example (2). Assume the same facts as in example (1) and that, in addition, A is the tax matters partner (within the meaning of section 6231) for the partnership. In 1986, A, as tax matters partner, is instructed to prepare a Form K–1 for partner Z, a corporation that acquired its interest from one of the ten investors. A would be required to include Z on A's list under paragraph (d) of this A–8 because A has been informed of the acquisition of an interest by Z.

Q–9: When does an organizer have a duty to inquire with respect to transfers of interests in the tax shelter?

A–9: An organizer has a duty to make a reasonable inquiry only with respect to transfers of interests in the tax shelter made by a seller described in paragraph (a) of A–6 of this section who acquired the interests from (a) the organizer or a person related (within the meaning of section 168(e)(4)) to the organizer, or (b) the tax shelter or a person related (within the meaning of section 168(e)(4)) to the tax shelter (provided the organizer is involved in the tax shelter on the date the interest is transferred to the seller). For example, if a broker or underwriter purchases a block of interests in a tax shelter from an organizer and in turn sells those interests to individual investors, the organizer has a duty to inquire with respect to such sales. If, as a result of the inquiry, the organizer knows the investors who acquired interests in the tax shelter from the broker or underwriter, the organizer would be required to include those persons on the list. (See paragraph (e) of A–8 of this section.) If the organizer fails reasonably to inquire with respect to transfers by a seller described in paragraph (a) of A–6 of this section, the organizer will have reason to know for purposes of paragraph (e) of A–8 of this section of those investors who acquired interests in the tax shelter from such a seller by reason of any transfer that the organizer would have discovered through a reasonable inquiry.

Q–10: What persons are required to be included on a list maintained by a seller?

A–10: Any list required to be maintained by a seller must identify each person who acquired an interest in the tax shelter from the seller, or, if the seller is an agent described in paragraph (b) of A–6 of this section, each person who acquired an interest through the

seller. Any list required to be maintained by a seller described in paragraph (a) of A–6 of this section must also identify each person who acquired an interest of which the seller is informed under A–15 of this section.

Designation of One Organizer To Maintain the List

Q–11: If more than one person is required to maintain a list for the same tax shelter (*i.e.*, multiple organizers, or organizers and sellers), may a single person be designated to maintain the list or a portion of the list for the tax shelter?

A–11: Yes. Organizers and sellers who are required to maintain a list (or a portion of such a list) of persons who have acquired interests in the same tax shelter may designate one of the organizers (but not a seller who is not also an organizer) to maintain the required list or portion of the list ("designated person"). The organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111. The organizer who registered the tax shelter under section 6111 ordinarily should be the designated person, although any other organizer who meets the requirements of this A–11 may be the designated person. An organizer may not be a designated person, however, unless—

(a) It is reasonably expected that the organizer will actively participate in the management of the tax shelter as (i) a general partner of the tax shelter, (ii) an officer or director of the tax shelter, (iii) an officer or director of a corporate general partner of the tax shelter, or (iv) a trustee of the tax shelter; and

(b) The organizer is not a resident of, and does not maintain its principal place of business in, a foreign country.

Q–12: What must organizers and sellers do to designate one organizer to maintain a list under A–11 of this section?

A–12: The organizers and sellers must enter into a written agreement that identifies the designated person and that is signed by all the parties to the agreement, including the designated person.

Q–13: What are the consequences of an agreement under A–12 of this section?

A–13: A seller or organizer who signs an agreement under A–12 of this section shall not be subject to penalty under section 6708 for failing to maintain a list, provided that the seller or organizer—

(a) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section), and

(b) Provides to each investor (within the meaning of paragraph (c) of A–6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice substantially in the form provided below:

(1) You have acquired an interest in [name and address of tax shelter]. If you transfer your interest in this tax shelter to another person, you are required by the Internal Revenue Service to keep a list containing that person's name, address, taxpayer identification number, the date on which you transferred the interest and the name, address and tax shelter registration number of this tax shelter. If you do not want to keep such a list, you must (i) send the information specified above to [name and address of designated person], who will keep the list for this tax shelter, and (ii) give a copy of this notice to the person to whom you transfer your interest.

(2) This notice may be incorporated into the notice required by A–53 or A–54 of § 301.6111–1T (relating to tax shelter registration).

If the designated person fails to maintain the list, the designated person shall be subject to penalty under section 6708. For special rules for determining the amount of the penalty imposed on a designated person under section 6708, see A–6 of § 301.6708–1T.

Additional Requirement Imposed on Sellers Who Do Not Sign Designation Agreements

Q–14: Is any additional requirement imposed on a seller who does not sign an agreement under A–12 of this section to designate one organizer to maintain a list for a tax shelter?

A–14: Yes. Any seller described in paragraph (a) of A–6 of this section who does not sign a designation agreement under A–12 of this section (including organizers who are such sellers) must provide the notice specified in A–13 of this section to all investors (within the meaning of paragraph (c) of A–6 of this section) who acquire interests in the tax shelter from the seller, except that the notice must include the name and address of the seller in place of the name and address of the designated person.

Special Rules Applicable to Investors

Q–15: Under what circumstances may an investor described in paragraph (c) of A–6 of this section who retransfers an interest in a tax shelter require a designated person or a seller to maintain the investor's list disclosing the transferee's name and the other information required by A–17 of this section?

A–15: Any investor may require a designated person or a seller identified in a notice provided under either A–13 or A–14 of this section to maintain the investor's list (and the investor will thus not be subject to any penalty under section 6708 for failing to maintain the list) by—

(a) Submitting to the designated person or seller so identified all of the information the investor otherwise would be required to maintain on a list for that tax shelter, and

(b) Providing a copy of the notice furnished to the investor under either A–13 or A–14 of this section to the person or persons to whom the investor retransfers an interest in the tax shelter.

Example. Assume that X, an organizer, retains brokers A and B to sell interests in a tax shelter. In 1985, A and B each negotiate sales of interests in the tax shelter to investors. A, B, and X enter into an agreement to designate X to maintain the list of investors who acquired interests in the tax shelter through A and B. Pursuant to the agreement, A and B submit the required information to X and provide the required notice to the investors who acquired interests through A and B. On January 1, 1986, C, an investor who acquired an interest through A, sells the interest to D. Since C was provided with the notice required by A–13 of this section, C may require X to maintain C's list with respect to the sale to D by submitting to X all of the required information regarding the sale and by providing a copy of the notice to D. If A, B and X had not signed an agreement, X, a seller dscribed in paragraph (a) of A–6 of this section, would nevertheless have been required to provide a notice to C (under A–14 of this section) and C would have been able to require X to keep the list by complying with the two requirements of this A–15. In the absence of an agreement, however, A and B, who are sellers described in paragraph (b) of A–6 of this section, would have been required to keep lists of investors with whom they negotiated sales.

Manner in Which List Shall Be Maintained

Q–16: In what manner must an organizer or a seller maintain a list?

A–16: A list may be maintained on paper, card file, magnetic media, or in any other form, provided the method of maintaining the list enables the Internal Revenue Service to determine without undue delay or difficulty the information required by A–17 of this section.

Q–17: What information must be included on a list?

A–17: A list must contain the following information:

(1) The name of the tax shelter and the registration number obtained under section 6111;

(2) The TIN (as defined in section 7701(a)(41)), if any, of the tax shelter;

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A–8 or A–10 of this section;

(4) The number of units (*i.e.*, percentage of profits, number of shares, *etc.*) acquired by each person who is required to be included on the list;

(5) The date on which each interest was acquired;

(6) If the interest was not acquired from the person maintaining the list, the name of the person from whom the interest was acquired; and

(7) The name and address of each agent of the person maintaining the list who is described in paragraph (b) of A–6 of this section.

If the person maintaining the list is an investor described in paragraph (c) of A–6 of this section, the list is required to include only the information specified in items (1), (3) and (5).

Q–18: If a person is required to maintain lists for more than one tax shelter, how should the lists be arranged?

A–18: A separate list, identified by the registration number obtained under section 6111, must be maintained for each tax shelter.

Retention of Lists

Q–19: How long must organizers and sellers retain a list?

A–19: A list generally must be retained for 7 years following the date on which the last acquisition of an interest required to be included on the list is made (not including any acquisition for which an organizer or seller is required to maintain a list under A–15 or paragraph (d) or paragraph (e) of A–8 of this section). In the case of any acquisition of an interest for which an organizer or seller is required to maintain a list under A–15 or paragraph (d) or paragraph (e) of A–8 of this section, the list with respect to the acquisition must be retained for the longer of the 7-year period determined under the preceding sentence, or the 3-year period following the date on which the interest is acquired.

Q–20: Who must retain the list if the person required to maintain the list is a corporation or a partnership that is dissolved or liquidated before completion of the period determined under A–19 of this section?

A–20: If a list is required to be maintained by a corporation or partnership that is dissolved or liquidated before completion of the period determined under A–19 of this section, the list shall be retained by the person or persons who under state law are responsible for winding up the affairs of the corporation or partnership. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors of the corporation or general partners of the partnership shall be responsible for retaining the list.

Availability for Inspection

Q–21: When must a person required to maintain a list make the list available for inspection?

A–21: Any person required to maintain a list must, upon request by the Internal Revenue Service, make the list available for inspection as soon as practicable, but in no event later than 10 calendar days after such request. The request need not be in the form of an administrative summons.

Effective Date

Q–22: With respect to what interests must an organizer or a seller maintain a list?

A–22: An organizer or seller must maintain a list with respect to any interest in the tax shelter other than an interest that was acquired before September 1, 1984, by an investor (within the meaning of paragraph (c) of A–6 of this section). Thus, if an organizer sells interests in a tax shelter to investors both before September 1, 1984, and after August 31, 1984, the organizer must maintain a list identifying only those inventors to whom the organizer sells an interest after August 31, 1984. The organizer is not required to include on the list investors who acquire interests in the tax shelter after August 31, 1984, from other individual investors who acquired the interests before September 1, 1984.

Example. Assume that on August 21, 1984, A, an organizer, sells a block of interests in a tax shelter to B, an underwriter, and an interest in the tax shelter to C, an investor. Assume also, that, on September 12, 1984, B sells to D, an investor, one of the interests that B acquired on August 21, 1984. A is not required to maintain a list with respect to the interest sold to C because that interest was acquired by an investor before September 1, 1984. B, who is a seller described in paragraph (a) of A–6 of this section, is required to maintain a list with respect to the interest sold to D because that interest was not sold to an investor before September 1, 1984. In addition, A is required to maintain a list with respect to the interest sold to D if A knows or has reason to know of the sale to D. (See paragraph (e) of A–8 and A–9 of this section.)

Par. 2. The following new § 301.6708–1T shall be added in the appropriate place:

§ 301.6708–1T Failure to maintain list of investors in potentially abusive tax shelters (temporary).

The following questions and answers issued under section 6708 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 683), relate to the penalty for failure to maintain a list of investors in potentially abusive tax shelters.

Q–1: What penalties are provided with respect to the failure properly to maintain a list of persons who acquire interests in potentially abusive tax shelters?

A–1: Any organizer (as defined in A–5 of § 301.6112–1T) of a tax shelter (as defined in A–3 of § 301.6112–1T) or seller (as defined in A–6 of § 301.6112–1T) of interests in a tax shelter who fails to meet any requirement imposed by section 6112 regarding the requirement to maintain a list of persons who have acquired interests in a tax shelter shall pay a penalty of $50 for each investor with respect to whom there is such a failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. For example, if an organizer who is required to maintain a list identifying each of 100 persons who acquired interests in a tax shelter fails to maintain the list, the organizer will be liable for a penalty of $5,000 ($50 × 100 persons), unless the organizer can show the failure was due to reasonable cause and not due to willful neglect. As another example, if a seller is required to maintain a list identifying each of 100 persons who acquired interests in a tax shelter from the seller and fails properly to maintain such list by omitting the TIN of each person, the seller will be liable for a penalty of $5,000 ($50 × 100 persons), unless the seller can show the failure was due to reasonable cause and not due to willful neglect.

Q–2: If an organizer or seller properly maintains a list, but fails to make the list available to the Internal Revenue Service upon request, will the organizer or seller be subject to a penalty?

A–2: Yes. A penalty applies if an organizer or seller fails to meet any requirement imposed by section 6112, including the requirement, upon request, to make the list available to the Internal Revenue Service as soon as practicable, but in any event within 10 calendar days. (See A–21 of § 301.6112–1T). The amount of the penalty is $50 for each person required to be on the list at the time of the request by the Internal Revenue Service. Assume, for example, that an organizer of a tax shelter properly maintains a list of 200 persons

who have acquired interests in a tax shelter and that the Internal Revenue Service requests the organizer to provide the list. If the organizer fails to provide the list to the Internal Revenue Service as soon as practicable (as required by A–21 of § 301.6112–1T), or in a form that enables the Internal Revenue Service to obtain the required information without undue delay or difficulty (as required by A–16 of § 301.6112–1T), the organizer will be liable for a penalty of $10,000 ($50 × 200 persons), unless the organizer can show that the failure to provide the list was due to reasonable cause and not to willful neglect.

Q–3: If an organizer or seller is required to maintain lists for more than one tax shelter in which the same person has acquired interests, how does the penalty apply if the organizer or seller fails to identify the person on each of the lists?

A–3: A separate $50 penalty applies with respect to the list for each tax shelter on which the person who acquired interests is not identified.

Q–4: Is there a limitation on the amount of the penalty imposed on a seller or organizer required to maintain a list of persons who have acquired interests in a tax shelter?

A–4: Yes. The maximum penalty that may be imposed on a person for any calendar year may not exceed $50,000.

Q–5: How does the calendar year limitation apply?

A–5: A separate $50,000 limitation applies to each calendar year in which a failure occurs, and to each tax shelter for which a list is required to be maintained. See A–6 of this section for special rules for determining how the $50,000 limitation applies to a designated person who fails properly to maintain a list of investors.

Example (1). Assume that A, an organizer of a tax shelter, fails to maintain and to provide to the Internal Revenue Service a list of 900 persons who acquired interests in the tax shelter in 1986. In addition, assume that A again fails to maintain and to provide the list of 900 investors upon request in 1987. A is subject to a penalty of $45,000 (900 persons × $50) for each calendar year in which there is a failure to comply with the requirements of section 6112. Thus, A is subject to $45,000 in penalties for the failures to maintain and to provide the list in 1986, and $45,000 in penalties for the failures to maintain and to provide the list in 1987, unless A can show reasonable cause for the failures.

Example (2). Assume that B, an organizer of Tax Shelter I, fails to provide a list of 1,500 persons who acquired interests in the tax shelter to the Internal Revenue Service upon request in 1987. Assume also that B, an organizer of Tax Shelter II, fails to provide a list of 2,000 persons who acquired interests in Tax Shelter II to the Internal Revenue Service upon request in 1987. Because the $50,000 calendar year limitation applies separately with respect to each tax shelter for which a list must be maintained, B is subject to a penalty of $50,000 for failing to provide the list for Tax Shelter I in 1987 and a $50,000 penalty for failing to provide the list for Tax Shelter II in 1987.

Q–6: How does the penalty apply to a designated person?

A–6: Separate penalties, each with its own $50,000 calendar year limitation, apply with respect to the portion of the list kept by the designated person in that person's capacity as organizer and to each portion of the list kept by the designated person in that person's capacity as the designated person with respect to each organizer and seller who signed the agreement under A–12 of § 301.6112–1T and for whom the designated person is responsible for complying with the requirements of section 6112.

Example. Assume that X, an organizer and seller, sells interests in a tax shelter directly to 750 investors in 1985. In addition, assume that A, an agent of X, negotiates for X sales of interests in the tax shelter to an additional 500 persons in 1985. If no agreement to designate X is made pursuant to A–11 of § 301.6112–1T, X would be required to maintain a list of the 1,250 investors who acquired interests in the tax shelter (see paragraph (a) of A–8 of § 301.6112–1T) and A would be required to maintain a list of the 500 persons who acquired interests through A (see A–10 of § 301.6112–1T). If, therefore, neither X nor A complied with the requirements of section 6112 in 1985, X would be liable for $50,000 in penalties ($50 × 1,250 investors, subject to the $50,000 maximum) and A would be liable for $25,000 in penalties ($50 × 500 investors). Assume, however, that X and A enter into a written agreement to designate X to maintain the list for the tax shelter. Pursuant to that agreement, A submits to X all of the required information regarding the sales to the 500 persons otherwise required to be maintained on A's list and provides the notice required by A–13 of § 301.6112–1T to each person. In 1986, X fails to provide any list of investors to the Internal Revenue Service upon request. For calendar year 1986, X is liable for penalties of $50,000 in X's capacity as an organizer ($50 × 1,250 persons, subject to the $50,000 maximum). In addition, X, as the person designated to maintain the list for A, is liable for penalties of $25,000 for failing properly to maintain A's list of investors ($50 × 500 persons). A would not be liable for any penalties.

Q–7: If an organizer or seller is subject to a penalty with respect to a tax shelter under section 6708, may the organizer or seller also be liable for other fines or penalties with respect to the tax shelter?

A–7: Yes. The penalty imposed by section 6708 is in addition to any other penalty provided by law. If, for example, an organizer of a tax shelter is subject to a penalty under section 6700 for promoting an abusive tax shelter, the organizer also would be liable for any applicable penalties for failing properly to maintain a list for the tax shelter. Similarly, if an organizer or seller fails to furnish a list upon request by the Internal Revenue Service, the organizer or seller may be subject both to the fine under section 7203 for the willful failure to supply information, and to the penalty for failing properly to maintain a list for the tax shelter.

Q–8: When is the penalty under section 6708 effective?

A–8: The penalty under section 6708 applies with respect to any interest in a tax shelter which is required to be included on a list under section 6112. See A–22 of § 301.6112–1T.

(Approved by the Office of Management and Budget under control number 1545–0865)

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 6112 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 681; 68A Stat. 917; 26 U.S.C. 6112 and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–22939 Filed 8–24–84; 3:30 pm]

BILLING CODE 4810–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Cocaine Offenses; Paroling Policy Guidelines

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: To more adequately sanction very large scale offenses involving cocaine, the Commission is amending its paroling policy guidelines, 28 CFR 2.20, to increase the guideline range for

offenses involving 5 kilograms or more of cocaine.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: James Beck, Case Operations, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5952.

SUPPLEMENTARY INFORMATION: As a result of the work of the Organized Crime Drug Enforcement Task Force, the Commission is seeing an increasing number of cases involving multi-kilo amounts of cocaine. The Commission currently rates the offense of distribution or possession with intent to distribute more than 1 kilogram of 100% pure cocaine as Category Six. However, the Commission has found that when it considers offenses involving multi-kilo amounts of cocaine, its release decisions are above the guidelines in a significant number of cases. These offenses usually involve major cocaine smugglers and suppliers whose profit expectations are enormous, and whose criminal sophistication and disregard for the law are unusually high. As part of the Commission's statutory duty to monitor its guidelines, the Commission on March 7, 1984 published a proposed amendment to its paroling policy guidelines to increase the guideline range for offenses involving 5 kilograms or more of cocaine.

The Commission proposed that more than one kilogram but less than 5 kilograms of 100% pure cocaine (or equivalent amount) be placed in Category Six; offenses involving five kilograms but less than 15 kilograms of 100% pure cocaine (or equivalent amount) be placed in Category Seven; and offenses involving 15 kilograms or more of 100% pure cocaine (or equivalent amount) be placed in Category Eight.

The remaining lower grade offenses are not substantively changed, except that offenders with only a peripheral role in the largest scale offenses (5 kilograms or more) would be placed in Category Six rather than in Category Five. The remaining categories are relettered and relabeled to conform with the amendment.

Six comments from the public were received on the Commission's proposal: three from federal probation officers in the Southern District of Florida, one from the Washington Legal Foundation and two from prisoners. Two of the probation officers enthusiastically supported the proposal. They noted that the guideline increase will act as a deterrent to very large scale cocaine dealers and provide more appropriate sanctions for harmful, extremely profitable drug offenses. The third probation officer neither supported nor criticized the proposal but wrote to inform the Commission that because the sentences for cocaine offenses in the Southern District of Florida are relatively short, the Commission's proposal will result in the denial of parole to most prisoners sentenced in that District. The Washington Legal Foundation wholeheartedly endorsed the proposal noting that increased penalties were merited because cocaine offenses had a corrupting effect on American society and were committed by "the most sophisticated, ambitious and ruthless of criminal offenders." The two prisoners opposed the proposal because, in their view, it would be unduly expensive to incarcerate offenders longer and would have no deterrent effect. Both prisoners also questioned whether the increase in the guidelines would be retroactively applied to prisoners who had already been given initial parole hearings. The increase in the guidelines will be prospective only; it will apply only to prisoners whose initial parole hearings are conducted on or after October 1, 1984.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisons, Probation and parole.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR 2.20 by revising section 921 of Chapter Nine, Subchapter C of the Offense Behavior Severity Index to read as follows:

PART 2—[AMENDED]

§ 2.20 Paroling policy guidelines: Statement of general policy.

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U.S. Parole Commission Offense Behavior Severity Index

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Chapter Nine—Offenses Involving Illicit Drugs

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SUBCHAPTER C—COCAINE OFFENSES

921 Distribution or Possession With Intent to Distribute.

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount), grade as Category Five;

(g) If small scale (e.g., involving 5–99 grams of 100% purity, or equivalent amount), grade as Category Four;

(h) If very small scale (e.g., involving 1.0–4.9 grams of 100% purity, or equivalent amount), grade as Category Three;

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

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Dated: August 14, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-22932 Filed 8-28-84; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Export Offenses

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: On March 5, 1984 at 49 FR 8035 the Parole Commission published a proposed addition to its Paroling Policy Guidelines, 28 CFR 2.20, establishing offense severities for export offenses. This addition was intended to make the guidelines more comprehensive. The only comment received on the proposal was an endorsement by the Chief U.S. Probation Officer from the Northern District of Indiana. The Commission is adopting the proposed rule as a final rule. This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: James Beck, Case Operations, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5952.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR 2.20 by adding sections 1042 and 1043 to Chapter Ten, Subchapter E of the Offense Behavior Severity Index to read as follows:

PART 2—[AMENDED]

§ 2.20 Paroling policy guidelines; Statement of general policy.

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U.S. Parole Commission Offense Behavior Severity Index

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Chapter Ten—Offenses Involving National Defense

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SUBCHAPTER E—OTHER NATIONAL DEFENSE OFFENSES

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1042 *Violations of Export Administration Act* (50 U.S.C. 2410)

Grade conduct involving "national securing controls" or "nuclear nonproliferation controls" as Category Six.

1043 *Violations of the Arms Control Act* (22 U.S.C. 2278)

(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armored vehicles, or "high technology" items) as Category Six.

(b) Grade Conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

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Dated: August 18, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-22931 Filed 8-28-84; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Information Considered; Use of Charges Upon Which Prisoner Was Found Not Guilty After Trial

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules at 28 CFR 2.19, Information Considered, to provide a second exception to its general policy stated at subsection (c), which prohibits the use of charges upon which the prisoner was found not guilty after trial. The exception permits the use of charges on which the prisoner was found not guilty due to his mental condition. The Commission is also amending subsection (a) of the rule to clarify that the policy against using counts that resulted in acquittals applies to both parole release and revocation proceedings.

EFFECTIVE DATE: October 1, 1984.

ADDRESS: Rockne Chickinell, Attorney, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5960.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Telephone (301) 492-5960.

SUPPLEMENTARY INFORMATION: On March 7, 1984, the Commission published for public comment a proposed amendment to its regulation at 28 CFR 2.19(c) which would provide an additional, explicit exception to its policy against using charges which resulted in acquittals. (See 49 FR 8446). The proposed exception pertained to cases where the prisoner had been found not guilty by reason of his mental condition. No public comment was sought on a clarifying amendment to the regulation at 28 CFR 2.19(a).

The Commission received two letters in response to its publication—one from the National Association of Criminal Defense Lawyers (NACDL) and one from the Federal Public Defender for the District of New Mexico. The NACDL and the Federal Defender both expressed the view that the proposed amendment was fundamentally unfair to persons who were tried in court and held not to be criminally responsible for their actions due to their mental condition. As the Commission explained in its publication of the proposed rule, though the prisoner may not be considered culpable of a criminal offense due to the factfinder's verdict of acquittal by reason of insanity or mental defect, the agency may still properly find that the prisoner's acts evidence he is a threat to the public welfare or may, if left unpunished, encourage disrespect for the law. See 18 U.S.C. 4206(a). The Commission believes its amendment is consistent with these statutory criteria for release.

The NACDL also raised the issue of whether the Commission would invoke the exception where the defense of diminished capacity was proferred and the fact-finder issued a general verdict of acquittal. In using the amended rule, the Commission does not intend to "look behind" a judge or jury's general verdict of acquittal and determine whether the decisionmaker's judgment was influenced by the defendant's mental condition at the time of the offense. The Commission intends to use the exception and consider the prisoner's acts in its own determinations where the judge or jury specifically indicates in its verdict or findings that the prisoner was acquitted only because of his "insanity" or defective mental condition.

This rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR Part 2 by revising the introductory text of paragraph (a), the last sentence of the introductory text of paragraph (c) and adding paragraphs (c)(1) and (c)(2) to read as follows:

§ 2.19 Information considered.

(a) In making a parole or reparole determination the Commission shall consider, if available and relevant:

* * * * *

(c) * * * However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless:

(1) Reliable evidence is presented that was not introduced at trial (e.g., a subsequent admission or other clear indication of guilt); or

(2) The prisoner was found not guilty by reason of his mental condition.

Dated: August 14, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-22927 Filed 8-28-84; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; National Appeals Board

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: On October 10, 1979 at 44 FR 58587 and again on January 28, 1980 at 45 FR 6379 the Parole Commission published an interim rule with request for comment at 28 CFR 2.26(a) that

required an additional vote when an action of the National Appeals Board resulted in a decision below the guidelines. No public comment has been received on the interim rule; therefore the Commission is adopting it as final. This rule has been functioning well since 1979 and has assisted the Commission in ensuring that decisions below the guidelines are a valid expression of the Commission's general paroling practice.

EFFECTIVE DATE: August 29, 1984.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, U.S. Parole Commission, Office of the General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

SUPPLEMENTARY INFORMATION:

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR Part 2 is amended by revising § 2.26(a) to read as follows:

§ 2.26 Appeal to National Appeals Board.

(a) Within 30 days of entry of a Regional Commissioner's decision under § 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman; and, if necessary, to other Regional Commissioners on a rotating basis as established by the Chairman.

* * * * *

Dated: August 14, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84–22930 Filed 8–28–84; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Presumptive Release Dates

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending to its rules at 28 CFR 2.12, Initial Hearings: Setting Presumptive Release Dates, providing that following an initial hearing a presumptive release date can be set within fifteen years of the hearing. This amendment is designed to give prisoners serving long sentences for serious offenses earlier notice of the amount of prison time the Commission determines they must serve, absent significant changes in circumstances.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Hoffman, Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: On June 1, 1984 at 49 FR 22834 the Commission published a proposed rule with request for comment which would allow a presumptive release date to be set within fifteen years of an initial hearing. Currently, following an initial hearing the Commission sets (1) an effective parole date or (2) a presumptive release date within ten years of the hearing or (3) continues the prisoner to a ten year reconsideration hearing. The Commission's amendment to its rules at 28 CFR 2.12 provides for the setting of presumptive parole dates within fifteen years of the hearing or, if a presumptive parole date is not found warranted within fifteen years of the hearing, a fifteen year reconsideration hearing.

Only two comments were received on the proposal, both from federal prisoners. One prisoner suggested that the proposal was politically motivated and that it would be counter productive and result in violence and escapes because it would remove a prisoner's hope of early release. The other prisoner who commented suggested that the Commission should give "realistic" parole dates that prisoners can strive to keep by good prison conduct. The Commission's amendment is intended to provide realistic information to prisoners. For prisoner's serving long sentences who can be paroled within 15 years the amendment will give earlier notice of their expected release dates. For prisoners who do not merit parole within 15 years, no false hope will be held out.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Implementation: This procedure will be applied to all initial hearings on or after October 1, 1984. Prisoners previously given ten year reconsideration decisions will be brought under the revised procedure at the time of the next scheduled statutory interim hearing and that hearing will be treated as if an initial for this purpose.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR Part 2.

28 CFR 2.12(b) is revised to read as follows:

§ 2.12 Initial hearings: setting presumptive release dates.

* * * * *

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to § 2.14(c).

* * * * *

The following conforming amendments are also adopted as final rules:

§ 2.14 [Amended]

28 CFR 2.14 is amended by substituting "fifteen year reconsideration hearing" at each place that "ten year reconsideration hearing" now appears.

§ 2.25 [Amended]

28 CFR 2.25 is amended by substituting "fifteen-year reconsideration hearing" where "ten-year reconsideration hearing" now appears.

Dated: August 14, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84–22928 Filed 8–28–84; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Revocation Hearings for Prisoners Serving New State or Local Sentences

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules at 28 CFR 2.47, Warrant Placed As a Detainer and Dispositional Review, to provide that revocation hearings be conducted for prisoners serving new state or local sentences after completion of the period in confinement required by the minimum of the applicable guideline range but not less than 24 months. This amendment is designed as part of an effort to meet budgetary limitations.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Hoffman, Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: Prior to July 1980 the Parole Commission's customary procedure for parole violators with new terms of incarceration was to conduct a revocation hearing only upon the completion of the confinement portion of the new sentence. This policy fully met the constitutional requirements set forth in *Moody* v. *Daggett*, 429 U.S. 78 (1976). In July 1980, the Commission instituted a policy of conducting revocation hearings for parole violators with a new term of incarceration prior to release on the new sentence. Prisoners serving new sentences in Federal institutions were given revocation hearings within 120 days of notification of the placement of a detainer and prisoners serving new state sentences in state or local institutions were given revocation hearings after service of 18 months on the new sentence or upon return to Federal custody, whichever came first. This policy was intended to provide the prisoner with earlier notice of the amount of prison time the Commission would require on the sentence(s) under its jurisdiction and avoid return to federal custody when a prisoner serving a new state sentence had already served an appropriate time in custody for the violation behavior. In July 1981, the Commission modified this policy by providing that prisoners serving new state sentences in state or local institutions would be given a hearing after service of 24 months on the new sentence or upon return to Federal custody whichever came first. This change was found necessary to reduce costs.

The relative costs of conducting hearings in state and local institutions has steadily risen. In the past the Commission received substantial assistance in conducting these hearings from the U.S. Probation Service. However, with the increase of the Probation Service's other duties and the procedural complexity these cases have presented, the Commission finds that Commission hearing examiners must conduct more of these hearings with corresponding increases in costs to the Commission. Thus, the Commission again reviewed the procedures for conducting such hearings.

On December 23, 1983 at 48 FR 56801 the Commission published a proposed rule with request for comment amending the procedure for conducting such hearings as follows: Revocation hearings for prisoners serving new state sentences will be conducted after the prisoner has served the period in confinement required by the minimum of the applicable guideline range as tentatively assessed at the dispositional review (the dispositional review is conducted within 180 days of the notification of the detainer) but not less than 24 months, unless the prisoner is earlier returned to Federal custody.

Since, as might be expected, few parole violators with serious criminal conduct are paroled below their guidelines (1 out of 213 in fiscal 1982), conducting the hearing after the prisoner has served the minimum time required by the guidelines would in large measure preserve the benefits of the current procedure by avoiding the return to federal custody of prisoners who have already served an appropriate time in custody for the violation behavior.

Three comments from the public were received on the proposal, two from Federal Public Defenders and one from a U.S. Probation Officer. Both Public Defenders opposed the amendment charging that it would increase uncertainty to parolees serving new state sentence without a real reduction in cost to the government. The Probation Officer urged that to increase the community's perception of fair treatment of offenders and to discourage early release of prisoners by state and local authorities that the Commission return to its pre-July 1980 policy of conducting revocation hearing only upon completion of the new sentence.

The Commission believes that the new rule strikes a balance between the need to provide prisoners a degree of certainty concerning their parole dates and the need to reduce costs and has voted to make the proposed rule final.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Implementation: This amendment will apply to all dispositional revocation hearings resulting from dispositional record reviews conducted on or after October 1, 1984. Dispositional revocation hearings previously scheduled will be conducted as scheduled.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR Part 2 by revising § 2.47(b)(1)(i) to read as follows:

§ 2.47 Warrant placed as a detainer and dispositional review.

* * * * *

(b) * * *

(1) * * *

(i) If the prisoner is serving a state or local sentence, order that a revocation hearing be scheduled—

(A) Upon return to a federal institution or

(B) Upon completion of the period in confinement required by the minimum of the applicable guideline range as tentatively assessed, but not less than twenty-four months, whichever (A) or (B) comes first.

However, a hearing under this subsection will not be scheduled for a prisoner in state or local custody serving a new term for life without possibility of parole, or sentenced to death, or who is incarcerated outside the United States.

* * * * *

Dated: August 14, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-22929 Filed 8-28-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Approval of Amendments to the Utah Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: The Secretary conditionally approved the Utah permanent program under the Surface Mining Control and Reclamation Act (SMCRA or the Act) (46 FR 5899–5915) on January 21, 1981. On April 30, 1984 (49 FR 18315), OSM announced receipt of proposed amendments to the Utah program submitted by the State for the Director's approval. The amendments pertained to water quality and effluent limitations, inspections, notices of violations, and suspension or revocation of permits. This notice announces the Director's approval of these amendments, with the exception of the proposed program modifications pertaining to the suspension or revocation of permits.

EFFECTIVE DATE: August 29, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Ave., NW., Washington, D.C. 20240; Telephone: (202) 343–5361.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of surface coal mining operations in the State (46 FR 5899–5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899–5915).

On February 6, 1984, the Utah Division of Oil, Gas and Mining (DOGM) submitted proposed program amendments for OSM's approval, pertaining to water quality standards and effluent limitations, and inspection and enforcement requirements.

On April 30, 1984, OSM announced receipt of these amendments and scheduled a public hearing and comment period on the proposed modifications (49 FR 18315).

The public hearing was not held as no one expressed an interest in presenting testimony. The public comment period closed May 30, 1984. No written comments were submitted to OSM on the proposed amendments during the comment period.

On June 29, 1984, OSM advised Utah by letter that the proposed provisions satisfied the criteria for approval of State program amendments set forth under 30 CFR 732.15 and 732.17 with certain exceptions in section UMC/SMC 843.13 of the proposed regulations. This section pertains to the suspension or revocation of permits (See Utah Administrative Record No. 335).

OSM informed the State that it was prepared to delay its final rulemaking on the amendments for one month to allow the State an opportunity to submit draft proposed rule changes or other evidence that the State amendments are consistent with the Federal standards.

Utah did not submit to OSM any additional materials to address the deficiencies identified by OSM in the State's proposed amendments during the one month period granted for this purpose. Therefore, OSM is proceeding with the publication of this final rule to announce the Director's decision on the amendments as submitted to OSM on February 6, 1984. In accordance with SMCRA and 30 CFR 732.17 and 732.15, the following are the Director's detailed findings on each of the provisions submitted by the State.

1. UMC 816.42 Hydrologic Balance: Water Quality and Effluent Limitations

Under this section Utah deleted subsection (a)(7) and added a new subsection (b) which establishes the water quality standards and effluent limitations for discharges of water from areas disturbed by surface mining activities. The language of UMC 816.42(b) is virtually the same as the language of the Federal regulations at 30 CFR 816.42(b). The Director finds section UMC 816.42, as revised, consistent with the Federal standards and, therefore, he approves the proposed modifications to this section.

2. UMC 817.42 Hydrology Balance: Water Quality and Effluent Limitations

Under this section Utah deleted subsection (a)(7) and added a new subsection (b) which establishes the water quality standards and effluent limitations for discharges of water from areas disturbed by underground mining activities. The language of paragraph (b) is virtually the same as the language of the Federal regulation at 30 CFR 816.42(b). The Director finds section UMC 817.42, as revised consistent with the Federal standards and, therefore, he approves the proposed modifications to this section.

3. UMC 840.11 Inspections by State Division of Oil, Gas and Mining (underground mining activities)

Utah deleted in its entirety UMC 840.11 as previously adopted by the Board of Oil, Gas and Mining and proposed new language for this section which sets forth the inspection requirements for underground mining activities. The language of the revised section is virtually identical to the language of Federal regulations at 30 CFR 840.11. Therefore, the Director finds the proposed amended section consistent with the Federal Act and regulations and, he approves it.

4. SMC 840.11 Inspections by State Division of Oil, Gas and Mining (surface mining activities)

Utah deleted in its entirety SMC 840.11 as previously adopted by the Board of Oil, Gas and Mining and proposed new language for this section, which sets forth the inspection requirements for surface mining activities. The language of the revised section is virtually identical to the language of the Federal regulations at 30 CFR 840.11. Therefore, the Director finds the proposed amended section consistent with the Federal Act and regulations and, he approves it.

5. SMC/UMC 843.12 Notices of Violation

Utah deleted the language of this section previously adopted by the Board of Oil, Gas and Mining and proposed the new language submitted to OSM.

The revised section establishes requirements which are virtually identical to the requirements of the Federal regulations at 30 CFR 843.12 with respect to the issuance of notices of violation. Therefore, the Director finds the revised provisions to be consistent with the Federal Act and regulations and he approves the proposed modifications to this section.

6. UMC/SMC 843.13 Suspension or Revocation of Permits

Section 843.13 as previously adopted by Utah's Board was deleted and new language adopted for this section. The Director finds the proposed Utah regulations do not meet the standard for approval of enforcement provisions set forth at section 521(d) of the Act. The Act requires that enforcement provisions shall, at a minimum, incorporate sanctions no less stringent

than those set forth in section 521(d) of the Act and shall contain the same or similar procedural requirements relating thereto.

Utah's proposed revised regulations at UMC/SMC 843.13 do not meet this standard in the following respects:

(a) *UMC/SMC 843.13(a)(2)(iv) and UMC/SMC,13(a)(1).* Utah's proposed amended rules provide that the determination that a pattern of violations exists shall be made by both the Director and the Board. Proposed rule UMC/SMC 843.13(a)(2)(iv) provides that "[i]f the Director determines a pattern of violations exists or existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she shall recommend that the Board issue an order to show cause as provided in paragraph (a)(1) of this section."

Proposed section UMC/SMC 843.13(a)(1) provides that the Board shall make a determination that a pattern does or does not exist and then issue a show cause order to the permittee if a pattern is found.

The Federal rules at 30 CFR 843.13(a)(1) and (3) provide that only one party, the Director of OGM, shall make the determination that a pattern of violations does or does not exist. Upon finding that a pattern does exist, the Director issues to the permittee an order to show cause why his or her permit and right to mine should not be suspended or revoked.

Utah's proposed two-tier system whereby the Director makes a determination and then the Board makes such a finding is not consistent with the Federal rules. To incorporate procedural requirements the same as or similar to the Federal provisions, Utah's rules must specify that either the Director or the Board, but not both, shall make the determination that a pattern of violations exists and shall issue an order to show cause to the permittee if a pattern is found.

(b) *UMC/SMC 843.13 (b) and (c).* Utah's proposed rules provide that if the permittee requests a hearing, the hearing shall be held before the Board or an administrative hearing officer and the Board shall make a final decision on the case.

Under the Federal rules, a hearing on an appeal is not held before the Director, who is responsible for making the initial determination that a pattern exists, but before the Office of Hearing and Appeal (OHA). The OHA makes the final decision on an appeal case and, if appropriate, issues an order.

To incorporate procedural requirements the same as or similar to those contained in the Federal rules at 30 CFR 843.13 (b) and (c), Utah's regulations must stipulate that an appeal hearing shall be conducted before a person or body other than the person or body that made the initial determination.

If the Director makes the initial determination, then the Board could conduct the appeal hearing and make the final decision on the case. If the Board makes the initial determination, then some other body would be required to conduct a hearing on an appeal and make a final decision on the case.

(c) *UMC/SMC 843.13(b).* Utah's proposed rules provide that a hearing on an appeal may be conducted, at the Board's option, before an administrative hearing officer who may be legally trained. To incorporate procedural requirements which are the same as or similar to those set forth in the Federal regulations, Utah's rules should specify that administrative hearing officers should have the minimum qualifications for hearing officers established under Utah law.

(d) *UMC/SMC 843.13 (a)(2), (a)(3) and (a)(4).* Utah's proposed regulations stipulate that the determination that a pattern of violations exists shall be based upon the permittee's performance during a given number of inspections of the permit area within a *calendar* year.

The Federal rules at 30 CFR 843.13 provide that the determination shall be based upon a review of a permittee's performance during a given number of inspections during any *12-month period.*

To incorporate sanctions no less stringent than those established in the Federal rules and procedural requirements which are the same as or similar to the Federal requirements, Utah must base its determination on the results of a given number of inspections conducted during a *12-month period* rather than during a calendar year. Under Utah's proposal, the period of consideration of an operator's performance usually would be much less than twelve months.

(e) *UMC/SMC 843.13(a)(4).* Utah's proposed rules specify that in determining whether or not a pattern exists, the Director shall consider only violations cited as a result of State inspections carried out—

(A) During enforcement of a State program or a Federal lands program; or

(B) During the interim program and before the State program was approved pursuant to section 502 or 504 of the Act.

To incorporate sanctions no less stringent than those set forth in the Act at section 521(a)(4) and the Federal rules at 30 CFR 843.13 and the same or similar procedural requirements relating thereto, Utah's program must stipulate that all violations of the State program requirements cited during any inspection be considered by the person or body making the determination that a pattern of violations does or does not exist.

(f) *UMC/SMC 843.13(d).* Section UMC/SMC 843.13(d) of Utah's proposed regulations provides that the Director "may" review the permittee's history of violations to determine whether a pattern of violations exists when the permittee fails to abate a violation contained in a notice of violation or cessation order. The Federal regulations at 30 CFR 843.13(d) do not allow the Director any discretion with respect to the review of a permittee's history of violations when a permittee fails to abate a violation contained in a notice or order within the abatement period set. The Federal provision stipulates that the Director "shall" conduct such a review.

To incorporate procedural requirements which are the same as or similar to the Federal requirements, Utah's rules must make the review requirement mandatory rather than discretionary.

Because of the deficiencies identified above the Director disapproves revised section UMC/SMC 843.13 of Utah's regulations submitted to OSM by the State on February 6, 1984.

Until such time as Utah reenacts the regulations under UMC/SMC 843.12 previously in effect and approved by the Secretary or until Utah adopts and OSM approves alternative regulations under this section, OSM expects the State to enforce the requirements under UMC/SMC 843.13 which were in effect at the time of the Secretary's approval of the Utah program on January 21, 1981.

Director's Decision

Accordingly, the Director hereby approves the modifications to the following sections of the Utah regulations submitted to OSM by Utah on February 6, 1984:

UMC 816.42 and UMC 817.42, Hydrology Balance: Water Quality and Effluent Limitations. UMC/SMC 840.11 Inspections by State Division of Oil, Gas and Mining. UMC/SMC 843.12 Notice of Violation.

The Director disapproves the changes to Section UMC/SMC 843.13 submitted to OSM by Utah on February 6, 1984. Pursuant to 30 CFR 732.17(h)(7), the State must within 30 days after publication of the Director's disapproval of these changes to Section UMC/SMC 843.13, resubmit a revised amendment request for consideration by the Director.

Additional Determinations

1. *Compliance With the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Compliance With the Regulatory Flexibility Act*

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance With Executive Order No. 12291*

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory program, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

List of Subjects in 30 CFR Part 944

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

Accordingly, 30 CFR Part 944 is amended as set forth herein.

Dated: August 23, 1984.

John D. Ward,

Director, Office of Surface Mining.

Authority: Sec. 503, Pub. L. 95–87 (30 U.S.C. 1253), unless otherwise noted.

PART 944—UTAH

Part 944 of Title 30 is amended as follows:

Section 944.15 is amended by adding a new paragraph (e) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(e) The following amendments are approved effective August 29, 1984.

(1) Modifications to Utah regulations, section UMC 816.42 and UMC 817.42, adopted August 26, 1983.

(2) Modifications to Utah regulations section UMC 840.11 and SMC 840.11 adopted October 27, 1983.

(3) Modifications to Utah regulations, section SMC/UMC 843.12 adopted January 27, 1984.

[FR Doc. 84–22900 Filed 8–28–84; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations, California, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

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 final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection 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 Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flool plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Lompoc (city), Santa Barbara County (FEMA-6599)	Santa Ynez River	100 feet upstream of center of State Highway 1	*86
		San Miguelito Creek	Intersection of West Ocean Avenue and North "O" Street.	#2
		East-West Channel	400 feet southeast of the intersection of Central Avenue and North "O" Street.	*75

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Department of Public Works, 100 Civic Center Plaza, Lompoc, California.				
Connecticut	Brooklyn, town, Windham County (FEMA Docket No. 6599).	Quinebaug River	Downstream corporate limits	*133
			Confluence of Pine Brook	*146
			Upstream of second upstream Breached Dam	*156
			Approximately 1.15 miles upstream of second upstream Breached Dam.	*165
			Upstream of U.S. Route 6	*194
			Approximately 1.5 miles upstream of U.S. Route 6	*196
			Upstream corporate limits	*201
		Blackwell Brook	Downstream corporate limits	*136
			Upstream of General Putnam Highway	*148
			Upstream of Tatnic Road	*186
			Upstream of Laurel Hill Road	*261
			Approximately 100 feet downstream of Woodward Road.	*320
		Creamery Brook	Confluence with Blackwell Brook	*147
			Upstream of Kapa Road	*191
			Approximately 180 feet upstream of most upstream Private Road.	*234
		Stony Brook	Confluence with Blackwell Brook	*187
			Upstream of U.S. Route 6	*327
			Approximately 900 feet downstream of Appell Road	*347
Maps available for inspection at the Town Clerk's Office, Town Hall, Brooklyn, Connecticut.				
Connecticut	Griswold, town, New London County (FEMA Docket No. 6586).	Quinebaug River	Downstream corporate limits	*77
			Upstream of Connecticut Turnpike	*83
			Most upstream corporate limits	*100
		Pachaug River	Downstream corporate limits	*129
			Upstream of Connecticut Turnpike	*134
			Upstream of Bitgood Road (downstream crossing)	*152
			Downstream of dam located at confluence of Pachaug Pond.	*155
		Pachaug Pond	Entire shoreline within corporate limits	*160
		Glasgo Pond	Entire shoreline within corporate limits	*187
Maps available for inspection at the Building Inspector's Office, 50 School Street, Griswold, Connecticut.				
Connecticut	Killingly, town, Windham County (FEMA Docket No. 6599).	Quinebaug River	Most downstream corporate limits	*146
			Downstream dam (upstream side)	*156
			Downstream corporate limits with Danielson	*169
			Upstream corporate limits with Danielson	*196
			Upstream dam (downstream side)	*206
			Cotton Bridge Street (upstream side)	*213
			Most upstream corporate limits	*219
		Five Mile River	Downstream corporate limits	*224
			Rock Avenue (upstream side)	*229
			Hartford Pike State Route 101 (upstream side)	*234
			State Route 52 South (downstream side)	*254
			Ballouville Road (upstream side)	*324
			Putnam Road (downstream side)	*345
		Whetstone Brook	Confluence with Five Mile River	*230
			Valley Road (upstream side)	*311
			Peeptoad Road (downstream side)	*354
Maps available for inspection at the Town Clerk's Office, Town Hall, 127 Main Street, Killingly, Connecticut.				
Connecticut	Sprague, town, New London County (FEMA Docket No. 6586).	Shetucket River	At confluence of Little River	*65
			Upstream of Occum Dam	*75
			Approximately .68 mile downstream of Scotland Road	*81
			Approximately 525' upstream of Scotland Road	*86
		Little River	Confluence with Shetucket River	*65
			Upstream of dam	*83
			Upstream of CONRAIL	*91
			Approximately .52 mile upstream of State Route 138	*100
		Beaver Brook	At confluence with Shetucket River	*85
			Upstream of Willimantic Road (upstream crossing)	*127
			Corporate limits	*135
Maps available for inspection at the Selectman's Office, 1 Main Street, Sprague, Connecticut.				
Florida	Unincorporated areas of Lee County (Docket No. FEMA-6599).	Orange River	At mouth	*8
			About 1.8 miles upstream of Buckingham Road	*18
		Daughtrey Creek	At mouth	*8
			Just downstream of Bright Road	*15
		Popash Creek	At mouth	*8
			About 0.7 mile upstream of Leetang Drive	*14
		Stroud Creek	At mouth	*8
			About 1.0 mile upstream of Bayshore Road	*17
		Owl Creek	At mouth	*8
			About 600 feet upstream of State Road 31	*21
		Telegraph Creek	At mouth	*8
			About 2.0 miles upstream of North River Road	*16
		Hickey Creek	At mouth	*8
			About 0.5 mile upstream of Bateman Road	*17
		Billy Creek	Just upstream of Palmetto Avenue	*8
			About 780 feet upstream of Glenwood Avenue	*13
		Gulf of Mexico	Along eastern shoreline of Gasparilla Island from Joe Gaspar Drive to Luke Street.	*8
			Along eastern shoreline of Cayo Costa from north end to Primo Island.	*8

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Along eastern shoreline of North Captiva Island at Foster Point.	*8
			Along eastern shoreline of Captiva Island from north end of Buck Key to within 1300 feet of Wulfert Channel.	*8
			From shoreline of Hurricane Bay north northeast to intersection of U.S. Route 41 and County Highway 865 and along the eastern shoreline of Estero Island from Julies Island to Bay Beach Drive.	*11
			Along Imperial River from mouth to Interstate 75	*12
			Along western shoreline of Gasparilla Island from 12th Street to 1st Street.	*12
			Along western shoreline of Gasparilla Island from northern county bountary to 12th Street and from 1st Street to southern tip of island.	*13
			Along western shoreline of Cayo Costa from north end to Captiva Pass.	*14
			Along western shoreline of North Captiva Island	*14
			Along western shoreline of Captiva Island from about 0.5 mile south of Redfish Pass to Blind Pass.	*15
			Along shoreline from intersection of Lazy Way and Estero Boulevard to County Highway 865 bridge over Big Carlos Pass.	*17
			Along shoreline from Mango Street to the intersection of Lazy Way and Estero Boulevard.	*18
			Along shoreline from Bodwitch Point to Mango Street and from Big Carlos Pass to southern county boundary.	*19
		Gasparilla Sound	Cayo Pelau, Devillish Key, and Sandfly Key	*10
		Charlotte Harbor	About 3500 feet west of County Highway 765 bridge over Hog Branch.	*8
			At intersection of Stringfellow Road and Barrachas Road.	*8
			Along shoreline of Pine Island from Big Jim Creek to about 1.3 miles east of north end of Antigua Way.	*11
			Along shoreline from northern county boundary to City of Cape Coral corporate limits.	*12
		Pine Island Sound	Along eastern shoreline of Vseppa Island	*7
			Along western shorelines of Mondongo Island and Patricio Island.	*8
			At intersection of State Road 78 and County Highway 767.	*9
			Along eastern shoreline of Pine Island between Deer Key and Rock Hole.	*9
			Part Island, and Cave Key	*10
			Along western shoreline of Pine Island from Big Jim Creek to York Island.	*11
		Matlacha Pass	About 2.4 miles east on State Road 78 from Matlacha Pass.	*8
			About 500 feet east of the shoreline from State Road 78 to about 2.6 miles south.	*10
		San Carlos Bay	At the intersection of McGregor Boulevard and Coconut Drive.	*10
			Fisherman Key	*11
			Along shoreline from Punta Rassa to Estero Pass	*18
		Estero Bay	Along shoreline from Estero River to about 1500 feet north of west end of Coconut Road.	*11
			Along eastern shoreline of Mound Key	*11
			Along shoreline from Needmore Point to Estero River	*13
			Along shoreline from Coconut Road to about 1.0 mile south of Spring Creek.	*14
		Caloosahatchee River	Just downstream of Chessie System	*8
			At eastern county boundary	*8
			At Shell Point	*10
Maps available for inspection at the Lee County Courthouse, P.O. Box 398, Ft. Myers, Florida.				
Florida	Town of Windermere, Orange County (Docket No. FEMA-6599).	Lake Bessie	Entire shoreline	*103
		Lake Butler	Entire shoreline	*102
		Lake Down	Entire shoreline	*102
Maps available for inspection at the Town Hall, Windermere, Florida.				
Georgia	City of Berkeley Lake, Gwinnett County (Docket No. FEMA-6599).	Chattahoochee River	Within community	*898
Maps available for inspection at the City Hall, 4040 Berkeley Lake Road, Duluth, Georgia.				
Idaho	Ada County (unincorporated areas), FEMA-6592	Boise River	25 feet upstream of centerline of crossing of Linder Road.	*2,516
			Intersection of Demeyer Road and Kent Lane	*2,616
		South Fork Boise River, Eagle Island.	Intersection of Clear Creek Drive and Jueestates Drive	*2,531
		South Fork Boise River, Right Overbank.	100 feet downstream of stream crossing of Linder Road.	*2,516
		Dry Creek	Intersection of Floating Feather Road and Eagle Road	*2,589
		Seaman Gulch	150 feet upstream from stream crossing of Hill Road	*2,647
		Pierce Gulch	Intersection of Hill Road and Pierce Park Lane	#1
			260 feet upstream from stream crossing of Hill Road	*2,653
		Stuart Gulch	At stream crossing of City of Boise corporate limits	*2,800

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Hulls Gulch	At stream crossing of City of Boise corporate limits	*2,869
		Cottonwood Creek	At stream crossing of Shaw Mountain Road	*2,948
		Warm Springs Creek	10 feet downstream of centerline of stream crossing of Barber Road.	*2,829
		Maynard Gulch	60 feet upstream from stream crossing of County Highway 21.	*2,842
		Highland Gulch	160 feet upstream from stream crossing of County Highway 21.	*2,833
		Tenmile Creek	180 feet upstream from stream crossing of Hubbard Road.	*2,758
		Tenmile Creek Creek Overbank	100 feet southeast of intersection of Columbia Road and Cloverland Road.	*2,736
		Polecat Gulch	Intersection of Collister Driver and Outlook Avenue	#2
Maps available for inspection at the Engineering Department, 650 Main Street, Boise, Idaho.				
Illinois	City of Centralia, Clinton, and Marion Counties (Docket No. FEMA-6599).	Raccoon Creek	About 450 feet downstream of Raccoon Dam	*471
		Crooked Creek	About 1.2 miles upstream of Southern Railway	*455
			At confluence of Raccoon Creek	*471
		Raccoon Lake	About 5,000 feet upstream of Raccoon Dam	*481
		Sewer Creek	About 0.09 mile upstream of Brookside Avenue	*478
			Just downstream of South Hickory Street	*482
Maps available for inspection at City Hall, 222 S. Poplar Street, P.O. Box 569, Centralia, Illinois 62801.				
Illinois	Village of Crossville, White County (Docket No. FEMA-6599).	Elliot Creek	About 1,300 feet downstream of West Main Street	*391
			About 350 feet upstream of South State Street	*398
		Center Tributary	Mouth at Elliot Creek	*391
			About 350 feet upstream of State Route 1	*388
		North Tributary	About 700 feet downstream of Rawlison Road	*392
			About 130 feet upstream of Rawlison Road	*395
Maps available for inspection at the Village Water and Gas Department, Crossville, Illinois.				
Illinois	Village of Elkville, Jackson County (Docket No. FEMA-6599).	South Fork	About 1,400 feet downstream of Sixth Street	*383
			About 1,100 feet upstream of Board Street	*401
		North Fork	About 300 feet downstream of Eighth Street	*388
			Just downstream of U.S. Route 51	*398
		South Fork Tributary	At mouth	*394
			About 800 feet upstream of mouth	*396
Maps available for inspection at the Community Building Reading Center, 4th and Board Streets, Elkville, Illinois.				
Illinois	Unincorporated areas of Jasper County (Docket No. FEMA-6599).	Embarras River	About 4.9 miles downstream of County Highway 10	*456
			About 1.4 miles upstream of County Highway 13	*515
Maps available for inspection at the Jasper County Clerk's Office, Jasper County Courthouse, 100 West Jourdan, Newton, Illinois.				
Illinois	City of Lawrenceville, Lawrence County (Docket No. FEMA-6599).	Embarras River	About 1,700 feet downstream of U.S. Route 50 (Business).	*429
			About 2,400 feet upstream of State Route 1	*433
Maps available for inspection at the Clerk's Office, City Hall, 700 E. State Street, Lawrenceville, Illinois.				
Illinois	City of Morris, Grundy County (Docket No. FEMA-6599).	Illinois River	Within community	*503
		Nettle Creek	Mouth at Illinois River	*503
			About 1.15 miles upstream of Ottawa Street	*506
Maps available for inspection at the City Clerk's Office, City Hall, 320 Wauponsee Street, Morris, Illinois.				
Illinois	Village of North Utica, La Salle County (Docket No. FEMA-6599).	Illinois River	About 0.45 mile downstream of State Route 178	*464
			About 0.5 mile upstream of State Route 178	*465
		Clark Run Creek	At mouth	*465
			Just downstream of county road (at northern corporate limits).	*499
Maps available for inspection at the Village Hall, 255 Mill Street, Utica, Illinois.				
Illinois	Village of Russellville, Lawrence County (Docket No. FEMA-6599).	Wabash River	At downstream corporate limits	*432
			At upstream corporate limits	*433
Maps available for inspection at the Clerk's Office, Lawrenceville, Illinois				
Indiana	Town of Milford, Decatur County (Docket No. FEMA-6599).	Clifty Creek	Just downstream of Spring Street	*802
			Approximately 1,800 feet upstream of Spring Street	*807
Maps available for inspection at the Town Hall, R.R. No. 3, Greensburg, Indiana.				
Indiana	Town of St. Paul, Decatur, and Shelby Counties (Docket No. FEMA-6599.	Flatrock River	About 500 feet downstream of road 700 West	*789
			About 400 feet upstream of road 700 West	*791
Maps available for inspection at the Town Hall, R.R. No. 1, St. Paul, Indiana.				
Indiana	City of Vincennes, Knox County (Docket No. FEMA-6599).	Wabash River	About 0.2 mile downstream of Vigo Street	*425
			About 1.3 miles upstream of Chessie System	*427

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Knox County Courthouse, 7th and Busseron Streets, Vincennes, Indiana.				
Indiana	Town of West Harrison, Dearborn County (Docket No. FEMA-6599).	Whitewater River	About 0.81 mile upstream of Indiana-Ohio State boundary.	*515
			About 1.9 miles upstream of Indiana-Ohio State boundary.	*518
Maps available for inspection at the Town Hall, 213 South State Street, West Harrision, Indiana.				
Iowa	City of Camanche, Clinton County (Docket No. FEMA-6599).	Mississippi River	Southern corporate limit (just downstream of Swan Island).	*586
			Northern corporate limit	*588
Maps available for inspection at City Hall, 917 Third Street, Camanche, Iowa.				
Kansas	City of Oberlin Decatur County (Docket No. FEMA-6599).	Sappa Creek	Just upstream of County Road	*2,555
			Just upstream of U.S. Highway 83	*2,561
Maps available for inspection at City Hall, 107 West Commercial Street, Oberlin, Kansas.				
Maine	Andover, town, Oxford County (FEMA Docket No. 6586).	Ellis River	Downstream corporate limits	*633
			Confluence of Gardner Brook	*636
			Lovejoy Covered Bridge (upstream side)	*643
			Confluence of West Branch Ellis River	*647
			East Andover Road (upstream side)	*661
		West Branch Ellis River	Confluence with Ellis River	*647
			State Route 120 (upstream side)	*660
			At State Route 5	*678
			Approximately 1 mile upstream of State Route 5	*711
			Access Road (upstream side)	*755
			Approximately 1,720 feet upstream of confluence of Stony Brook.	*799
Maps available for inspection at the Planning Board, Andover, Maine.				
Maine	Freeport, town, Cumberland County (FEMA Docket No. 6599).	Casco Bay	Shoreline at south end of Fogg Point, 1,000 feet east of Fogg Point Road extended.	*13
			Shoreline at mouth of Cousins River, at Lambert Road extended.	*10
			East shoreline of Cousins River, at crossing of northbound lane of I-95.	*10
			Entire shoreline, east side of Stockbridge Point	*15
			Shoreline at south end of Wolf Neck, at Wolf Neck Road extended.	*15
			Shoreline on west side of Flying Point Neck, at west end of Johns Point.	*10
			Shoreline of entire southeast shore of Bustin's Island	*13
			Shoreline of entire northwest shore of Bustin's Island	*10
		Maquoit Bay	Shoreline of east shore of Flying Point Neck, at Byram Avenue extended.	*15
			Shoreline along entire southeast shord of Little Flying Point.	*12
			West shore of Maquoit Bay, shoreline at Freeport-Brunswick Town boundary.	*13
		Harraseeket River	Entire shoreline of Spar Cove	*10
			Shoreline at Cove Road extended	*10
			Shoreline of Little River at crossing of Burnett Road	*11
Maps available for inspection at Town Offices, Municipal Building, Freeport, Maine.				
Michigan	Township of Algoma, Kent County (Docket No. FEMA-6599).	Rogue River	Approximately 4,500 feet downstream of 12 Mile Road	*699
			Approximately 1,000 feet upstream of Algoma Avenue	*718
			Just downstream of Division Avenue	*731
Maps available for inspection at the Township Clerk's Office, Township of Algoma, 10531 Algoma Avenue, Rockford, Michigan.				
Michigan	Village of Bingham Farms, Oakland County (Docket No. FEMA-6527).	Main Branch-River Rouge	Downstream corporate limit	*661
			Upstream corporate limit	*665
		Franklin Branch-River Rogue	Downstream corporate limit	*674
			Just downstream of Telegraph Road	*711
Maps available for inspection at the Village President's Office, Suite 448, 30400 Telegraph Road, Bingham Farms, Michigan.				
Michigan	Township of Blackman, Jackson County (Docket No. FEMA-6599).	Grand River	About 1.6 miles downstream of confluence of Portage River.	*910
			About 900 feet upstream of Interstate 94	*919
		Portage River	Mouth at Grand River	*911
			About 4,000 feet upstream of State Prison Farm Bridge.	*913
Maps available for inspection at the Supervisor's Office, Blackman Township Hall, 1996 Parnall Road, Jackson County, Michigan.				
Michigan	Township of Sparta, Kent County (Docket No. FEMA-6599).	Rogue River	Just upstream of Division Avenue	*731
			Just downstream of 16 Mile Road	*755
Maps available for inspection at the Township Clerk's Office, Township of Sparta, 160 East Division, Sparta, Michigan.				
Michigan	City of Westland, Wayne County (Docket No. FEMA-6599).	Tonquish Creek	At mouth at Middle River Rouge	*632
			About 3,000 feet upstream of John Hix Road	*660
		Willow Creek	At mouth at Tonquish Creek	*654
			About 2,550 feet upstream of Chessie System	*667

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Planning Director's Office, City Hall, 36601 Ford Road, Westland, Michigan.				
Missouri	Unincorporated areas of Callaway County (Docket No. FEMA-6521).	Stinson Creek	About 1.2 miles downstream of confluence of Smith Branch.	*685
			At City of Fulton downstream corporate limits (about 1,800 feet downstream of confluence of Smith Branch).	*692
			About 1,800 feet upstream of U.S. Highway 54	*770
		Big Hollow Creek	About 0.9 mile downstream of Cote Sans Dessein Road.	*768
			About 800 feet downstream of Cote Sans Dessein Road.	*780
			About 1,400 feet upstream of U.S. Highway 54	*804
		Missouri River	At downstream county boundary	*529
			At upstream county boundary	*562
Maps available for inspection at the County Clerk's Office, Callaway County Courthouse, Fulton, Missouri.				
Missouri	Town of Carrollton, Carroll County (Docket No. FEMA-6599).	Missouri River	At River Mile 285.9	*669
			At River Mile 287.0	*670
Maps available for inspection at the Town Hall, Carrollton, Missouri.				
Missouri	City of Gasconade, Gasconade County (Docket No. FEMA-6592).	Missouri River	At the confluence fo the Gasconade River	*524
			About 4,800 feet upstream of the confluence of the Gasconade River.	*525
Maps available for inspection at City Hall, Gasconade, Missouri.				
Missouri	City of Sikeston, Scott and New Madrid Counties (Docket No. FEMA-6599).	Shallow flooding (overflow from St. Johns Ditch).	About 0.1 mile downstream of U.S. Highway 60	*306
			About 1.8 miles upstream of Missouri Pacific Railroad	*311
		Shallow flooding (overflow from Lateral C).	About 0.4 mile downstream of U.S. Highawy 60	*306
			Just downstream of Malone Avenue	*310
		Shallow flooding (overflow from Ditch No. 4).	Just downstream of Missouri Pacific Railroad	*301
			Just downstream of Salcedo Road	*303
		Shallow flooding (overflow from North Cut Ditch).	Southeast of Interstate 55 and U.S. Highway 60 interchange.	*307
			Northeast of Interstate 55 and U.S. Highway 60 interchange.	*309
Maps available for inspection at City Hall, Sikeston, Missouri.				
Missouri	City of Wright, city, Warren County (Docket No. FEMA-6333).	Peruque Creek	About 8,200 feet downstream of Count Highway F	*671
			Just upstream of County Highway F	*696
			About 2,300 feet upstream of County Highway F	*702
Maps available for inspection at the City Hall, P.O. Box 436, Wright City, Missouri.				
New York	Addison, town, Steuben County (FEMA Docket No. 6568).	Canisteo River	Downstream corporate limits	*977
			Downstream corporate limits between Town and Village of Addison.	*982
			Upstream corporate limits between Town and Village of Addison.	*991
			Upstream corporate limits	*994
		Tuscarora Creek	Downstream corporate limits	*996
			Approximately 350 feet upstream of upstream corporate limits.	*1,000
Maps available for inspection at the residence of the Town Clerk, Ms. Kathy Bliss, Rathman Road, Box 23, Addison, New York.				
New York	Amity, town, Allegany County (FEMA Docket No. 6560).	Genesee River	Downstream corporate limits	*1,332
			Confluence of Van Campen Creek	*1,340
			Downstream corporate limits of Village of Belmont	*1,364
			Upstream corporate limits of Village of Belmont	*1,387
			Upstream side Corbin Hill Road	*1,398
			Upstream corporate limits	*1,427
		Phillips Creek	Corporate limits to Village of Belmont	*1,382
			Upstream side Old Whithey Road	*1,529
			Upstream side Irish Settlement Road	*1,621
		Plum Bottom Creek	Corporate limits of Village of Belmont	*1,387
			Upstream side Hood Road	*1,394
			Upstream side CONRAIL	*1,403
			Upstream side Ingraham Road	*1,430
			8,810 feet upstream Ingraham Road	*1,568
		Van Campen Creek	Confluence with Genesee River	*1,340
			Upstream side State Route 19	*1,348
			Upstream corporate limits	*1,371
Maps available for inspection at the Amity Town Hall, One Shuyler Street, Belmont, New York.				
New York	Batavia, town Genesee County (FEMA Docket No. 6599).	Tonawanda Creek	Approximately 110 feet downstream of downstream corporate limits.	*861
			Powers (upstream side)	*868
			West Main Street (upstream side)	*877
			City of Batavia downstream corporate limits	*887
			City of Batavia upstream corporate limits	*896
Maps available for inspection at Town Hall, 4165 West Main Street, Batavia, New York.				
New York	Belmont, village, Allegany County (FEMA Docket No. 6568).	Genesee River	Downstream corporate limits	*1,364
			At CONRAIL	1,373
			Upsteam State Route 19/Schuyler Street	*1,380
			Upstream corporate limits	*1,388

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Phillips Creek	Confluence with Genesee River	*1,373
			Upstream corporate limits	*1,382
		Plum Bottom Creek	Confluence with Genesee River	*1,380
			Upstream John Street	*1,384
			Upstream corporate limits	*1,388
Maps available for inspection at the Village Hall, 1 Schuyler Street, Belmont, New York.				
New York	Cameron, town, Steuben County (Docket No. FEMA-6568).	Canisteo River	Downstream corporate limits	*1,033
			Upstream second crossing of County Route 432	*1,059
			Upstream corporate limits	*1,069
Maps available for inspection at the residence of Dorothy O'Brien, Town Clerk, Depot Street, Cameron, New York.				
New York	Clyde, village, Wayne County (FEMA Docket No. 6599).	Unnamed Tributary	500 feet downstream of Ford Street	*391
			105 feet upstream of Ford Street	*394
			Approximately .54 mile upstream of Wayne Avenue	*397
		Diversion Channel	At corporate limits	*391
			140 feet upstream of Dezeng Street	*396
			600 feet upstream of Access Road	*397
Maps available for inspection at the Clyde Municipal Building, South Park Street, Clyde, New York.				
New York	Friendship, town, Allegany County (FEMA Docket No. 6574).	Van Campen Creek Creek	Downstream corporate limits	*1,371
			Upstream Private Road	*1,456
			Upstream Corbin Hill Road	*1,485
			Confluence with South Branch Van Campen Creek and West Branch Van Campen Creek.	*1,499
		North Branch Van Campen Creek	Confluence with Van Campen Creek	*1,497
			Upstream CONRAIL	*1,532
			Approximately 1,315 feet upstream of CONRAIL	*1,557
		South Branch Van Campen Creek	Confluence with Van Campen Creek	1,499
			Upstream State Route 275	*1,551
			Upstream Times Square Road	*1,590
			Upstream corporate limits	*1,606
		West Branch Van Campen Creek	Confluence with Van Campen Creek	*1,499
			Upstream State Route 275	*1,520
			Upstream Steenrod Road	*1,586
			Upstream Ruckles Road	*1,640
			Upstream corporate limits	*1,660
Maps available for inspection at the Town Hall, 50 West Main Street, Friendship, New York.				
New York	Hanover, town, Chautauqua County (FEMA Docket No. 6550).	Cattaraugus Creek	Confluence with Lake Erie	*579
			Approximately 1,500 feet upstream of State Route 5 and U.S. Route 20.	*591
		Halfway Brook	Confluence with Lake Erie	*579
			Upstream Blading Road	*628
			Approximately 5,900 feet upstream of Blading Road	*747
		Silver Creek	Approximately 700 feet downstream of King Road	*858
			Upstream first crossing of Alleghany Road	*869
			Approximately 3,200 feet upstream of second crossing of Alleghany Road.	*961
		Walnut Creek	Downstream corporate limits	*908
			Upstream Loana Road	*944
			Upstream corporate limits	*1,024
Maps available for inspection at the Hanover Town Hall, 239 Central Avenue, Silver Creek, New York.				
New York	Harrietstown, town, Franklin County (FEMA Docket No. 6449).	Saranac River	Entire shoreline within community	*1,537
Maps available for inspection at the Town Hall, 30 Main Street, Saranac Lake, New York.				
New York	Hume, town, Allegany County (FEMA Docket No. 6586).	Wiscoy Creek	Confluence with Genesee River	*1,147
			Upstream State Route 19A	*1,150
			Approximately 250 feet upstream Tenafly Road	*1,179
		Genesee River	Confluence of Rush Creek	*1,174
			Upstream Snyder Hill Road	*1,175
			Approximately 6,000 feet upstream of Snyder Hill Road.	*1,179
		Rush Creek	Confluence with Genesee River	*1,174
			Upstream Snyder Hill Road	*1,193
Maps available for inspection at the Town Hall, Fillmore, New York.				
New York	Millerton, Village, Dutchess County (FEMA Docket No. 6576).	Webatuck Creek	At downstream corporate limits	*671
			Upstream of Mill Street	*679
			Upstream of U.S. Route 44 (Main Street)	*687
			Upstream of dam	*700
			Upstream of Abandoned Railroad bridge at upstream corporate limits.	*712
		Kelsey Brook	Confluence with Webatuck Creek	*679
			Upstream corporate limits	*706
Maps available for inspection at the Village Hall, Millerton, New York.				
New York	Pawling, town, Dutchess County (FEMA Docket No. 6586).	East Branch Croton River	Downstream corporate limits	*434
			Upstream CONRAIL (third crossing)	*441
			Upstream corproate limits	*443

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tributary to the East Branch Croton River.	Downstream corporate limits	*612
			Upstream of CONRAIL (first crossing)	*676
			Upstream of 2nd upstream dam	*688
			Upstream of CONRAIL (second crossing)	*699
			Upstream of CONRAIL (third crossing)	*720
		Swamp River	Downstream corporate limits	*423
			Downstream Swamp Road	*429
			Upstream corporate limits	*433
		Whaley Lake Stream	Downstream corporate limits	*657
			Upstream State Route 292	*689
			Upstream of CONRAIL	*699
			Upstream of dam	*711
Maps available for inspection at the Town Hall, 160 Charles Colman Boulevard, Pawling, New York.				
New York	Portage, town, Livingston County (FEMA Docket No. 6560).	Genesee River	Downstream Main Street	*1,115
			At Whiskey bridge (downstream of bridge on map)	*1,120
		Keshequa Creek	Downstream corporate limits	*968
			Upstream Parker Road	*1,029
			Approximately 1,530 feet upstream of Parker Road	*1,043
Maps available for inspection at the residence of the Town Clerk, Oleath Kemp, 1153 East Main Street, Hunt, New York.				
New York	Richmond, town, Ontario County (FEMA Docket No. 6568).	Hemlock Outlet	Confluence with Honeoye Creek	*791
			South Road (upstream side)	*794
			Pierpont Road (upstream side)	*799
			Reed Road (upstream side)	*837
			Approximately 5,000 feet upstream of Reed Road	*863
			Upstream corporate limits	*879
		Mill Creek	Confluence with Honeoye Creek	*806
			East Lake Road (upstream side)	*844
			Approximately 2,800 feet upstream of spillway	*878
		Honeoye Lake	Entire shoreline within corporate limits	*806
Maps available for inspection at the Town Hall, Route 20A, Honeoye, New York.				
New York	Rome, city, Oneida County (FEMA Docket No. 6586)	Mohawk River	Downstream corporate limits	*420
			Upstream of New York State Barge Canal Weir	*426
			Upstream of East Whitesboro Street	*426
			Upstream of East Bloomfield Street	*447
			Upstream of East Chestnut Street	*458
			Upstream of Wright Settlement Road	*466
			Upstream of Golf Course Road	*490
		Fish Creek	Downstream corporate limits	*386
			Upstream of State Route 49	*389
			Approximately 2.1 miles upstream of State Route 49	*396
			At upstream corporate limits	*402
		Wood Creek	Approximately 750 feet downstream of Fort Bull Road	*424
			Upstream of CONRAIL	*431
			Upstream of West Court Street	*445
			Upstream of Union Street	*462
			Upstream of Merrick Street	*469
			Approximately .71 mile upstream of Halpin Road	*481
Maps available for inspection at the City Engineer's Office, City Hall, Rome, New York.				
New York	Shandaken, town, Ulster County, (FEMA Docket No. 6599).	Esopus Creek	Downstream corporate limits	*662
			Approximately .82 mile downstream of State Route 28 (first crossing).	*682
			State Route 28 (upstream side) (first crossing)	*702
			Approximately .94 mile upstream of State Route 28 (first crossing).	*714
			Approximately 1.89 miles upstream of State Route 28 (first crossing).	*742
			Approximately 1.2 miles downstream of County Route 155.	*775
			County Route 155 (upstream side)	*818
			Woodland Valley Road (upstream side)	*864
			Approximately .94 mile upstream of Woodland Valley Road.	*899
			Approximately 1.89 miles upstream of Woodland Valley Road.	*931
			Approximately 2.84 miles upstream of Woodland Valley Road.	*960
			Fox Hollow Road (upstream side)	*1,024
			State Route 28 (upstream side) (third crossing)	*1,063
Maps available for inspection at the Town Hall, Route 28, Shandaken, New York.				
North Dakota	Wiser (township), Cass County (FEMA-6599)	Red River of the North	50 feet upstream from center of County Road No. 34	*881
Maps available for inspection at Wiser Township Supervisor's Home, Argusville, North Dakota.				
Ohio	City of Circleville, Pickaway County, (Docket No. FEMA-6599).	Hargus Creek	Just downstream of island Road	*671
			Just downstream of Farm Road	*690
		Hominy Creek	At confluence with Hargus Creek	*685
			About 4,100 feet upstream of Abandoned Railroad Bridge.	*702

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		McHenry Ditch	At confluence with Hargus Creek	*675
			About 200 feet upstream of Nicholas Drive	*697
Maps available for inspection at the Circleville Herald, P.O. Box 498, Circleville, Ohio 43113.				
Ohio	Village of De Graff, Logan County (Docket No. FEMA-6599).	Brokengehalas Creek	About 1,050 feet downstream of Mill Street	*974
			About 1,600 feet upstream of Miami Street	*991
Maps available for inspection at the Municipal Building, 107 South Main Street, De Graff, Ohio.				
Ohio	Village of Elmwood Place, Hamilton County (Docket No. FEMA-6599).	Mill Creek	About 1,225 feet downstream of Center Hill Road	*510
			About 2,650 feet upstream of Center Hill Road	*513
Maps available for inspection at the Municipal Building, 6118 Vine Street, Elmwood, Ohio.				
Ohio	City of Streetsboro, Portage County (Docket No. FEMA-6599).	Cuyahoga River	About 0.58 mile downstream of State Route 14	*1,055
			About 0.07 mile upstream of the confluence of Yoder Ditch.	*1,070
Maps available for inspection at the Service Director's Office, City Hall, 2094 State Route 303, Streetsboro, Ohio.				
Oregon	Corvallis (city), Benton County (FEMA-6599)	Willamette River	Upstream edge of state Highway 34 Eastbound Bridge	*220
		Marys River	25 feet west along Tunison Avenue from the intersection of Tunison Avenue and the Southern Pacific Railroad.	*224
		Millrace	Intersection of 3rd Street (State Highway 99 West) and Lilly Avenue.	*222
			Intersection of Twin Oaks Circle and SW Pleasant Place.	#1
		Dixon Creek	Upstream edge of 10th Street	*223
		South Fork Dixon Creek	Approximately 50 feet upstream of confluence with North Fork Dixon Creek.	*268
		Squaw Creek	Upstream edge of 35th Street	*232
		Oak Creek	Upstream edge of 30th Street	*226
		Stewart Slough	Upstream edge of Conifer Boulevard	*216
Maps available for inspection at Drainage Department, 501 SW Madison, Corvallis, Oregon.				
Oregon	Klamath County (unincorporated areas) (FEMA-6599)	Sprague River Near Braymill	100 feet upstream of the centerline of Sprague River Road.	*4,261
		Sprague River Near Lone Pine	100 feet upstream of the centerline of Skeen Ranch Road.	*4,286
		Sprague River Near Council Butte	Intersection of Jackson Street and Deschutes Street	*4,302
		Williamson River	Intersection of River and U.S. Highway 97	*4,153
		Klamath River	Intersection of U.S. Highway 97 and Joe Wright Road	*4,085
		Fourmile Creek	50 feet upstream of the centerline of Rocky Point Road.	*4,144
		Upper Klamath Lake	500 feet west of the intersection of Front Street and Bismark Street (which is located in the City of Klamath Falls.	*4,142
Maps available for inspection at Planning Department, 360 Main Street, Klamath Falls, Oregon.				
Pennsylvania	West Caln, Township, Chester County (FEMA Docket No. 6592).	Birch Run	Approximately 2,330 feet downstream of confluence of Tributary to Birch Run.	*549
			Martins Corner Road (upstream side)	*568
			Approximately 50 feet upstream of South Martins Corner Road.	*613
		West Branch Brandywine Creek	Downstream corporate limits	*364
			Approximately 4,000 feet upstream of downstream corporate limits.	*394
			Hibernia Road (upstream side)	*443
		Tributary to West Branch Brandywine Creek.	Downstream corporate limits	*589
			Access Road (upstream side)	*600
			Telegraph Road (upstream side)	*626
			Approximately 760 feet upstream of Telegraph Road	*643
		Indian Spring Run	Downstream corporate limits	*485
			Compass Road (upstream side)	*507
			Cambridge Road (upstream side)	*531
			Approximately 3,700 feet upstream of Cambridge Road.	*584
		Tributary to Indian Spring Run	Downstream corporate limits	*485
			Compass Road (upstream side)	*507
			Approximately 2,400 feet upstream of Compass Road	*531
Maps available for inspection at the Township Building, West Caln, Pennsylvania.				
Tennessee	Unincorporated areas of Unicoi County (FEMA-6581)	Buffalo Creek	Just downstream of Castile Road	*1,700
			Just upstream of U.S. Highway 23 and 19W and State Highway 36.	*1,899
		Scioto Creeek	Just downstream of Forest Service Road	*1,928
			Just downstream of of State Highway 107	*1,963
		Nolichucky River	Just downstream of U.S. Highway 23 and 19W By-pass.	*1,645
			Just downstream of U.S. Highway 23 and 19W	*1,652
			Approximately 100 feet upstream of U.S. Highway 23 and 19W and Highway 36.	*1,680
		North Indian Creek	Just downstream of State Highway 81	*1,647
			Just upstream of U.S. Highway 23 and 19W By-Pass (upstream crossing).	*1,675

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 100 feet upstream of U.S. Highway 23 and 19W.	*1,920
		South Indian Creek	Approximately 200 feet downstream of County Road (County Road is located approximately 1,300 feet above mouth).	*1,645
			Just downstream of Unnamed Road (approximately 500 feet from the intersection of Mill Road and U.S. Highway 19W and 23).	*1,785
		Martin Creek	Just upstream of Caroline Avenue	*1,685
			Just upstream of U.S. Highway 23 and 19W	*1,725
		Odom Branch	Just upstream of Private Drive (approximately 700 feet upstream of mouth).	*1,855
		Rock Creek	Just upstream of U.S. Highway 23 and 19W	*1,760
Maps available for inspection at Unicoi County Courthouse, Main Street, Erwin, Tennessee 37650.				
Texas	City of Cities Municipal Utility District No. 2, Fort Bend County (FEMA-6592).	Oyster Creek	Just upstream of the Eastern corporate limits (approximately 3,700 feet upstream of Blair Road).	*70
			Just downstream of the Western corporate limits (approximately 100 feet downstream of Missouri Pacific Railroad).	*72
Maps available for inspection at City of Cities Municipal Utility District Office, 518 Sugarcreek Boulevard, Sugarland, Texas 77478.				
Texas	City of Magnolia, Montgomery County (FEMA-6599)	Arnold Branch	Approximately 700 feet downstream of FM 1,488	*241
		Mill Creek Tributary No. 4	Approximately 150 feet downstream of Magnolia-Conroe Street.	*279
		Sulphur Branch	Just downstream of Missouri Pacific Railroad	*256
			Approximately 500 feet upstream of Missouri Pacific Railroad.	*260
Maps available for inspection at City Council Chambers, City Hall, 510 Magnolia Boulevard, Magnolia, Texas 77355.				
Texas	Town of Woodloch, Montgomery County (FEMA-6599).	West Fork, San Jacinto River	At South Woodloch Drive (Extended)	*114
Maps available for inspection at the Home of Mayor Mary Gilbert or the Home of Councilperson Mary Baker, Woodloch, Texas 77302.				
Vermont	Barre, city, Washington County (FEMA Docket No. 6599).	Stevens Branch	Downstream corporate limits	*565
			Willey Street (upstream side)	*587
			Blackwell Street (upstream side)	*598
			Prospect Street (upstream side)	*607
			Upstream Dam (upstream side)	*653
			Upstream corporate limits	*662
Maps available for inspection at the City Clerk's Office, City Hall, Barre, Vermont.				
Vermont	Middlebury, town, Addison County (FEMA Docket No. 6581).	Otter Creek	Approximately 460 feet downstream of Pulp Mill bridge	*320
			State Route 30 (upstream side)	*346
			Village of Middlebury upstream corporate limits	*350
			Upstream corporate limits	*351
		Middlebury River	Confluence with Otter Creek	*351
			Shard Villa Road (upstream side)	*356
			First upstream corporate limits	*360
			Second upstream corporate limits	*363
			U.S. Route 7 (upstream side)	*376
			Grist Mill Road (upstream side)	*445
			Approximately 130 feet downstream of High Plains Road.	*506
Maps available for inspection at the Office of Fred Dunnington, Administrative Office of Middlebury, Municipal Building, Middlebury, Vermont.				
Vermont	Westminster, town, Windham County (FEMA Docket No. 6557).	Connecticut River	At downstream corporate limits	*241
			Upstream of State Route 123	*249
			Upstream corporate limits	*254
Maps available for inspection at the Town Hall, Westminster, Vermont.				
Virginia	Virginia Beach, city, Independent City (FEMA Docket No. 6599).	Lake Smith Tributary	Confluence with Lake Smith	*8
			Approximately 1.4 miles upstream of confluence with Lake Smith.	*15
		Lake Pembroke	Confluence with Western Branch Lynnhaven River	*8
			Upstream of Witch Duck Road	*10
		Thalia Creek	Upstream side Norfolk Southern Railroad	*8
			Upstream side of South Plaza Trail	*9
		Left Bank Tributary Thalia Creek	Confluence with Thalia Creek	*8
			Downstream side Windsor Oaks Boulevard	*12
		Holland Road Tributary Thalia Creek.	Confluence with Left Bank Tributary Thalia Creek	*12
			Upstream side Timberlake Drive	*13
		Kings Point System	Confluence with Western Branch Lynnhaven River	*8
			Downstream of Alcott Road	*10
		Pine Tree Branch	Confluence with Eastern Branch Lynnhaven River	*8
			Approximately .5 mile upstream of Eastbound Lane Virginia Beach Boulevard.	*8
		Canal No. 2—London Bridge Creek	Upstream side Westbound Lane Virginia Beach Boulevard.	*6
			Upstream side South Lynnhaven Road	*9
			North side Lynnhaven Parkway	*9
		Canal No. 2—West Neck Creek	Upstream side West Neck Road	*5
			Upstream side Indian River Road	*5
			Upstream side Princess Anne Road	*7
			Confluence of Canal No. 4	*9

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			South side of Lynnhaven Parkway	*10
		Holland Road Corridor System	Confluence with Green Run Canal	*10
			Approximately 1,200 feet upstream of Chimney Hill Parkway.	*9
		Green Run Canal	Confluence with Canal No. 2 West Neck Creek	*10
			Approximately .5 mile upstream of Rosemont Road	*11
		Mill Dam Creek	Confluence with Broad Bay	*7
			Downstream side Old Donation Parkway	*15
		Canal No. 1 North	Upstream side Virginia Beach Toll Road	*7
			Upstream Norfolk Southern Railroad	*9
			Approximately 1 mile upstream of Norfolk Southern Railroad.	*13
		Fox Run Canal	Confluence with Eastern Branch Elizabeth River	*8.5
			Brandywine Drive (downstream side)	*14
		Lake Banbury	Confluence with Eastern Branch Elizabeth River	*9
			Approximately 950 feet upstream of Northbound lane Military Highway.	*16
		Cedar Hill Canal	Confluence with Eastern Branch Elizabeth River	*9
			At Providence Road	*8.5
			At Indian River Road	*14
			Downstream side Centerville Turnpike	*17
		Salem Canal	Downstream side Elbow Road	*6
			Upstream side Recreation Road	*9
			Downstream side Providence Road	*10
		Canal No. 4	Confluence with Salem Canal	*5
			Upstream side Salem Road	*7
			Approximately 1.4 miles upstream of Salem Road	*10
			Approximately 2 miles upstream of Salem Road	*11
		Colony Acres Canal	Confluence with Canal No. 2—West Neck Creek	*8
			Approximately .3 mile upstream of London Bridge Road Road.	*13
		Chesapeake Bay	Entire shoreline of Chesapeake Bay within community	*13
			Little Creek at Pretty Lake Road (extended)	*9
		Atlantic Ocean	Entire shoreline of Atlantic Ocean within community	*13
		Eastern Branch Elizabeth River	Military Highway	*9
			Interstate Route 64	*9
			Princess Anne Road	*8.5
		Lake Smith	Entire shoreline	*8
		Lynnhaven River	Lynnfield Drive (extended)	*8
		Lynnhaven Bay	Entire shoreline	*8
		Linkhorn Bays	Entire shoreline	*7
		Broad Bay	Entire shoreline	*7
		Rudee Inlet	Entire shoreline	*9
		Lake Holly	Shoreline south of Southern Boulevard	*8
			Shoreline north of Southern Boulevard	*7
		Back Bay	Entire shoreline within community	*5
		Chubb Lake	Entire shoreline	*8
		Bradford Lake	Entire shoreline within community	*8
		Lake Taylor	Entire shoreline within community	*8.5
Maps available for inspection at City Engineer's Office, Room 345, Operations Building, Virginia Beach, Virginia.				
Washington	Burlington (city) Skagit County FEMA-6586	Skagit River	20 feet upstream from center of Interstate Highway 5	*30
		Overbank Flow Path #1	At center of intersection of Pine Street and Olympia Avenue.	*31
Maps are available for inspection at City Hall, 900 East Fairhaven, Burlington, Washington.				
Washington	La Conner (town) Skagit County FEAM-6599	Skagit River Delta Overbank Flow Path 3.	Intersection of State and North 3rd Streets.	*8
Maps available for inspection at Town Hall, Commercial Avenue, La Conner, Washington.				
Washington	Mount Vernon (city) Skagit County FEMA-6586	Skagit River	50 feet west from center of intersection of Main and Kincaid Streets.	*28
		Shallow Flooding (Ponding)	100 feet northeast from center of intersection of Kimble and Britt Slouth Roads.	*15
		Shallow Flooding (Sheet Flow)	Center of intersection of West Division and Baker Streets.	#3
		Shallow Flooding (Sheet Flow)	20 feet south of intersection of Douglas Street and Blackburn Road.	#2
		Shallow Flooding (Sheet Flow)	Center of intersection of Hazel Street and Cleveland Avenue.	#1
		Deep Ponding	Center of intersection of College Way and Riverside Drive	#30
Maps are available for inspection at City Hall, Mount Vernon, Washington				
West Virginia	Raleigh County (Docket No. FEMA-6592)	New River	Approximately 1.78 miles downstream of confluence of Sewell Branch.	*1,242
			Upstream of confluence of Sewell Branch	*1,261
			Upstream of confluence of Mill Branch	*1,321
			Upstream of confluence of Big Branch	*1,335
		Piney Creek	At confluence of Beaver Creek	*2,089
			At confluence of Whitestick Creek	*2,123
			Upstream of Shriver Avenue (1st upstream crossing)	*2,147
			Upstream of Chessie System bridge (4th upstream crossing).	*2,203
			Upstream of Fitzpatrick Dam	*2,221
			Upstream of confluence of Crab Orchard Creek	*2,231
			Upstream of confluence of Turkey Branch	*2,249
			Upstream of confluence of Soak Creek	*2,263

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Norfolk and Western Railway (1st upstream crossing).	*2,268
			Upstream of confluence of Take In Creek	*2,272
			Upstream of Norfolk and Western Railway (4th upstream crossing).	*2,283
			Upstream of County Route 40	*2,298
			Upstream of County Route 44 (1st upstream crossing)	*2,305
			Approximately 450 feet upstream of Norfolk and Western Railway (6th upstream crossing).	*2,319
		Paint Creek	At downstream County boundary	*1,642
			Upstream of State Route 23	*1,657
			Upstream of confluence of Sand Branch	*1,706
			Upstream of confluence of Davis Branch	*1,788
			Upstream of confluence of Left Hand Fork	*1,806
			Approximately 1.16 miles upstream of confluence of Left Hand Fork.	*1,865
		Beaver Creek	At confluence with Piney creek	*2,089
			Upstream of Blue Jay Road	*2,120
			Upstream of County Route 19-27	*2,165
			Upstream of Blue Jay Road (2nd upstream crossing)	*2,225
			Upstream of Chessie System dam	*2,287
			Approximately 1.46 miles upstream of Chessie System dam.	*2,291
		Little Beaver Creek	At confluence with Beaver Creek	*2,144
			Upstream of State Route 307	*2,175
			Upstream of County Route 22	*2,235
			Upstream of most upstream Access Road	*2,270
		Pinch Creek	Approximately 1.06 miles downstream of County Route 27.	*2,400
			At confluence of Squealing Fork	*2,428
			At confluence of Tributary No. 1 to Pinch Creek	*2,445
			0.66 mile upstream of County Route 28	*2,500
		Crab Orchard Creek	At confluence with Piney Creek	*2,231
			Upstream State Route 16	*2,279
			Approximately .56 mile upstream of confluence of Tributary to Crab Orchard Creek.	*3,321
		Sand Branch	At confluence with Paint Creek	*1,706
			Confluence of North Sand Branch	*1,768
		North Sand Branch	Confluence with Sand Branch	*1,768
			Downstream County Route 6	*1,850
			Approximately 1.25 miles upstream of confluence of Maple Fork.	*2,065
			Approximately 3.18 miles upstream from the confluence of Maple Fork.	*2,281
		Whitestick Creek	Confluence with Piney Creek	*2,123
			Downstream of Beckley corporate limits (1st upstream crossing).	*2,220
			Upstream Chessie System bridge (4th upstream crossing).	*2,273
			Downstream City Avenue	*2,284
			At Mill Road	*2,325
			At Whitestick Avenue	*2,332
			.55 mile upstream County Route 18	*2,353
		Glade Creek	Downstream County Route 31	*2,828
			Upstream of confluence of Farley Creek	*2,866
			At confluence of Oak Creek	*2,870
		Oak Creek	At confluence of Glade Creek	*2,870
			Interstate 77 (upstream side) (1st upstream crossing)	*2,895
			Approximately 0.71 miles upstream Interstate Route 77 (2nd upstream crossing).	*2,919
		Tributary 1 to Pinch Creek	Confluence with Pinch Creek	*2,445
			Approximately 0.34 mile upstream of confluence with Pinch Creek.	*2,450
		Tributary 2 to Pinch Creek	At confluence with Pinch Creek	*2,477
			Approximately 65 feet upstream of County Route 22	*2,510
		Squealing Fork	At confluence with Pinch Creek	*2,428
			Approximately 0.28 mile upstream of confluence with Pinch Creek.	*2,483
		Farley Creek	Just upstream of confluence with Glade Creek	*2,866
			Approximately 1.77 miles upstream confluence with Glade Creek.	*2,905
		Maple Fork	At confluence with North Sand Branch	*1,859
			Approximately 1 mile above confluence with North Sand Branch.	*1,968
			Approximately 2.35 miles upstream of confluence with North Sand Branch.	*2,030
		Tributary to Crab Orchard Creek	Confluence with Crab Orchard Creek	*2,291
			Approximately .64 mile upstream of confluence with Crab Orchard Creek.	*2,393
		Stover Fork	Confluence with Crab Orchard Creek	*2,258
			Approximately 1.86 miles above confluence with Crab Orchard Creek.	*2,365
		Left Hand Fork	Confluence with Paint Creek	*1,806
			Approximately 1.11 miles above confluence with Paint Creek.	*1,980
		Take In Creek	Confluence with Piney Creek	*2,272
			Approximately .74 mile upstream of confluence with Piney Creek.	*2,300
		Lampkin Branch	Confluence with Piney Creek	*2,302

State	City, town, and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 0.51 mile upstream of confluence with Piney Creek.	*2,340
		Laurel Creek	Confluence with Piney Creek	*2,299
			Approximately 0.63 mile upstream of confluence with Piney Creek.	*2,316
		Bowyer Creek	Confluence with Piney Creek	*2,296
			Approximately 1,800 feet upstream of confluence with Piney Creek.	*2,300
		Dixons Branch	Confluence with Paint Creek	*1,655
			Confluence of Right Fork	*1,721
			Approximately 0.38 mile upstream of confluence of Right Fork.	*1,785
		McKinney Branch	Approximately 950 feet upstream confluence with Flat Top Lake.	*2,933
			Approximately 200 feet upstream Interstate Route 77 southbound.	*2,965
			Approximately 1.32 miles upstream from Interstate Route 77 southbound.	*3,007
		Tributary to McKinney Branch	At confluence with McKinney Branch	*2,966
			Approximately 0.42 mile upstream of confluence with McKinney Branch.	*2,979
Maps available for inspection at the Raleigh County Planning and Zoning Office, 1557 Harper Road, Beckley, West Virginia.				
Wisconsin	City of Janesville, Rock County (Docket No. FEMA-6599).	Rock River	About 1.1 miles downstream of confluence of Markham Creek.	*758
			Just upstream of Center Avenue	*766
			Just downstream of Centerway Dam	*770
			Just upstream of Centerway Dam	*775
			About 2.5 miles upstream of Memorial Drive	*777
		Spring Brook	At mouth	*767
			At confluence of Morningside Tributary	*808
		Blackhawk Creek	At confluence with Spring Brook	*808
			Just downstream of U.S. Highway 14	*835
Maps available for inspection at the City Hall, 18 N. Jackson Street, Janesville, Wisconsin.				
Wisconsin	City of Kiel, Manitowoc and Calumet Counties (Docket No. FEMA-6599).	Sheyboygan River	About 750 feet downstream of County Highway AA	*886
			Just downstream of State Highway 32	*888
Maps available for inspection at the City Clerk's Office, City Hall, 621 Sixth Street, Kiel, Wisconsin.				
Wisconsin	City of Wisconsin, Dells, Sauk, and Columbia Counties (Docket No. FEMA-6599).	Wisconsin River	Approximately 2.4 miles downstream of dam	*826
			Just downstream of dam	
			Just upstream of dam	*845
			Approximately 1.2 miles upstream of dam	*848
Maps available for inspection at the Village Clerk's Office, Community Hall, La Crosse Street, Wisconsin Dells, Wisconsin.				

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City, town and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Amherst, town of, Erie County (Docket No. FEMA-6278).	Black Creek	At confluence with Ransom Creek	*583
			At upstream corporate limits	*586
		Ellicott Creek	At downstream corporate limits	*574
			Upstream of North Forest Road	*596
			At 1st crossing of corporate limits	*608
			At 2nd crossing of upstream corporate limits	*675
			Downstream of Youngs Road	*689
			Ponding area west of Sweet Home Road between the old railroad grade, Niagara Falls Boulevard and Sunset Court.	*576
			Ponding area north of the old railroad grade between Sweet Home Road, Tonawanda Creek Road and Campbell Boulevard.	*578
		Got Creek	At confluence with Ransom Creek	*583
			At upstream corporate limits	*591
		Ransom Creek	At confluence with Tonawanda Creek	*576
			At upstream corporate limits	*584
			Ponding area south of Scholles Road between Hopkins Road, French Road and Campbell Boulevard.	*580
			Ponding area south of French Road between Dodge and Hopkins Roads.	*582
		Tonawanda	Approximately 1,900 feet downstream of confluence of Bull Creek.	*573
			At upstream corporate limits	*582

State	City, town and county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Offices of the Town Clerk and the Town Planner, Town Hall, Williamsville, New York; at the Town Engineering Department, 1100 North Forest Road, Amherst, New York, and at the Town Highway Department, 1042 North Forest Road, Amherst, New York.				
New York	Canisteo, Town of, Steuben County (Docket No. FEMA-6568).	Canisteo River	Downstream corporate limits	*1,068
			Upstream Catatunk Road	*1,098
			Upstream corporate limits	*1,131
Maps available for inspection at the Town Hall, Canisteo, New York.				
Texas	City of Oak Ridge North, Montgomery County (FEMA-6574).	Sam Bell Gully	Just downstream of Ridgewood Road	*130
			Just upstream of Robinson Road	*133
Maps available for inspection at City Secretary's Office, City Hall, 27506 Interstate 45, Oak Ridge North, Texas 77380.				
Wisconsin	City of Eau Claire, Eau Claire and Chippewa County (Docket No. FEMA-6526).	Chippewa River	Just upstream of Interstate 94	*774
			Just downstream of Dells Dam	*788
			Just upstream of Dells Dam	*798
			About 5.79 miles upstream of Chicago and North Western railroad (upstream of Dells Dam).	*808
		Sherman Creek	At mouth	*778
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (about 2,400 feet upstream from mouth).	*778
			Just upstream of Clairemont Avenue (about 2,500 feet upstream from mouth).	*784
			About 1.28 miles upstream from mouth	*807
			About 0.95 mile downstream of U.S. Highway 12	*886
			Just upstream of U.S. Highway 12	*891
		Eau Claire River	At mouth	*784
			About 1,800 feet upstream of Chicago and North Western railroad.	*791
		Chippewa River Overflow Channel	Just upstream of Interstate 94	*774
			About 200 feet downstream of Ferry Street	*775
Maps available for inspection at the City Engineer's Office, City Hall, 203 S. Farwell, Eau Claire, Wisconsin.				

(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; and Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator).

Issued: August 23, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84-22886 Filed 8-28-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-1201; RM-4518]

FM Broadcast Station Oscoda, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 261A to Oscoda, Michigan, in response to a petition filed by Robert A. Sherman. The assignment could provide a first FM broadcast service to Oscoda.

EFFECTIVE DATE: October 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Oscoda, Michigan); MM Docket No. 83-1201; RM-4518.

Adopted: August 15, 1984.
Released: August 22, 1983.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by Robert A. Sherman ("petitioner"), the Commission adopted a *Notice of Proposed Rule Making*, 48 FR 51657, published November 10, 1983, proposing the assignment of FM Channel 261A to Oscoda, Michigan, as its first FM assignment. Petitioner filed comments indicating that it would file an application to construct and operate on Channel 261A, if assigned. Late-filed supporting comments were received from D. Schaberg on behalf of Midwest Radio Consultants, Inc. Opposing comments were filed by Carroll Enterprises, Inc. ("Carroll"), licensee of WKJC(FM), Tawas City, Michigan.

2. Carroll has furnished copies of congratulatory letters from Oscoda groups and individuals, showing that FM Station WKJC is addressing the local needs and interests of the community as a transmission service. Carroll states that assignment of an FM channel to Oscoda is unnecessary as WKJC and other stations in Tawas City (15 miles away) serve the needs of the community. However, the Commission's policy continues to be that a community's need for first local service cannot be met by other stations not licensed to that locality. See, *Revision of FM Assignment Policies and Procedures*, BC Docket 80-130, 90 FCC 2d 88 (1982), wherein the Commission indicated that it would continue to give emphasis to local service.

3. The proposed assignment of Channel 261A to Oscoda can be made in conformity with the minimum distance

separation requirements of § 73.207 of the Commission's Rules. Canadian concurrence has been received.

4. The Commission has determined that the public interest would be served by assigning Channel 261A to Oscoda, Michigan, since it could provide a first FM broadcast service to that community.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective October 29, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Oscoda, MI	261A

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–22921 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket Nos. 83–1139; RM–4578]

FM Broadcast Station in Terrytown, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Christian Media, Inc., assigns Class C Channel 245 as a substitute for Channel 280A at Terrytown, Nebraska, and modifies the license of Station KCMI (Channel 280A) to specify operation on the Class C channel.

EFFECTIVE DATE: October 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio, Broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Terrytown, Nebraska); MM Docket No. 83–1139; RM–4578.

Adopted: August 17, 1984.

Released: August 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 51659, published November 10, 1983, proposing the substitution of Class C Channel 245 for Channel 280A at Terrytown, Nebraska. The *Notice* was adopted in response to a petition filed by Christian Media, Inc. ("petitioner"), licensee of Station KCMI–FM, which also requested modification of its license to specify operation on Channel 245. Petitioner filed supporting comments reaffirming its interest in the channel substitution. Opposing comments were filed by Tracy Corporation ("Tracy"), to which the petitioner responded.[1]

2. Tracy, licensee of KMOR–FM, Channel 225, Scottsbluff, Nebraska questioned whether a sufficient showing was made by petitioner to merit the Class C Channel assignment. Instead, Tracy requested the proposed Channel C frequency be allocated to Goring, Nebraska rather than Terrytown.

3. The counterproposal is unacceptable because Tracy failed to express an intention to apply for the channel, if assigned, and to provide a showing demonstrating the assignment was possible. No one else expressed an interest in the allocation to Goring, Nebraska.

4. Assignment of Channel 245 can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter site is restricted to 3.4 miles southwest of Terrytown to avoid short-spacing to Station KQSK–FM (Channel 248), Chadron, Nebraska.

5. After carefully considering the proposal, we believe the public interest would be served by substitution of Class C Channel 245 at Terrytown in order to provide an increase in coverage for petitioner's station. We have authorized in paragraph 7 a modification of the petitioner's license for Station KCMI, Terrytown, Nebraska, to specify operation on Channel 245 since there were no other expressions of interest in the Class C Channel. See *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976).

6. Accordingly pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commisison's Rule, it is ordered, that effective October 30, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Terrytown, NE	245

7. It is further ordered, pursuant to the authority contained in section 316 of the Communications Act of 1934, as amended, that the license of Station KCMI, Terrytown Nebraska, is modified to specify operation on Channel 245, subject to the following conditions:

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

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

(c) Nothing contained herein shall be construed to authorize major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

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

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (303) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 202)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–22925 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

[1] Petitioner's reply comments were not timely filed. It explains the reason for the delay on the need to retain counsel. Petitioner also asserts that no prejudice would result since there was only one opposition and the instant pleading terminates the pleading cycle. We shall deny acceptance of the late pleading since we do not believe petitioner was sufficiently diligent on securing counsel. In this regard, the reply was submitted a month and half late.

47 CFR Part 73

[MM Docket No. 83–840; RM–4466]

TV Broadcast Station in Memphis, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 50 to Memphis,

Tennessee, as its sixth commercial TV channel in response to a request filed by Jack Townes.

EFFECTIVE DATE: October 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Memphis, Tennessee); MM Docket No. 83–840, RM–4466.

Adopted: July 30, 1984.
Released: August 22, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is its *Notice of Proposed Rule Making*, 48 FR 37489, published August 18, 1983, issued in response to a petition filed by David E. Sparks ("petitioner") proposing the assignment of UHF Television Channel 50 to Memphis, Tennessee, as that community's sixth commercial television service. Petitioner failed to file supporting comments in response to the *Notice*. However, we received comments from Jack Townes ("Townes"), in lieu of petitioner, expressing an interest in the proposed assignment. Comments were also filed by Scripps-Howard Broadcasting Company [1] ("Scripps-Howard"), licensee of Station WMC–TV (Channel 5), Memphis, and by Delta Television Corporation ("Delta"), licensee of independent television Station WPTY–TV (Channel 24) Memphis. No reply comments were received.

2. Memphis (population 646,356),[2] the seat of Shelby County (population 777,113), is located in southwestern Tennessee, approximately 305 kilometers (190 miles) southwest of Nashville.

3. Scripps-Howard and Delta each advise that the instant proposal is inconsistent with the mileage separation requirements to a proposal to assign UHF Television Channel 50 to Oxford, Mississippi, (see fn. 1 *supra*). Additionally, Delta claims that since Memphis is currently served by a plethora of local television stations, there is no need for an additional outlet in the community. It adds that such proposal, if implemented, would further fragment the market revenue to the detriment of existing stations, particularly independents, such as itself.

4. While recognizing that the foregoing matters are questions traditionally reserved for resolution at the application stage, Delta asserts that they are not the paramount reason for urging denial or the proposal. Rather, it claims, the mileage separation deficiency with respect to the Oxford, Mississippi proposal discussed above, is a far more fundamental and fatal flaw which warrants its rejection.

5. Initially, it should be noted that the proposal to assign UHF Television Channel 50 to Oxford was withdrawn, and has been dismissed by Commission action. In view of this decision, we may proceed with consideration of the instant proposal.

6. In the *Notice*, we proposed the assignment of UHF Television Channel 50 to Memphis with a "zero" offset. However, it is necessary to change the offset to "plus" in order to accommodate a proposal to assign Channel 50 to Hendersonville, Tennessee in MM Docket No. 83–946.

7. In view of the above considerations, and having found no policy objections to the proposal, we believe the public interest would benefit by assigning UHF Television Channel 50 to Memphis, Tennessee, since it could provide a sixth commercial television broadcast service to that community.

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective October 29, 1984, the Television Table of Assignments, § 73.606(b) Commission's Rules, is amended, as follows:

City	Channel No.
Memphis TN	3–, 5+, *10+, 13+, *14+, 24, 30, and 50+

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–22920 Filed 8–28–84; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–824; RM–4469]

TV Broadcast Station in Uvalde, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 26 to Uvalde, Texas, as its first television assignment in response to a petition filed by Charles J. Thompson.

EFFECTIVE DATE: October 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 635–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Uvalde, Texas); MM Docket No. 83–824, RM–4469.

Adopted: August 15, 1984.
Released: August 22, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 48 FR 37491 published August 18, 1983, in response to a petition filed by Charles J. Thompson ("petitioner") The *Notice* proposed assigning UHF Television Channel 26 to Uvalde, Texas, as its first television channel. Supporting comments were filed by the petitioner, in which he restated his intention to apply for the channel, if assigned. Comments in opposition to the proposal were submitted by Media National Corp. ("Media"). Petitioner did not respond.

2. In its comments Media argues that the petitioner has not met the requirementrs of § 1.401 of the Rules with regard to supportive material demonstrating that the public interest would be served by the proposal. Further, Media claims that verification of the petition's content as required by § 1.52, is also lacking.

[1] Although these comments were primarily directed to MM Docket No. 83–832 (RM–4471), concerning a proposal to assign UHF Television Channel 50 to Oxford, Mississippi, they have been incorporated herein since the proposals are interrelated by their mutual exclusivity.

[2] Population figures were extracted from the 1980 U.S. Census.

3. Contrary to Media's allegations, we feel that the requirements of § 1.52 have been met. The petitioner is not represented by an attorney and has signed the pleading as verification of its contents. Additionally, the good faith intention of the petitioner is assumed in a rule making proceeding. Inasmuch as the opposition's comments do not include any technical reason why the assignment should not be made, and we find no valid policy objection to the proposal, we shall consider the request.

4. We believe that the public interest would be served by the provision of a first television assignment of Uvalde, Texas. Channel 26 can be assigned in compliance with the minimum distance separation requirements and other technical criteria of the Commission's Rules.

5. Mexican concurrence has been obtained in the assignment of UHF Television Channel 26 to Uvalde, Texas.

6. Accordingly, pursuant to the authority contained in section 4(1), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective October 29, 1984, the Television Table of Assignment, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Uvalde,TX	26

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

8. For further information please contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-22919 Filed 8-28-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Endangered Maryland Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates critical habitat for the Maryland darter (*Etheostoma sellare*) by this final rule. Self-sustaining populations of this fish species are now believed to exist only in two small segments of streams in Harford County, Maryland. The Maryland darter was listed as Endangered on March 11, 1967 (32 FR 4001), and is protected under the provisions of the Endangered Species Act of 1973, as amended. Critical habitat was not designated at the time of listing. The present action, based on recommendations of Service biologists, the State of Maryland, and a recovery team, specifies 2.8 miles of 2 streams that are considered critical to survival of this fish. Federal actions that may affect the areas designated are subject to consultation with the Service, pursuant to Section 7(a)(2) of the Endangered Act of 1973, as amended.

DATE: The rule becomes effective on September 28, 1984.

ADDRESS: Comments and materials relating to the rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 100 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Department of the Interior, Washington, D.C. 20240, (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Maryland darter is a small (2 to 3 inch) member of the freshwater perch family (Percidae) of fishes. Individuals have been observed in and near rock crevices and similar shelters in clean, well-oxygenated, swiftly flowing parts of streams (the riffle habitat), and have seldom been seen or collected in even the nearby quiet parts of streams. Like most darters, they remain usually on or near the bottom, whereby they dart quickly from shelter to shelter. They feed mostly on small riffle insects, snails and other invertebrates. Exact life history details have been difficult to obtain for this rare species; related species survive poorly often fail to reproduce if confined to still water, or even in flowing streams where bottom crevice shelters have been eliminated by siltation.

The species was first described in 1912, based on two specimens from Swan Creek in Harford County, Maryland. It has apparently been subsequently extirpated from Swan Creek itself, and has not been collected in widespread regional stream surveys since 1962, except in two stream segments. Gashey's Run, known also as Gashey's Creek, is a small stream tributary to Swan Creek. It may support a breeding population of Maryland darters, since individuals have been found in it from time to time. A second population appears to be sustaining itself in the lower mile or so of Deer Creek, another stream nearby. In 1973, Deer Creek was designated a scenic river by an act of the State Legislature under the Maryland Wild and Scenic Rivers Act of 1968. Experimental approaches to learning exact habits of this fish are hampered by its extreme rarity, and by fears that removing any individuals for tests might have adverse effects on the species.

The Maryland darter was listed as endangered on March 11, 1967 (32 FR 4001). A proposal to determine critical habitat for the species was published in 1978 (43 FR 20518). It was subsequently withdrawn by the Service (44 FR 12382), in accordance with the Endangered Species Act Amendments of 1978, which established specific procedures the Service must follow when designating critical habitat. A reproposal conforming with these amendments was published August 28, 1980 (45 FR 57680). The reproposal summarized biological, environmental and economic information available to the Service regarding the known habitats of the Maryland darter, and solicited comments, suggestions, objections and factual information from any interested persons. A letter was sent to the Governor of Maryland on September 9, 1980, notifying him of the proposed rule. On September 17, 1980, letters were mailed to appropriate Federal agencies, local governments and other interested parties notifying them of the proposal and soliciting their comments and suggestons. Eighteen official letters of comment were received from six Federal agencies, the interstate Susquehanna River Basin Commission, and representatives of nine Maryland State regulatory or advisory bodies. Federal agencies responding included the Environmental Protection Agency, Department of Transportation, U.S Army, U.S. Navy, U.S. Air Force, and the Heritage Conservation and Recreation Service. State agencies responding directly included the Governor of Maryland, his Advisory Commission for Susquehanna State Park, the Maryland Department of Natural Resources, with separate comments from the Tidewater Administration, Water Supply and Capital Programs divisions, the Maryland Department of Transportation, and the State

Clearinghouse, the latter transmitting input from divisions of Agriculture, Environmental Programs, Economic and Community Development and the Regional Planning Council. A public meeting regarding the proposal was held on September 30, 1980, at Aberdeen Proving Ground, Maryland. The information upon which this rule is based was determined by the Service to have continuing validity in a review conducted during June 1984.

Summary of Comments and Recommendations

In the August 28, 1980, Federal Register proposed rule (45 FR 57680) and associated September 17, 1980, press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rule. Earlier letters sent out June 2, 1980, to several Federal and State Agencies requesting suggestions and economic information, elicited responses which were also treated as official comments. Two private individuals commented in letters supporting the proposed rule. All comments received have been considered in the formulation of the final rule. A total of 19 comments received in this period and an earlier comment dated July 10, 1978, in response to the earlier proposal of critical habitat for the Maryland darter, are summarized below.

The Governor of Maryland indicated support for the designation of critical habitat for this rare fish, and expressed concern that the area proposed by the Service for designation is smaller than the area recommended for such designation by the Maryland Department of Natural Resources. He expressed the hope that if a survey recommended in the Recovery Plan for the Maryland darter shows the range to be more extensive than currently believed, the Service will take swift action to extend the designated area to provide additional protected habitat and potential areas for habitat expansion. The Service wishes to reassure the Governor that it will not hesitate to take such action if additional biological data so indicate. In regard to the area designated by this rule, the Governor is referred to the more detailed discussion in response to comments from the Maryland Darter Recovery team Leader.

The Acting Chairman of the Governor's Advisory Committee, the Superintendent of Susquehanna State Park, stated that the proposal has been reviewed by the Committee, but made no specific recommendations. He advised that the designated segment of Deer Creek was under consideration by Harford County as a possible water supply source. The Chief of the Water Supply Division of Maryland Water Resources Administration, however, indicated in his comments that Harford County had made a recent decision to obtain additional water supplies from the lower Susquehanna River at the existing Havre de Grace water treatment plant. In further comments, the latter reminded the Service that a document entitled *Water Allocation for Deer Creek* has been prepared by his agency, giving preliminary estimates of the minimum flow needed to avoid probable adverse impacts on darter habitat. The document, cited below, summarizes present and projected water uses in relation to measured stream discharges for the past several decades. The commenter also stated that his agency has no knowledge of federally funded or sponsored withdrawal projects or other existing or planned water uses for Gashey's Run.

The Regional Planning Council, a consortium of State and local agencies, endorsed a review and referral memorandum certifying that the proposed designation had undergone review and comment by representatives of the affected member agencies. The summary comment was that the designation is consistent with the General Development Plan, and should prevent Federal actions from degrading water quality (especially with respect to sediment loads) of parts of Deer Creek and Gashey's Run. Attached endorsements were signed by the Executive Director, the Planning Director, and by a representative of Harford County Planning and Zoning Commission. A similar umbrella review was transmitted by the State Clearinghouse, stating that the designation is not inconsistent with State plans, programs and objectives as of this date. The review included input from State Departments of Agriculture, Economic and Community Development (including Historical Trust Section), Office of Environmental Programs, Department of Transportation, Baltimore Regional Planning Council, Harford County, and Clearinghouse management staff. Capital Programs Administration of the Maryland Department of Natural Resources provided a separate letter supporting the establishment of critical habitat as necessary to help protect the fish, and calling attention to the Deer Creek management plan (cited below under References), prepared under the Maryland Wild and Scenic Rivers Act.

The Chief of the Region 3 Office, U.S. Environmental Protection Agency, furnished excerpts from a draft wastewater facilities planning study for an area that includes lower Gashey's Run. The stream area itself is identified in the study as a sensitive area, however, and the letter states that direct impacts on it from construction or development are not anticipated.

A memorandum transmitted from the Regional Director, Northeast Region of the Heritage Conservation and Recreation Service (whose functions are now performed by the National Park Service) through the Director of that agency, outlines criteria under which Deer Creek has been identified as a potential Wild and Scenic River for possible designation in accordance with the provisions of the Wild and Scenic Rivers Act, Pub. L. 90–542. The identification and the proposed critical habitat designation were suggested to constitute complimentary Federal actions.

Officials of the United States Navy and United States Air Force responded, commenting that their agencies have no planned or ongoing activities likely to affect the designated areas, and no objections to the designations. Aberdeen Proving Ground of the United States Army, in letters of July 10, 1978, and reiterated comments through the Office of the Chief of Engineers, dated August 7, 1980, states that Deer Creek is its sole source of water supply, and that any required changes in drawdown quantities could impact upon the installation. The commenters further stated that alternative sources of water are not immediately available, and that the cost of developing such alternate sources would impact budget requirements. In response, the Service notes that average streamflow provides more than three times the average estimated combined minimum requirements of APG and the darter habitat except at times of low water. Severe periods of low flow have historically been rare and of short duration, but it could be expected to increase in frequency and severity should future development and deforestation in the watershed shorten the time constant of water discharge. Guidelines, under which the multiple interstate uses for Deer Creek can be optimized for all users, are codified at 18 CFR Part 803 in regulation of the Susquehanna River Basin Commission. Other Army activities with potential impact on Deer Creek specified in the comments received are expected to have negligible impact on the designated area. A problem of sedimentation at the Churchville Test Course was solved by means of a silt control project in 1982.

The Susquehanna River Basin Commission, and the Baltimore District, Corps of Engineers, in a letter forwarded through that Commission, stated that there are presently no Federal projects within their jurisdictions in the designated areas. The Executive Director of the Commission summarized its review authority as: waste-water discharge permits; encroachment permits; groundwater withdrawals in excess of 0.1 mgd (million gallons per day); surface water withdrawals in excess of 1.0 mgd; and consumptive uses in excess of 0.02 mgd. The Commission also exercises certain other powers, including emergency powers in times of drought. The letter from the Corps of Engineers stated that only a long-pending project to repair Wilkinson Bridge over Elbow Branch appears to require a consultation under Section 7 of the Endangered Species Act, if formally submitted for this review. The commenter indicated an opinion that strong conservation measures are needed to upgrade the existing habitat if the Maryland darter is to survive.

In a letter of general comment, the Associate Administrator for Right-of-Way and Environment of the Federal Highway Administration noted the reduction in length of the designated segment of Deer Creek between the 1978 critical habitat proposal and the 1980 proposal. He expressed the opinion that this was a positive step that would reduce the potential for conflict with routine maintenance procedures on a highway bridge no longer included within the designated area. The Service does not agree with this interpretation of the provisions of Section 7 of the Act. If, after consultation with the Service, Federal activities are considered not likely to adversely modify or destroy the critical habitat for a listed species, they can be conducted as freely within the designated areas, as elsewhere. On the other hand, designation of critical habitat does not obviate the need for Federal agencies to continue to evaluate effects on endangered species that might result from activities outside such designated areas. This responsibility stems from the "jeopardy" prohibition set forth in Section 7(a)(2) of the Act.

A final letter of comment was received from the leader of the Maryland Darter Recovery Team, who is with the Tidewater Administration of the Maryland Department of Natural Resources. He stressed that many of the features that have enabled the Maryland darter to survive best at the Stafford Bridge riffle of Deer Creek remain unknown. He suggested that factors possibly affecting these features include: (a) Increased uncompensated water withdrawals from Aberdeen Proving Ground (APG) or by other users, (b) sediment production from APG Churchville Test Course, agriculture urban runoff or other sources, (c) sewage effluent from all sources, and (d) other pollution from point or distributed sources, such as animal waste, pesticides, herbicides, etc. He advocated establishment of at least an upstream buffer zone as an area for possible future population expansion, within which potentially damaging factors would receive more careful scrutiny by the responsible agencies, and in which at least some protective dilution could occur. The Service agrees that these are all factors requiring scrutiny in regard to their potential effects on the Maryland darter. However, the function of the present rule is to identify those areas considered critical to the survival of the species, upon which activities likely to have an adverse effect are to be avoided. Designating additional area upstream from the specified zones in either stream as areas for reasonable expansion could be considered once the best scientific information available indicated the darters were capable of moving and surviving there, which it presently does not. Improvements of the scientific data might permit the presently known features to be identified in nearby streams such as Swan Creek, and future actions to be initiated to restore the Maryland darter to more of its probable historic range.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) areas within the geographical area occupied by the species, at the time that the species is listed, which are (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time of listing, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable. Critical habitat is being designated for the Maryland darter to include 2.8 miles of 2 streams, Deer Creek and Gashey's Run in Harford County, Maryland. Based on data presently available, the designated Deer Creek area appears to include sufficient area for individual and population growth and for normal behavior. Immature fish have been collected in the Gashey's Run area and it may support a breeding population. Riffle and pool areas in both streams provide habitat for aquatic insects and snails, the Maryland darter's food. Large gravel and cobbler in the streams provide cover for the Maryland darter. Although reproduction has not been observed directly, it is presumed to occur in these streams, since the fish have not been taken elsewhere. These streams and Swan Creek are the only habitats known to represent the historic distribution of the species.

The listing regulations further require that, when considering the designation of critical habitat, the Service should describe the biological and physical constituent elements within the defined area that are essential to the conservation of the species and that may require special management considerations or protections. Known primary constituent elements are to be listed with the critical habitat description. The following elements are known or believed to be constituent elements in the designated critical habitat of the Maryland darter:

1. *Continuity and sufficiency of stream flow.* Like most fishes, this one could not be expected to survive removal of all water from its habitat for more than a few minutes.

2. *Permanence of riffle habitat.* Like many other darters, this one shows evidence of permanent residence in the shallower, swifter segments of streams. Both reproduction and ultimately survival can reasonably be predicted to be adversely affected if the population is forced by low water into stagnant or even still pools for prolonged periods. This contraint probably holds for most organisms that are the darter's natural food.

3. *Pollution sensitivity.* Coupled with most darters' preference for swift water is a high oxygen requirement, making darters among the first fishes to show respiratory stress and failure with any reduction of oxygen availability. Selective mortality of darters in habitats subjected to various other kinds of pollution is also documented.

4. *Presence and quality of cover.* Darters inhabiting riffles are known to use crevices among stones, smaller pebbles, vegetation or trapped wood flotsam both for cover from their predators and for spawning and egg protection. They have been noted to disappear from riffles when silt deposition eliminated such crevices. Darter eggs have been shown to be particularly vulnerable to smothering by silt, so that even less siltation can normally be tolerated during the spawning season.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. The following is a description of such activities.

At present, the regional water use planning for Deer Creek by the Susquehanna River Basin Commission and by the Maryland Department of Natural Resources seems to make adequate provision for probable needs of the Maryland darter as well as equitable allocation among interstate human needs. Water drawdown by Aberdeen Proving Ground could, during times of extreme drought, conceivably adversely affect the designated area by forcing darters into pool areas for extended periods. Severe periods of low flow, however, have been historically rare and of short duration. APG has enough well capacity to operate without and Deer Creek water for 3 days under emergency conditions, but supply from its wells or locally purchased water is not sufficient to maintain operations on a regular basis.

Construction of dams or other structures traversing Deek Creek that would impound the stream segments designated as critical habitat would almost certainly destroy the Maryland darter population. Impoundments upstream could adversely change temperature relationships within the stream. However, the State of Maryland, through State legislative action designating Deer Creek a Wild and Scenic River, has signified a desire for minimum alteration of that stream.

Activities involving the introduction of chemicals, organic waste matter of silt into the streams comprising the critical habitat may adversely affect such areas. Special sensitivities to these factors have been suggested by work on other species (see above). Because some of those activities are not Federal activities *per se*, or federally authorized or funded actions, they will not be affected by the critical habitat designation. Critical habitat for the Maryland darter is located on Deer Creek and Gashey's Run (also known as Gashey's Creek) in the eastern part of Harford County, Maryland.

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 has prepared an economic analysis and evaluated such area that was proposed in the light of all additional information obtained. The only activity having Federal involvement that might conceivably be affected by or affect the critical habitat designation is water withdrawal by the Aberdeen Proving Ground (APG), U.S. Army under low flow or drought conditions. Such conditions have been historically rate and APG's withdrawal may never affect or be affected by the designation.

Available Conservation Measures

Section 7(a)(2) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposed rule at 48 FR 29990; June 29, 1983).

This rule requires Federal agencies not only to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of the Maryland darter, but also requires them to insure their actions are not likely to result in the destruction or adverse modification of this critical habitat.

Endangered status of the Maryland darter under the provisions of Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) is not affected by this designation of its critical habitat.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia. The rule is not expected to affect costs or prices in any way. No direct costs, enforcement costs, or information collection and recordkeeping requirements are imposed on small entities by this rule. This rule contains no recordkeeping or information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Literature Cited

Dietman, A., and D. Schultz. 1978. Water allocation guidelines for Deer Creek. Unpublished staff report, Maryland Department of Natural Resources, prepared under contract with U.S. Fish and Wildlife Service. 73 pp.

Harford County Advisory Board and Department of Natural Resources. 1979. Deer Creek Scenic River, Revised Edition. Maryland Department of Natural Resources, Annapolis, 68 pp., 8 maps.

Knapp, L. 1976. Redescription, relationships and status of the Maryland darter, *Etheostoma sellare* (Radcliff and Welsh), an endangered species, Proc. Biol Soc. Washington 89(6):99–117.

Knapp, L., W.J. Richards, R.V. Miller, and N.R. Foster. 1963. Rediscovery of the percid fish *Etheostoma sellare* (Radcliff and Welsh). Copeia 1963(2):455.

Radcliff, L., and W.W. Welsh. 1913. Description of a new darter from Maryland. Bull. U.S. Bur. Fish. 32(1912):29–32.

Author

The author of this rule is Dr. George E. Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., (703/235–1975).

List of Subjects in 50 CFR Part 17

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

Regulation promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended 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. Amend § 17.95(e) Fishes by adding critical habitat of the Maryland darter after that of the leopard darter as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

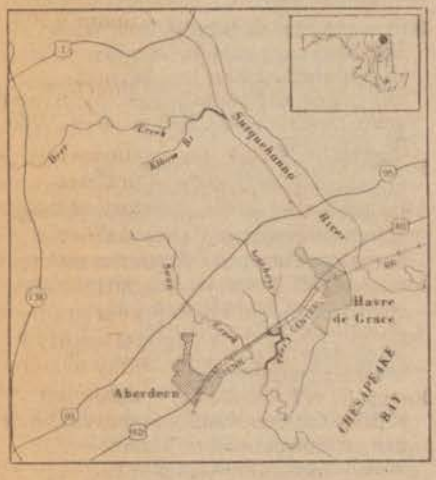
(e) *Fishes.*

* * * * *

Maryland Darter (Etheostoma sellare)

Maryland (Harford County): (1) Deer Creek main channel from the junction with Elbow Branch thence downstream to the junction

with the Susquehanna River. (2) Gasheys Run (also known as Gasheys Creek) main channels of east and west forks from their overcrossing by old Penn Central Railroad (presently titled to National Railroad Passenger Corporation, Amtrak) south to their confluence, thence south to the confluence with Swan Creek.



Constituent elements of this habitat are considered to be quality and permanence of streamflow in shallow areas of the streams (riffles), and presence of unsilted rocky crevices for shelter and production of aquatic insects and snails for food.

* * * * *

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-22834 Filed 8-28-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 169
Wednesday, August 29, 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 ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270 and 273

[Docket No. RM83-53-000]

Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed, for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

August 23, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking and request for comments on statement of policy.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is requesting comments on its policy regarding the obligations and duties of sellers and purchasers under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (1982), and the Natural Gas Act (NGA), 15 U.S.C. 717–717w (1982), to make diligent and prudent efforts to insure the passthrough to gas consumers of first-sale collections in excess of NGPA maximum lawful prices. The Commission is also proposing amendments to its § 273.302 interim collection refund provisions to allow purchasers to make billing adjustments to effect required interim collection refunds. In addition, interstate pipelines would be required to file reports with their Purchased Gas Adjustment filings identifying billing adjustments they have made to recover refunds owed by sellers under the general refund provision in § 270.101(e) and the interim collection refund provisions in § 273.302. The Commmission also is proposing to amend § 154.38(d)(4)(vii) to clarify that the requirements of that section regarding refunds received by interstate pipelines apply to refunds recovered through billing adjustments.

DATE: Comments must be filed by 4:30 p.m. EDT., October 29, 1984.

ADDRESS: Comments should be submitted to the Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is stating its policy regarding the obligations and duties of sellers and purchasers under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (1982), and the Natural Gas Act (NGA), 15 U.S.C. 717–717w (1982), to make diligent and prudent efforts to insure the pass through to gas consumers of refunds required to correct first-sale collections in excess of NGPA maximum lawful prices (MLPs). The Commission is also proposing amendments to its § 273.302 interim collection refund provisions to allow purchasers to make billing adjustments to effect required interim collection refunds. In addition, interstate pipelines would be required to file reports with their Purchased Gas Adjustment (PGA) filings identifying billing adjustments they have made to recover refunds owed by sellers under § 270.101(e) or § 273.302. The Commission also is proposing to amend § 154.38(d)(4)(vii) to clarify that the section's requirements regarding refunds received by interstate pipelines apply to refunds recovered through billing adjustments.

II. Background

Under the Commission's regulations, the obligation of producers and other sellers of first-sale natural gas to make refunds of collections in excess of the appropriate maximum lawful prices under the NGPA falls into two main categories. The first are those situations involving potential refund obligations under the Commission's interim collection refund requirements in § 273.302. The second covers all other potential refund obligations under the Commission's general refund provisions in § 270.101(e). These primarily include overcollections from disqualification of the authorization to collect the stripper well maximum lawful price under § 108 of the NGPA.

A. Section 273.302 Interim Collection Refund Cases

Under the NGPA, the maximum lawful price in any first sale of natural gas depends on the NGPA category of the gas. If natural gas is of one of those categories subject to the interim pricing conditions of NGPA section 503,[1] the seller must apply to the appropriate State or Federal jurisdictional agency [2] for a determination of eligibility to sell the gas at a price up to the maximum law price for gas of that category. The Commission reviews all such determinations by State and Federal jurisdictional agencies, both affirmative and negative, and may remand or reverse any agency determination it finds to be unsupported by substantial evidence in the record.

Once a first seller of natural gas has filed the requisite application with a jurisdictional agency, section 503 of the NGPA and the Commission's implementing regulations in 18 CFR Part 273 [3] permit the seller to collect prices

[1] Section 503 of the NGPA explicitly requires a determination of eligibility by the appropriate jurisdictional agency, either Federal or State, to collect the MLPs in first sales of natural gas of the following categories: (1) New natural gas (section 102); (2) new onshore production wells (section 103); (3) high-cost natural gas (section 107); and (4) stripper well natural gas (section 108).

[2] NGPA category eligibility determinations generally are made initially by the Bureau of Land Management or Minerals Management Service in the case of natural gas produced on Federal lands, as defined in § 274.501(c) of the Commission's regulations. Determinations with respect to gas produced from the Naval Petroleum Reserves are made by the Department of Energy. NGPA-category eligibility determinations for natural gas produced in a particular State, from either State- or privately-owned leases, are made by that State's designated jurisdictional agency. The names and addresses of Federal and State jurisdictional agencies are listed in § 274.501(a) of the Commission's regulations.

[3] "Interim Regulations Implementing the Natural Gas Policy Act of 1978," Interim Regulations, Docket No. RM79-3, issued Dec. 1, 1978, 43 FR 56448 (Dec. 1, 1978); Order No. 36, "Natural Gas; Collection Authority; Refunds," Final rule, Docket No. RM79-53, issued June 19, 1979, 44 FR 37491 (June 27, 1979); and Order No. 131, "Amendments to Part 273 Regulations under the Natural Gas Policy Act," Docket No. RM80-54, issued Feb. 9, 1981, 46 FR 12198 (Feb. 13, 1981).

up to the maximum lawful price for the applied-for category of natural gas. However, a seller is required to refund these interim collections by lump-sum payments with interest [4] if either the initial reviewing jurisdictional agency or the Commission ultimately denies the seller's requested NGPA category approval, or a seller withdraws its application for NGPA category determination before the agency determination is final.

B. Section 270.101(e) General Refund Cases

All other seller refund obligations fall under § 270.101(e) of the Commission's regulations. Most involve gas produced from wells that were determined previously by jurisdictional agencies and the Commission to be stripper wells qualified under NGPA section 108 but which were subsequently disqualified because production in at least one ninety-day production period exceed the stripper well qualification level.[5]

Section 270.101(e) refund obligations also arise in any sale of gas sold at a particular NGPA incentive price where the seller was not eligible, even on an interim basis under Part 273, to collect a price in excess of the otherwise applicable MLP because the seller had not yet filed an application with the appropriate jurisdictional agency for a determination of eligibility to charge that incentive price. Not having made application for the necessary NGPA category eligibility determination, the seller had no interim collection authority under Part 273 to collect that NGPA incentive price and the seller was limited to the otherwise applicable maximum lawful price. Section 270.101(e) refund obligations also attach to pricing violations in sales made either after a final eligibility determination has been rendered or after the seller has withdrawn its application for eligibility determination.[6]

Refund obligations under the § 270.101(e) general refund requirements also include those arising as the result of sales of misvintaged gas. For example, factors such as the date that surface drilling of a well began and the employment of certain enhanced recovery measures can both affect the proper calculation of the MLP for "old" gas (*i.e.*, gas subject to NGPA section 104). Misvintaging occurs and a § 270.101(e) refund obligation may be triggered whenever either of these criteria are incorrectly factored into section 104 MLP calculations.

C. The Need for Revisions to the Refund Regulations

The Commission is committed to insuring that refunds owed by producers and other first sellers to their customers should be made as expeditiously as possible, in order to hasten their ultimate passthrough to residential customers and other end-users. The Commission, therefore, has reviewed the provisions of the § 270.101(e) general refund requirements and the § 273.302 interim collection refund requirements to determine whether any changes in those or other regulatory provisions should be made to promote and facilitate the refund process. As a result of this review, the Commission is, in addition to making a statement of policy, proposing several regulatory changes that it has tentatively determined would be appropriate.

III. Discussion of Proposed Regulatory Amendments and Policy Statement

A. Billing Adjustments To Effect § 273.302 Interim Collection Refunds

As discussed above, a first seller of natural gas that has filed an application for a determination of eligibility with a jurisdictional agency and complied with the Commission's other Part 273 filing requirements may make interim collections up to the maximum lawful price for the applied-for NGPA category. If the application is ultimately denied or withdrawn, then § 273.302 includes specific requirements for refunding excessive interim collections. Section 273.302 requires a seller to refund with interest, within sixty days after either withdrawing its application or receiving a negative determination, any portion of an interin collection that is in excess of the actual maximum lawful price for the correct NGPA category of the gas sold. Within ninety days of either a negative eligibility determination or an application withdrawal, a seller must file either a refund report [7] or a statement with the Commission certifying that no refund is required.

In those cases where an interim collection refund is due, § 273.302 provides that a seller may make only a lump-sum refund payment. Unlike § 270.101(e), which imposes no restrictions on the use of billing adjustments to accomplish refunds so long as the refunds are made promptly, § 273.302 does not permit billing adjustments. The Commission believes that the restriction under § 273.302 against the use of billing adjustments to make refunds may be hampering the refund process.

Billing adjustments as a refund mechanism were permitted under the Natural Gas Act (NGA)[8] regulations of this Commission's predecessor, the Federal Power Commission.[9] The Commission's experience under the NGA led it to prohibit the use of billing adjustments to effect § 273.302 interim collection refunds and instead to require lump-sum payments in all instances. The Commission concluded that the use of billing adjustments under the NGA to satisfy sellers' refund liabilities resulted

[4] The interest payable on a § 273.302 interim collection refund is required to be calculated under § 154.102(c) of the Commission's regulations for the entire period covering the date of overcollection to the date that refund is made. An exception applies if the refund is paid from an escrow account, in which case the accrued interest in the escrow account is the interest amount payable with the refund.

[5] Prior to December 1983; the Commission's regulations provided that a well would lose its stripper well qualification and gas produced from that well would become subject to the otherwise applicable MLP if the well's production exceeded the qualifying level in any single ninety-day production period. Once such event occurred, even if production quickly thereafter fell below qualifying levels once again, stripper well status could be regained only if the producer made a new filing for another determination of eligibility to sell gas from that well at stripper well prices. The Commission's regulations were amended effective December 7, 1983, to provide that once the Commission has given stripper well approval, such status is not forfeited because production exceeds stripper well levels in one or more ninety-day production periods; however, the seller may collect only the otherwise applicable MLP, not the stripper well incentive price, for gas produced in those periods of higher production. *See* order No. 336, "Reduction in Filing Requirements for Well Category Applications Under sections 102, 103, and 107 and 108 of the Natural Gas Policy Act of 1978," Final Rule, Docket No. RM83-3-000, issued Sept. 27, 1983, 48 FR 44508 (Sept. 29, 1983). (Order No. 336 was effective Dec. 7, 1983.) *See* 48 FR 54947 (Dec. 7, 1983).

[6] If a seller does not file an application for a determination of eligibility or withdraws its application before an agency determination is rendered and becomes final, the seller will owe refunds if it made interim collections of prices based on the maximum lawful price for gas of a category requiring Part 273 interim collection authority. That is because all the maximum lawful prices of the NGPA categories for which interim collection authority is required are higher than all the maximum lawful prices for those NGPA categories for which interim collection authority is not necessary.

[7] A refund report is required under § 273.302(f)(3) to state the amount of the overcharges and interest payable, the dates such refunds were due as well as when actually paid, the name and American Petroleum Institute well number of the well that produced the gas sold, the state agency with which the seller's application for determination of eligibility was originally filed, and, if applicable, the date the sellers withdrew the application. Sellers are also required to include in any refund report a statement of concurrence by the purchaser that all proper refunds have been made or indicate that the purchaser has not submitted such a statement to the seller. Thereafter, statements of concurrence or nonconcurrence not included with a seller's report become the filing obligation of the purchaser.

[8] 15 U.S.C. 717–717w (1982).

[9] Such refund procedures also have been permitted under the general refund provisions of § 270.101(e) which apply to all NGPA refund obligations other than § 273.302 interim collection refunds.

in delays in reimbursing gas customers for overcharges. The Commission also believed at that time that billing adjustment, as compared with lump-sum payments, made identification of overcharges and the monitoring of sellers' progress in making refunds more difficult and time-consuming.[10]

The Commission's experience with implementing the NGPA indicates that a lump-sum payment requirement to satisfy interim collection refunds has met with limited success in avoiding delays. Precluding the use of billing adjustments does not appear to have facilitated appreciably the identification of interim collection refund obligations and the Commission's monitoring of refunds. Therefore, the Commission does not believe that there is any strong reason to continue to deny natural gas companies the additional flexiblity of using billing adjustments to make refunds.

Informal staff discussions with pipelines have indicated that if pipelines were given the option of recovering interim overcollections through billing adjustments, § 273.302 refunds generally would be effected more expeditiously and efficiently. Furthermore, pipelines have argued in favor of allowing producers' interim overcollections to be recovered through billing adjustments by their customers because pipelines can more readily take the initiative. In their dealings with small producers, most often concerning well that have lost their stripper well status, some pipelines already routinely calculate overcharges, compute interest owed, and inform producers of their refund obligations under the § 270.101(e) general refund provisions. These pipelines indicated that, if § 273.302 permitted billing adjustments to effect § 273.302 interim collection refunds, the pipelines could be instrumental in assuring that producers' and other first seller interim overcollections are corrected.

In view of the above considerations, the Commission is proposing to amend § 273.302(e) to delete requiring a specific method for making refunds owed by first sellers pursuant to paragraph (b) of that section to particular purchasers. Thus, either billing adjustments or lump-sum payments would be acceptable.

B. Reporting Requirements

1. *General discussion of need for additional reporting requirements.* As discussed above, the Commission is proposing to amend § 273.302(e) to permit interim collection refunds to be made through billing adjustments. This proposed relaxation should hasten refunds because it provides, for the first time, a self-help means of recovery by which pipelines and other first-sale purchasers themselves may recover § 273.302 refunds. Furthermore, billing adjustments may permit satisfaction of the obligations of some sellers for whom compliance with the current lump-sum payment requirement may have presented cash flow difficulties. Such billing adjustments are already allowed under § 270.101(e) for other types of refunds. However, the Commission's responsibility to insure that gas consumers are not being charged more for gas than allowed under Congress's statutory scheme necessitates that the Commission be able to identify all types of required refunds and to monitor the progress being made in making those refunds.

Monitoring refund activities, however, with only the limited reporting requirements currently in effect, has become impractical.[11] To illustrate the Commission's administrative burden, as of May 31, 1984, the Commission had received reports on 2,468 wells involving refunds totaling $88.6 million in NGPA overcollections. Of this amount, $12.8 million was not refunded by producers until long after the original due date and after the Commission sent them letters of inquiry. The administrative effort of pursuing refunds in this manner from the many interest owners in these wells is a significant drain on Commission resources.

The Commission has concluded that the reporting requirements proposed below are necessary to enable the Commission to discern more readily those cases where any required refunds already have been made. By eliminating these cases from its backlog, the Commission will be able to devote more time and personnel to the remaining cases, hastening their review. Thus, the Commission believes its burden in processing its backlog of potential refund cases could be substantially reduced while only requiring that sellers and interstate pipelines reports the refunds they actually make after the effective date of the reporting requirement.

2. *Section 273.302—Refund Reports by Interstate Pipelines.* In view of the Commission's need to receive information regarding refunds, the Commission is proposing to add a new subparagraph (2) to § 273.302(f) to require interstate pipelines to file reports identifying those instances where they have made billing adjustments to collect § 273.302 interim overcollections. The reports would be required to contain information similar to that required from first sellers under the filing provision of § 273.302(f). The Commission anticipates that, if allowed, purchasers will heavily utilize billing adjustments to recover interim collection overcharges from sellers. Therefore, the Commission believes that application of the proposed filing requirement to interstate pipelines would be necessary in order for the Commission to know whether permitting billing adjustments was working to expedite the refund process.

The proposed new subparagraph (2) to § 273.302(f) would require each interstate pipeline to file a separate supplemental report in conjunction with each of its Purchased Gas Adjustment (PGA) Filings identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds owed to it pursuant to § 273.302(b). The report would show the amount of overcharges and interest required to be refunded to the pipeline

[10] *See* Order No. 36, "Natural Gas; Collection Authority; Refunds," Final Rule, Docket No. RM79-53, issued June 19, 1979, 44 FR 37491 (June 27, 1979).

[11] Section 273.302(f) provides that within ninety days of either (1) the date of a final determination of eligibility is obtained that a sale is not at least eligible for the price category stated in the application for determination, or (2) the date an application is withdrawn by the applicant while the application is before the Commission or a jurisdictional agency, the seller shall file with the Commission either a refund report or a statement certifying that no refund is required. A refund report must show for each purchaser: The amount of overcharges and interest to be refunded; the dates on which any refunds were due; the dates on which refunds were paid; the well name and, if available, the American Petroleum Institute Well Number; the jurisdictional agency with which the application for determination was filed; and, if applicable, the date of withdrawal of the application. A seller's § 273.302 refund report must also be accompanied by a statement of concurrence by the purchaser that all proper refunds have been made. If a purchaser does not submit a statement of concurrence to the seller, the seller must so indicate. When a seller's filing does not include the purchaser's statement of concurrence, the purchaser is required to submit to the Commission such concurrence or a statement indicating the reason for its refusal to provide its concurrence to the seller. The purchaser's submission is due within thirty days of the date the seller filed its refund report statement which did not include a statement of concurrence by the purchaser.

Since the purchaser's statement of concurrence or nonconcurrence with the seller's § 273.302 refund report is required only if the seller files a report, there is no back-up filing requirement by which the Commission is apprised of a § 273.302 refund obligation or payment if the seller does not report it. Moreover, Part 270 imposes no filing requirements on either sellers or purchasers regarding their refund obligations under the § 270.101(e) general refund provisions.

by each of its suppliers, as determined in accordance with § 273.302(e). The report would identify by name and, if available, American Petroleum Institute Well Number, each well that produced any of the gas for which the interstate pipeline was overcharged. The report would also state the dates on which any refunds were due under § 273.302(e), and the dates and amounts of all billing adjustments to recover those refunds. The interstate pipeline's report would also be required to show, if applicable, for each well that produced any of the gas for which the pipeline was overcharged, the date on which the seller's original application for an NGPA-category eligibility determination was withdrawn by the seller.

3. *Section 270.101—Filing Requirements for Interstate Pipelines.* About half of the potential refund cases arise under the § 270.101(e) general refund requirements. Section 270.101(e) is the applicable refund provision when, for example, pricing violations occur (1) prior to the date that the seller files an application with a jurisdictional agency for NGPA-category determination, (2) after the seller has withdrawn its application, or (3) after an eligibility determination becomes final.[12] Most of the Commission's potential § 270.101(e) refund cases relate to sales of gas produced from wells that previously were determined to be eligible for stripper well prices under Part 273 but no longer qualify as stripper wells due to excess production.

Because § 270.101(e) does not require natural gas companies to file any reports regarding their § 270.101(e) general refund obligations, the Commission has had some difficulties in identifying and reviewing these obligations. The Commission therefore, proposes that the new § 270.101(f) require interstate pipelines to file refund reports when they make billing adjustments to effect § 270.101(e) refunds owed to them by sellers. The information required from interstate pipelines would be similar to that to be required from interstate pipelines in the proposed § 273.302(f) interim collection refund reports. However, whereas interstate pipelines' § 273.302(f) refund reports would state, where applicable, the dates sellers withdrew applications for any eligibility determinations by jurisdictional agencies, the interstate pipelines' § 270.101(f) refund reports would be required to state the dates that overcollections began or, where applicable, the dates of stripper well disqualifications. The Commission is proposing that interstate pipelines' § 270.101(f) reports, like the proposed § 273.302(f) reports, be filed with the Commission with the pipelines' PGA filings.

4. *Supplemental Reports by Sellers.* The Commission also asks for comment on whether it should go further to impose additional reporting requirements on first sellers of natural gas. One option would be to amend § 270.101 by adding a new paragraph (f) to require that first sellers file reports identifying § 270.101(e) refunds that they make. This would require first sellers to report essentially the same information that is currently required under the § 273.302(f) interim collection refund filing requirements. Another option would be to require sellers to make a one-time report identifying all § 270.101(e) general refund obligations and § 273.302 interim collection refund obligations outstanding as of the effective date of the reporting requirement. The Commission asks for comment on whether either of these reports may be necessary for the Commission to make an initial determination of outstanding refunds that procedures owe consumers.

5. *Interstate Pipelines' Filing Obligations Under § 154.38(d)(4)(vii).* Section 154.38(d)(4)(vii) of the Commission's regulations provides that, once an interstate pipeline's PGA clause becomes effective, the jurisdictional portion of all refunds, including interest, received by the interstate pipeline from its suppliers shall be flowed through to the pipeline's jurisdictional customers. Reports filed by an interstate pipeline, pursuant to a settlement agreement or Commission order or regulation, to document refunds received by the pipeline from its suppliers are required under § 154.38(d)(4)(vii) to show details of the computations of such refunds.

The references to refunds in § 154.38(d)(4)(vii) mean all refunds, including those recovered by interstate pipelines by means of billing adjustments. Consequently, interstate pipelines should already be flowing through in accordance with this provision any refunds they receive pursuant to the § 270.101(e) general refund requirements and the interest requirements of § 154.102 (c) and (d). Furthermore, pipelines are required to reflect such billing adjustments in their PGA filings, together with an explanation of their computation. At a minimum PGA filings should show, for each refund, the name of the supplier that owed the refund; and date on which the overcollection occurred; and whether the refund was made by lump-sum payment by the seller or billing adjustment by the pipeline. PGA filings also should separately break down the portions of the refund that were principal and interest. Such identification of refunds in PGA filings is important also so that those refunds can be matched with potential refund cases pending review, permitting those cases to be closed and removed from the Commission's backlog.

Since the Commission is proposing to permit the use of billing adjustments to effect refunds required under the § 273.302 interim collection refund provisions, the Commission wishes to clarify now that, in the event the proposal is adopted, any § 273.302 refunds recovered by an interstate pipeline through billing adjustments would be required to be passed through by the pipeline in accordance with § 154.38(d)(4)(vii) and reported, in the aforementioned detail, in its PGA filing. Accordingly, the Commission proposes to amend § 154.38(d)(4)(vii) to clarify and emphasize that references in that section to refunds include those recovered through billing adjustments.

C. Reports by Other Purchasers

Due to the complexity associated with monitoring the refund of overcharges, the Commission has determined, as discussed above, that additional refund reports by interstate pipelines are necessary to ensure that sellers' § 270.101(e) and § 273.302 refunds are paid. The authority to require these reports is encompassed within the Commission's general authority in section 501(a) of the NGPA "to perform any and all acts * * * as it may find necessary or appropriate to carry out its functions" under the NGPA, which functions include insuring that maximum lawful prices are not exceeded in any first sale transaction. The Commission recognizes that it would be administratively infeasible to actively pursue refunds from all natural gas producers without the aid of the reports. However, in conjunction with the reports, the Commission also intends to continue and expand its current audit program.

The Commission recognizes that the same NGPA section 501(a) authority under which the Commission is requiring interstate pipelines to file refund reports could be used to require other purchasers of first sale gas,

[12] As discussed above, interim collection authority under Part 273 applies only to natural gas subject to NGPA sections 102, 103, 107, and 108. *See supra* n.1. Part 273 does not apply to gas subject to NGPA section 104, 105, 106, and 109 which relate to the NGPA MLPs for natural gas including certain committed or dedicated natural gas, gas subject to existing intrastate contracts or intrastate rollover contracts, and certain other categories of natural gas not required an eligibility determination.

including intrastate pipelines, local distribution companies, Hinshaw pipelines and end-users, to file refund reports. The Commission declines to propose requiring reports from these entities at this time because the Commission has tentatively concluded that the additional interstate pipeline filing requirements would be sufficient to enable the Commission to deal effectively with its backlog of refund cases. However, the Commission specifically requests comments as to whether the Commission should also require reports from intrastate pipelines or other first sale purchasers, including local distribution companies, Hinshaw pipelines and end-users.

IV. Statement of Policy on Interstate Pipelines' Duty to Pursue Refunds

The Commission wishes to emphasize that a seller continues to carry the primary responsibility for its refund obligations. However, the Commission believes that pipelines also have an obligation as part of prudent management to ensure that producers pay required refunds. The Commission, therefore, is clarifying that it expects pipelines to be aggressive in pursuing refunds. The Commission will consider in appropriate proceedings the extent to which a pipeline may have been less than diligent in its efforts to recover refunds.

V. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."

The proposals would, first, amend § 273.302(e) to permit billing adjustments to effect refunds required under that section which currently requires that refunds be made in single, full-amount, lump-sum payments. There is no requirement that either a seller or purchaser make a billing adjustment. More relevant, however, the proposal simply permits an alternative procedure for satisfying already existing refund liabilities of fixed amounts. In view of these considerations, this aspect of the proposal would not have a "significant economic impact on a substantial number of small entities."

The proposal would, secondly, amend § 154.38(d)(4)(vii) to clarify that refunds, when referenced in that section, include refunds effected by means of billing adjustments. Furthermore, § 154.38(d)(4)(vii) applies only to interstate pipelines, none of which are small entities. This clarification of the provision's coverage, which is not subject to notice requirements, would not have a "significant economic impact on a substantial number of small entities."

The proposal would also require that interstate pipelines file reports with the Commission that identify billing adjustments to correct refunds owed by sellers to the pipelines. Interstate pipelines would not be required to make billing adjustments unless prudency so requires. Therefore, whether an interstate pipeline would be required to file a report in any instance would depend on its decision to make a billing adjustment. Furthermore, in cases involving § 273.302 interim collection refunds, the reports would be in lieu of the statements of concurrence or nonconcurrence that first-sale purchasers are currently required to file in conjunction with sellers § 273.302(f) reports. Finally, none of the interstate pipelines are small entities.

In view of all these considerations, the Commission has determined, pursuant to section 605(a) of the RFA, that neither the proposed additional filing requirement nor the proposal in general will have "a significant economic impact on a substantial number of small entities."

VI. Paperwork Reduction Act

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. IV 1980), and OMB's regulations, 48 FR 13666, 13694 (1983) (to be codified at 5 CFR 1320.13). Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Jack O. Kendall, (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Written Comment Procedure

The Commission invites all interested persons to submit written data, views and other information concerning the matters set out in this Notice. All comments in response to this Notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refere to Docket No. RM83–53–000. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EST, on October 29, 1984, will be considered by the Commission.

All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

List of Subjects

18 CFR Part 154

Natural gas.

18 CFR Part 270

Natural gas, Wage and price controls.

18 CFR Part 273

Natural gas.

In consideration of the foregoing, the Commission proposes to amend Parts 154, 270, and 273, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970).

2. Section 154.38(d)(4)(vii) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of Rate.*

* * * * *

(4) * * *

(vii) The jurisdictional portion of all refunds, including those effected by billing adjustments pursuant to §§ 270.101(e) or 273.302(e) of this subchapter, received from suppliers (including interest received) applicable to purchases after a PGA clause becomes effective shall be flowed through to the company's jurisdictional customers. If the company utilizes deferred accounting for unrecovered purchased gas costs, the jurisdictional portion of all refunds received (including interest received) shall be credited to the unrecovered purchased gas cost

account. If the company does not utilize deferred accounting and holds supplier refunds more than 30 days, the jurisdictional portion of supplier refunds (including interest received) applicable to purchases after a PGA clause becomes effective shall be flowed through to the company's jurisdictional customers with interest. Any requirement for the serving and filing of reports, including the requirements of §§ 270.101(f) and 273.302(f) of this subchapter, showing details of the computations of any such refunds, including those effected by billing adjustments, shall be either as agreed in settlement discussions held among the company, jurisdictional customers, interested State commissions, other interested parties, and the Commission staff, or as prescribed by Commission order.

PART 270—[AMENDED]

3. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

4. Section 270.101 is amended by the addition of a new paragraph (f) to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(f) *Filing Requirements.* An interstate pipeline shall include with any Purchased Gas Adjustment Filing under § 154.38 of this chapter, a refund report identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds required to be made to it by sellers under paragraph (e) of this section. The interstate pipeline shall file with the Commission the original and two copies of a refund report showing for each seller:

(1) The amounts of overcharges and interest to be refunded by that seller as determined in accordance with paragraph (e);

(2) The amounts of, and dates on which, billing adjustments were made by the pipeline to satisfy the seller's refund obligations under paragraph (e) of this section in whole on in part; and

(3) The well name and, if available, American Petroleum Institute Well Number of the well that produced the natural gas for which the interstate pipeline was overcharged by the seller; and

(4) The date that overcollection began or, if applicable, the date of stripper well disqualification.

PART 273—[AMENDED]

5. The authority citation for Part 273 is revised to read as follow:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 2201–3432 (1982), unless otherwise noted.

6. Section 273.302 is amended by revising paragraphs (e)(1) and (f) to read as follows:

§ 273.302 Refunds of interim collections

* * * * *

(e) *Refund payments.* (1) Within sixty (60) days after a determination becomes final denying a first sale at least eligible for the price collected under this part, or within sixty (60) days after the date on which an application for determination is withdrawn by the applicant while it is before the Commission or the jurisdictional agency, the seller shall refund to the purchaser the refund amount computed under paragraph (h) of this section together with interest determined in accordance with § 154.102 (c) and (d) on the excess charges that have been collected from the date of payment until the date of refund.

* * * * *

(f) *Filing requirements.* (1) *Sellers.* (i) Except as provided in paragraph (f)(1)(ii) of this section, within ninety (90) days of either the date a final determination of eligiblity is obtained that a sale is not at least eligible for the price category stated in the application for determination, or the date an application is withdrawn by the applicant while the application is before the Commission or a jurisdictional agency, the seller shall file with the Commission:

(A) Either;

(*1*) an original and two copies of a refund report showing for each purchaser:

(*i*) The amount of overcharges and interest to be refunded as determined in accordance with paragraph (e) of this section;

(*ii*) The dates on which any refunds were due; and

(*iii*) The dates on which refunds were paid; or

(*2*) A statement certifying that no refund is required under this section.

(B) The following information:

(*1*) The well name;

(*2*) The American Petroleum Institute Well Number, if existent;

(*3*) The jurisdictional agency with which the application for determination was filed; and

(*4*) If applicable, the date of withdrawal of the application.

(*C*) A statement of concurrence by the purchaser that all proper refunds have been made. If a purchaser does not submit a statement of concurrence to the seller, the seller shall so indicate. When a filing does not include the purchaser's statement of concurrence, the purchaser shall submit to the Commission such concurrence or a statement indicating the reason for its refusal to submit its concurrence with the seller. The purchaser's submission shall be due within thirty (30) days of the date of filing a refund report or statement by a seller which does not include a statement of concurrence by the purchaser. A duplicate of the submission shall be served upon the seller.

(ii) A seller shall not be required to include in a report filed under paragraph (f)(1)(i) of this section any information regarding a refund required to be made by the seller to an interstate pipeline if the refund is recovered by the interstate pipeline through a billing adjustment.

(2) *Interstate Pipelines.* An interstate pipeline shall include with any Purchased Gas Adjustment Filing under § 154.38 of this chapter, a refund report identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds required to be made to it by sellers under paragraph (e) of this section. The interstate pipeline shall file with the Commission the original and two copies of the refund report showing for each seller:

(i) The amounts of overcharges and interest to be refunded by that seller as determined in accordance with paragraph (e);

(ii) The dates on which any refunds by the seller were due;

(iii) The amounts of, and the dates on which, billing adjustments were made by the pipeline to satisfy the seller's refund obligations under paragraph (e) of this section in whole or in part;

(iv) The well name and, if available, American Petroleum Institute Well Number of the well that produced the natural gas for which the interstate pipeline was overcharged by that seller; and

(v) If applicable, the date of withdrawal of the seller's application.

* * * * *

[FR Doc. 84-22688 Filed 8-28-84; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-234 (New Mexico-27)]

High-Cost Gas Produced From Tight Formations; New Mexico

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Morrow Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 9, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 7, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, [202) 357–8511, or Victor Zabel, (202) 357–8616.

I. Background

August 6, 1984, the State of New Mexico Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.803 (1983)), that the Morrow Formation located in Lea County, New Mexico, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether New Mexico's recommendation that the Morrow Formation be designated a tight formation should be adopted. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation underlies certain lands in Lea County, New Mexico, and is located in the South Bell Lake Field in southeastern New Mexico. The recommended area is approximately 17,920 acres and consists of Township 24 South, Range 33 East, NMPM, Sections 11 through 14, 23 through 26, and 35 and 36; Township 24 South, Range 34 East, NMPM, Sections 8 S/2, 9 S/2, 14 W/2, 15 through 17, 19 through 22, 23 W/2, 26 W/2, 27 through 34, and 35 W/2. The average depth to the top of the Morrow Formation is 14,287 feet and the gross pay thickness of such formation is approximately 96 feet.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7750 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by New Mexico that the Morrow Formation as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 9, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–234 (New Mexico-27), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commisson in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than September 7, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formation.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts New Mexico's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(203) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(176) through (202) [Reserved]

(203) *Morrow Formation in New Mexico.* RM79–76–234 (New Mexico–27).

(i) *Delineation of formation.* The Morrow Formation is located in Lea County, New Mexico, in Township 24 South, Range 33 East, NMPM, Sections 11 through 14, 23 through 26, and 35 and 36; Township 24 South, Range 34 East, NMPM, Section 8 S/2, 9 S/2, 14 W/2, 15 through 17, 19 through 22, 23 W/2, 26 W/2, 27 through 34, and 35 W/2.

(ii) *Depth.* The Morrow Formation has a gross pay thickness of approximately 96 feet and begins at the base of the Atoka Formation and extends to the top

of the Chester Formation. The average depth to the top of the Morrow Formation is 14,287 feet.

[FR Doc. 84-22867 Filed 8-28-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF STATE

22 CFR Parts 121, 122, 123, 124, 125, 126, 127, 128, and 130

[Docket No. SD-188]

Revision of the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: On December 19, 1980, the Department of State published a proposed comprehensive revision of the International Traffic in Arms Regulations (the ITAR). (45 FR 83970). Numerous public comments were received, and the Department has now produced a final draft of the ITAR. Any member of the public who wishes to obtain a copy of this text and further review this rule may do so by contacting the Office of Munitions Control.

DATE: Comments should be received no later than October 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Wiznitzer, Office of Munitions Control, SA-6 Room 800, Department of State, Washington, D.C. 20520, (202) 235-9756.

SUPPLEMENTARY INFORMATION: The proposed revision of the ITAR that was published on December 19, 1980 was designed to clarify and improve the regulatory scheme on exports of defense articles and defense services that was established pursuant to the Neutrality Act of 1939 (54 Stat. 11), the Mutual Security Act of 1954 (68 Stat. 848) and the Arms Export Control Act of 1976 (22 U.S.C. 2778). Numerous public and governmental comments were received on the draft, and the Department has now completed its revision and has prepared a final rule to promulgate the revised ITAR.

The ITAR are regulations with respect to a foreign affairs function of the United States and are thus excluded from the major rules procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The Department of State has nonetheless continuously sought public comments on the ITAR because of a desire to ensure that the public is fully consulted on the proposed revision.

While the normal procedure would be to publish the final rule at this time, the Department of State believes that it would be desirable to provide any interested member of the public with another opportunity to review the proposed revision. All public comments will be taken into account before publication of the final rule.

Consequently, any member of the public may receive a copy of the proposed revision and an explanation of significant changes by contacting the Office of Munitions Control, SA-6 Room 800, Department of State, Washington, D.C. 20520, or by calling (202) 235-9756. The public will have 45 days to comment on the regulations.

Dated: August 7, 1984.

William Schneider, Jr.,

Under Secretary for Security Assistance, Science and Technology.

[FR Doc. 84-22952 Filed 8-28-84; 8:45 am]
BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-35-81]

Simplification of Private Foundation Return and Reporting Requirements; Proposed Rulemaking

Correction

In FR Doc. 84-22178 beginning on page 33145 in the issue of Tuesday, August 21, 1984, make the following corrections:

§ 1.6033-2 [Corrected]

1. On page 33146, in § 1.6033-2(a)(4), third column, sixth line, insert the word "same" between "the" and "manner".

§ 1.6033-3 [Corrected]

2. On page 33147, in § 1.6033-3(c)(iii), sixth line, insert the word "same" between "the" and "time". Also in the same column, the sentence beginning on the twenty-fifth line should have been included in the preceding paragraph.

§ 1.6034-1 [Corrected]

3. On the same page, third column, second line, "May 1969" should have read "May 27, 1969".

BILLING CODE 1505-01-M

26 CFR Part 1

[LR-54-83]

Effect of Windfall Profit Tax Overpayments on Estimated Income Tax Payments; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the effect of windfall profit tax overpayments on estimated income tax payments and penalties in light of the changes to the tax law made by the Technical Corrections Act of 1982. These amendments would provide rules with respect to the conditions under which overpayments of windfall profit tax may be taken into account in determining the amount of estimated income tax payments and the amount of any penalty for underpayment thereof.

DATES: Written comments and requests for a public hearing must be mailed or delivered by October 29, 1984. The amendments in this document are proposed to be effective with respect to windfall profit tax overpayments made for taxable years ending after February 29, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-54-83), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T), (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

Section 201(j) of the Technical Corrections Act of 1982 authorizes the promulgation of regulations prescribing conditions under which windfall profit tax overpayments may be taken into account in determining: (1) The amount of estimated income tax payments under sections 6015 and 6154 of the Code, and (2) the amount of any penalty for underpayment of estimated income tax under sections 6654 and 6655 of the Code. The proposed regulations contained herein would prescribe these conditions.

On March 26, 1984, the Federal Register published at 49 FR 11186 proposed amendments to the regulations that contained, among other provisions, proposed revisions to regulations §§ 1.6655-1 and 1.6655-2. The proposed rules contained herein include amendments to §§ 1.6655-1 and 1.6655-2 that were proposed on March 26, 1984.

These regulations are necessary to implement section 201(j) of the Technical Corrections Act of 1982 and are to be issued under the authority contained in sections 6015, 6154, 6654, 6655 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2395 and 2396,

68A Stat. 917; 26 U.S.C. 6015, 6154, 6654, 6655 and 7805).

This notice of proposed rulemaking does not reflct amendments to sections 6015 and 6654 made by sections 411 and 412(a) of the Tax Reform Act of 1984.

Explanation of Provisions

Sections 6015(d) and 6154(c) of the Code define the term "estimated tax" by providing a calculation to arrive at an estimated income tax amount. The calculation includes a reduction for overpayments of windfall profit tax to the extent such overpayments are allowed by the regulations. Sections 1.6015(c)–1(a)(5), 1.6015(d)–1(b)(4), and 1.6154–5(b)(2) of the proposed regulations provide for the reduction to the extent of an overpayment of windfall profit tax. An "overpayment" of windfall profit tax is defined as the amount by which the taxpayer's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is reasonably expected to be exceeded by withholding of windfall profit tax for the taxable year.

Sections 6654(g) and 6655(f) of the Code, in determining the amount of any penalty for the underpayment of estimated income tax, define the term "tax", as an amount which is reduced for overpayments of windfall profit tax to the extent the regulations allow such a reduction. Sections 1.6654–1(a)(4)(v), 1.6655–2(b)(1)(v), 1.6655–1(b)(5)(ii)(B), and 1.6655–2(c)(1)(ii)(B) provide for the reduction to the extent of an overpayment of windfall profit tax. An "overpayment" of windfall profit tax is defined as the amount by which the taxpayer's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year. For purposes of section 6654 only, the definition of an overpayment is expanded to include amounts treated as an overpayment of windfall profit tax under sections 6429 and 6430. In figuring the amount of the reduction for windfall profit tax overpayments in the penalty context, the deemed payment date of section 4995(a)(4) is not to be taken into account.

Comments and Requests for a Public Hearing

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

Special Analysis

The Commissioner of Internal Revenue has determined that these proposed regulations are not major regulations subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

The Commissioner of Internal Revenue has concluded that these proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are regulations not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

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

List of Subjects

26 CFR Part 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 1.6151–1—1.6165–1

Income taxes, Administration and procedure, Payment of tax.

26 CFR Part 1.6654–1—1.6696–1

Income taxes, Administration and procedure, Penalties, Additions to tax.

Proposed Amendments to the Regulations

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

Paragraph 1. Section 1.6015(c)–1 is amended as follows:

1. By removing, in paragraph (a)(3), the words "and also minus" and inserting, in their place, the word "minus".

2. By removing in paragraph (a)(4), the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes)." and inserting, in their place, the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes), and minus".

3. By adding a new paragraph (a)(5) immediately after paragraph (a)(4) as set forth below.

§ 1.6015(c)–1 Definition of estimated tax.

(a) *In general.* * * *

* * * * *

(5) For taxable years ending after February 29, 1980, the amount which the individual estimates will be the amount of such individual's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the amount by which such individual's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is reasonably expected to be exceeded by withholding of windfall profit tax for the taxable year.

* * * * *

Par. 2. Section 1.6015(d)–1 is amended as follows:

1. By removing, in paragraph (b)(3), the words "and lubricating oils; and" and inserting, in their place, the words "and lubricating oils;".

2. By redesignating paragraph (b)(4) as paragraph (b)(5), adding a new paragraph (b)(4) immediately after paragraph (b)(3), and revising new paragraph (b)(5) as set forth below.

§ 1.6015(d)–1 Contents of declaration of estimated tax.

* * * * *

(b) *Computation of estimated tax.*

* * *

* * * * *

(4) For taxable years ending after February 29, 1980, the amount which the taxpayer estimates will be the amount of such taxpayer's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the amount by which such individual's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is reasonably expected to be exceeded by withholding of windfall profit tax for the taxable year.

(5) The excess, if any, of the sum of the amounts shown under subparagraphs (b) (1) and (2) of this paragraph over the sum of the amounts shown under subparagraphs (b) (3) and (4) of this paragraph shall be the estimated tax for the taxable year.

* * * * *

Par. 3. Section 1.6154–5 is added immediately after § 1.6154–4 as set forth below:

§ 1.6154-5 Definition of estimated tax.

For taxable years beginning after December 31, 1976, the term "estimated tax" means the excess of—

(a) The amount which the corporation estimates as its income tax liability for the taxable year under section 11 or 1201(a), or subchapter L of chapter 1 of the Code, whichever is applicable, over

(b) The sum of—

(1) Any estimated credits against tax provided by part IV of subchapter A of chapter 1 of the Code, plus

(2) For taxable years ending after February 29, 1980, the amount which the corporation estimates will be the amount of such corporation's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the amount by which such corporation's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is reasonably expected to be exceeded by withholding of windfall profit tax for the taxable year.

Par. 4. Section 1.6654-1 is amended as follows:

1. By removing, in paragraph (a)(4)(iii), the words "and also minus" and inserting, in their place, the word "minus".

2. By removing, in paragraph (a)(4)(iv), the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes)." and inserting, in their place, the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes), and minus".

3. By adding a new paragraph (a)(4)(v) immediately after paragraph (a)(4)(iv) as set forth below.

§ 1.6654-1 Addition to the tax in the case of an individual.

(a) *In general.* * * *

* * * * *

(4) * * *

(v) For taxable years ending after February 29, 1980, the individual's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the sum of (A) the amount by which such individual's aggregate windfall profit tax liability for the taxable year as producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year, and (B) any amount treated under section 6429 or 6430 as an overpayment of windfall profit tax for crude oil removed during the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payment for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

* * * * *

Par. 5. Section 1.6654-2 is amended as follows:

1. By removing, in paragraph (b)(1)(iii), the words "estimated tax, and also minus" and inserting, in their place, the words "estimated tax, minus".

2. By removing, in paragraph (b)(1)(iv), the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes)." and inserting, in their place, the words "(relating to the credit for tax withheld from wages on account of qualified State individual income taxes), and minus".

3. By adding a new paragraph (b)(1)(v) immediately after paragraph (b)(1)(iv) as set forth below.

§ 1.6654-2 Exceptions to imposition of the addition to the tax in case of individuals.

* * * * *

(b) *Meaning of terms.* * * *

(1) * * *

(v) For taxable years ending after February 29, 1980, the individual's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the sum of (A) the amount by which such individuals's aggregate windfall profit tax liability for the taxable year as producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year, and (B) any amount treated under section 6429 or 6430 as an overpayment of windfall profit tax for crude oil removed during the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payments for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

* * * * *

Par. 6. Paragraph (b)(5)(ii)(B) of proposed § 1.6655-1 is revised to read as follows:

§ 1.6655-1 Addition to the tax in the case of a corporation.

* * * * *

(b) *Amount of underpayment.* * * *

* * * * *

(5) *Definition of the term "tax."* * * *

(ii) * * *

(B) For taxable years ending after February 29, 1980, the corporation's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the amount by which such corporation's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payments for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

* * * * *

Par. 7. Paragraph (c)(1)(ii)(B) of proposed § 1.6655-2 is revised to read as follows:

§ 1.6655-2 Exceptions to imposition of the addition to the tax in the case or corporations.

* * * * *

(c) *Meaning of terms.* * * *

(1) Meaning of term "tax." * * *

(ii) * * *

(B) For taxable years ending after February 29, 1980, the corporation's overpayment of windfall profit tax imposed by section 4986 of the Code from the taxable year. For this purpose, the amount of such overpayment is the amount by which such corporation's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payment for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-22937 Filed 8-28-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 51

[LR-38-82]

Net Profits Interests; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the rules applicable to net profits interests for purposes of the windfall profit tax on domestic crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. Changes to the applicable law were made by sections 201(h) and 203(c) of the Technical Corrections Act of 1982. The regulations would provide guidance for determining the portion of crude oil produced from the property attributable

to the holder of a new profits interest. These regulations would supersede § 150.4996–1(b)(3) of the Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980, 26 CFR Part 150, for those net profits interests for which these regulations would be effective. Those temporary regulations remain in effect for those net profits interests for which these regulations would not be effective (*e.g.*, a net profits interest established by an agreement entered into before April 1, 1982, which is held by a profit making corporation).

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 29, 1984. The amendments are proposed to be effective generally with respect to net profits agreements entered into (or renewed) after March 31, 1982. However, in the case of a 90 percent or more net profits interest held by an exempt charity or exempt governmental interest, these amendments are proposed to be effective with respect to crude oil removed after February 29, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–38–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1982, the Federal Register published final regulations (47 FR 50215) under sections 4986, 4987, 4988, 4989, 4991, 4922, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, 6081 and 6402 of the Internal Revenue Code of 1954. Those regulations were required to implement various sections of the Crude Oil Windfall Profits Tax Act of 1980. In general, those regulations superseded Temporary Excise Tax Regulations under the Crude Oil Windfall Tax Act of 1980. However, paragraph (b)(3) of § 51.4996–1, relating to net profits interests, was reserved in the final regulations. The final regulations did not supersede paragraph (b)(3) of § 150.4996–1. These proposed amendments are to be issued under the authority of Code section 4997(b), which grants the Secretary of the Treasury or his delegate authority to prescribe regulations necessary or appropriate to carry out the purpose of the windfall profit tax (including changes in the application of the energy regulations), sections 4996(a)(1)(B) and 4996(h)(2), and under the more general regulatory authority contained in section 7805(b).

Explanation of Provisions

The windfall profit tax imposes a tax on the producer of domestic crude oil except exempt oil. Section 4996(a)(1)(A) provides that the term "producer" generally means the holder of an economic interest with respect to the crude oil. The holder of a net profits interest in a property is generally considered to hold an economic interest with respect to the crude oil. Under § 150.4996–1(b)(3) of the temporary regulations (promulgated before enactment of the Technical Corrections Act of 1982, the holder of a net profits interest is treated as the producer of the number of barrels of crude oil equal to the net profits interest holder's share of net profits divided by the removal price of the crude oil. For example, if X receives $120 of his share of net profits and the removal price of the crude oil is $30 per barrel, X is treated as the producer of four barrels of crude oil.

Section 201(h) of the Technical Corrections Act of 1982 amends the definition of "producer" in section 4996(a) to provide special rules for producers subject to a net profits interest agreement. These special rules provide that for windfall profit tax purposes the amount of crude oil equal in value to the cost of operating the property (cost recovery oil) will be treated as produced by the net profits interest holder and the person holding the interest burdened by the net profits interest in the same proportion as their respective shares of net profits. Section 201(h) of the Act also amends section 4988(b) by adding a new paragraph (6) which provides that for purposes of the net income limitation the expenses of producing the crude oil will be allocated in the same manner as the cost recovery oil. Thus, the holder of a 10 percent net profits interest essentially will be treated as the producer of 10 percent of the barrels of crude oil produced and will be attributed 10 percent of the expenses of producing that crude oil.

As if Cost Depletion

Section 4988(b)(6) provides that for net income limitation purposes, if any person is treated as the producer of a portion of cost recovery oil covered by a net profits agreement, such person (and only such person) shall include in its gross income from the property the gross income from such portion and the qualified costs allocable to such portion shall be treated as paid or incurred by such person. Section 51.4988–2(c)(4) of the proposed regulations makes clear that this rule applies for purposes of determining "as if" cost depletion under § 51.4988–2(b)(3). This position is consistent with Congressional intent as indicated in the following statement from the Senate report: "Thus the net income limitation treatment of depletion and intangible drilling costs, for example, will be determined in accordance with the new allocation rules [section 4988(b)(6)] for the windfall profit tax and not under the usual income tax rules." S. Rep. No. 97–592, 97th Cong., 2d Sess. 43 (1982).

Specified Amounts

There may be situations in which the person with the working interest transfers that interest while retaining an overriding royalty interest with certain conditions. For example, the agreement may provide that the person holding the overriding royalty interest will not receive an amount in excess of a specified percentage of net profits (*e.g.*, the overriding royalty interest is entitled to the proceeds from ¼ of the production except that such amount shall not exceed 90 percent of net profits). The proposed regulations treat this type of limited overriding royalty interest as a net profits interest in those cases in which the proceeds from the specified share of production exceed the specified percentage of net profits.

There may be situations in which the person with the working interest transfers that interest while retaining an interest that entitles such person to the greater of a specified percentage of net profits or a specified amount (*e.g.*, 90 percent of net profits or $200, whichever is greater). The proposed regulations do not treat this type of interest as a net profits interest in those cases in which the specified amount exceeds the specified percentage of net profits. If the share of net profits exceeds the specified amount, the excess of the amount received over the specified amount, rather than the entire amount received, is treated as attributable to a net profits interest. The amount received equal to the specified amount is treated as attributable to a royalty interest or production payment, depending on the particular situation.

Allocation of Cost Recovery Oil

Section 4996(h)(2) defines "cost recovery oil" as crude oil produced from a property that is allocated to a person as reimbursement for qualified costs paid or incurred with respect to the production of crude oil from the property. That section also provides that the Secretary shall by regulations

prescribe rules for allocating the cost recovery oil to the oil produced from the property. Proposed § 51.4996–1(b)(3)(iv) provides that if a property produces crude oil of different categories, cost recovery oil shall be allocated among such categories in proportion to the production from that property in each such category that was removed from the premises during the immediately preceding calendar quarter. For this purpose, the categories of crude oil are tier 1, tier 2, newly discovered oil, tier 3 oil other than newly discovered oil, and exempt oil. Proposed § 51.4996–1(b)(3)(iv) also provides that if a net profits agreement provides that net profits are determined from proceeds other than proceeds solely from the production of crude oil, "cost recovery oil" shall be deemed to exist to the extent that, based on all the facts and circumstances, the expenses paid or incurred in producing the net profits are attributable to the production of crude oil.

Qualified Costs

Section 4996(h)(3) defines "qualified costs" as any amount paid or incurred for exploring for, or developing or producing, one or more oil or gas wells on the property. The proposed regulations provide that this term includes any amounts paid or incurred for overhead or indirect costs that are attributable to the activities described in the preceding sentence. The proposed regulations also provide that the term "qualified costs" does not include any amount that is paid or incurred with respect to the tax imposed by chapter 45.

Comments and Requests for Public Hearing

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

Special Analysis

The Commissioner of the Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and the Treasury-OMB agreement dated April 29, 1983, implementing that order. Accordingly, a Regulatory Impact Analysis is not required.

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

Drafting Information

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

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act Act of 1980.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 51 are as follows:

Paragraph 1. Paragraph (c) of § 51.4988–2 is amended by redesignating paragraphs (c)(4), (5), and (6) as (5), (6), and (7), respectively, and by inserting a new paragraph (c)(4) to read as set forth below.

§ 51.4988–2 Net income limitation on windfall profit.

* * * * *

(c) *Special rules.* * * *

(4) *Certain net profits interests.* (i) For purposes of determining the net income limitation under this section in the case of any person treated under paragraph (b)(3) of § 51.4996–1 (relating to net profits interests) as the producer of any portion of cost recovery oil (within the meaning of § 51.4996–1(b)(3)(iv)) covered by a net profits agreement (within the meaning of § 51.4996–1(b)(3)(iii))—

(A) Such person (and only such person) shall include in its gross income from the property the gross income from such portion, and

(B) The qualified costs (within the meaning of § 51.4996–1(b)(3)(v) allocable to such portion (and only by such person).

The determination of cost depletion under paragraph (b)(3) of this section shall be made with regard to the principles of paragraph (b)(3) of § 51.4996.1. Thus, a person treated under that paragraph as the producer of any portion of cost recovery oil covered by a net profits agreement computes the cost depletion deduction allowable under paragraph (b)(3) of this section by using as the number of units sold that number of units which such person would have used for income tax purposes of such person's gross income from the property had included the gross income attributable to that portion of the cost recovery oil of which such person is treated as the producer.

(ii) *Example.* B owns 100 percent of the working interest in Whiteacre. B's working interest is burdened by a 75 percent net profits interest held by C. The net profits agreement provides that the amount of net profits is determined by subtracting from gross income from the sale of Crude oil or gas production from Whiteacre all payments to royalty holders and all operating expenses except the windfall profit tax. Whiteacre produces only taxable crude oil. For the taxable year, 20,000 barrels of crude oil are produced from Whiteacre and sold for $40 per barrel for a total of $800,000. Of this amount, $100,000 is paid to D for his ⅛ royalty interest ($40×(20,000×⅛)). The operating expenses attributable to the production of the taxable crude oil are $100,000. The net profits for the year are $600,000 ($800,000 (gross income)—($100,000 (royalty payment)+$100,000 (expenses))). C is entitled to $450,000 ($600,000×.75). Under § 51.4996–1 (b)(3) C is treated as the producer of 13,125 barrels of crude oil (20,000×⅞×.75). Thus, for purposes of determining C's hypothetical cost depletion deduction allowable for the taxable year under paragraph (b)(3) of § 51.4988–2, C would use the 13,125 barrels as his number of units sold and would attribute $75,000 of the costs ($100,000×.75) to that production for purposes of calculating the net income limitation.

* * * * *

Par. 2. Paragraph (b)(3) of § 51.4996–1 is revised to read as follows:

§ 51.4996–1 Definitions.

* * * * *

(b) *Producer.* * * *

(3) *Certain net profits interests*—(i) *In general.* In the case of any property (within the meaning of paragraph (i) of this section), all cost recovery oil (within the meaning of paragraph (b)(3)(iv) of this section) covered by a net profits agreement (within the meaning of paragrpah (b)(3)(iii) of this section) shall be treated as produced by the parties to such agreement in proportion to the respective shares (determined after reduction for such cost recovery oil) of the production of the crude oil covered by such agreement. An economic interest in crude oil in place in the ground which is not a working interest (within the meaning of paragraph (d)(2)

of § 51.4992–1) without regard to this subparagraph shall not be considered a working interest by reason of the allocation of costs to a holder of a net profits interest under this subparagraph.

(ii) *General rule inapplicable before payout.* In the case of any property, the provisions of paragraph (b)(3)(i) of this section only shall apply for—

(A) The first taxable period in which, under the agreement with respect to such property, one or more persons receive a share described in paragraph (b)(3)(iii)(B) of this section, and

(B) All subsequent taxable periods to which such agreement applies.

(iii) *Net profits agreement defined.* The term "net profits agreement" means an agreement entered into (or renewed) after March 31, 1982, that provides for sharing part or all of the production of crude oil from a property where—

(A) One or more persons are to be reimbursed for qualified costs (within the meaning of paragraph (b)(3)(v) of this section) by the allocation of cost recovery oil, and

(B) One or more persons are to receive a share of any production of crude oil from the property remaining after reduction for the cost recovery oil referred to in paragraph (b)(3)(iii)(A) of this section.

The term "net profits agreement" shall include an agreement that provides that a party to the agreement is entitled to the greater or lesser of a specified share of production of crude oil from the property remaining after reduction for cost recovery oil or some other amount (such as a specified share of total production or a maximum or minimum amount) provided the requirements of paragraphs (b)(3)(iii) (A) and (B) of this section are satisfied. If a party to an agreement described in the preceding sentence receives a share of production other than the specified share of production of crude oil from the property remaining after reduction for cost recovery oil, such party shall be treated as receiving a share of production of crude oil from the property remaining after reduction for cost recovery oil in certain situations. If such party receives a maximum or minimum amount with respect to any crude oil production instead of a specified share of production, such party shall not be treated as receiving a share of production remaining after reduction for cost recovery oil with respect to such crude oil production. However, if such party is entitled to receive the greater of a specified share of production or a specified amount and receives the specified share of production remaining after reduction for cost recovery oil instead of the specified amount, such party shall be treated as receiving a share of production remaining after reduction for cost recovery oil to the extent that the amount of the share received exceeds the specified amount. See example (4) of paragraph (b)(3)(viii) of this section.

(iv) *Cost recovery oil defined.* The term "cost recovery oil" means crude oil produced from the property that is allocated to a person as reimbursement for qualified costs paid or incurred with respect to the property. If the property produces crude oil of different categories, cost recovery oil shall be allocated among such categories in proportion to the production from that property in each such category that was removed from the premises during the immediately preceding calendar quarter. For purposes of the preceding sentence, the categories of crude oil are tier 1, tier 2, newly discovered oil, tier 3 oil other than newly discovered oil, and exempt oil. If a new profits agreement provides that net profits are determined from proceeds other than proceeds solely from the production of crude oil, cost recovery oil shall be deemed to exist to the extent that, based on all the facts and circumstances, the expenses paid or incurred in producing the net profits are attributable to the production of crude oil. See example (7) of paragraph (b)(3)(viii) of this section.

(v) *Qualified costs.* The term "qualified costs" means any amount paid or incurred for exploring, developing, or producing natural gas or crude oil from a reservoir on the property. The term includes any overhead or indirect costs paid or incurred that are attributable to the activities described in the preceding sentence. The term does not include any amount that is paid or incurred with respect to the tax imposed by chapter 45.

(vi) *Scope of agreement.* A net profits agreement shall be treated as covering only shares of production of crude oil held by persons who hold economic interests in the property (determined without regard to paragraph (b)(3)(i) of this section).

(vii) *Effective date for certain governmental entities and certain charities.* If 90 percent or more of the remaining production referred to in paragraph (b)(3)(iii)(B) of this section is to be received by holders of a qualified governmental interest (within the meaning of section 4994(a)) or holders of a qualified charitable interest (within the meaning of section 4994(b)), or both, that do not share in the costs referred to on paragraph (b)(3)(iii)(A) of this section, then the requirement of paragraph (b)(3)(iii) that the agreement be entered into (or renewed) after March 31, 1982, shall not apply. Accordingly, the applicability of the provisions of this subparagraph is determined without regard to the date on which the net profits agreement was entered into.

(viii) The principles of this subparagraph may be illustrated by the following examples:

Example (1). A, an independent producer, holds the working interest in property X which produces tier 1 oil. A's interest is burdened by a 95 percent net profits interest held by B who is neither an independent producer nor an exempt producer. The agreement between A and B provides that the amount of net profits is determined by subtracting from gross income all operating expenses except windfall profit taxes. Property X produces 400 barrels of crude oil during the month of May, each of which is sold for $35. The operating expenses for May are $6,300. Of the 400 barrels produced during May, 180 are attributed to A under the agreement to cover operating expenses ($6,300 ÷ $35). Of the 220 barrels remaining, 11 are attributed to A (5% of 220) and 209 are attributed to B (95% of 220) under the agreement. For windfall profit tax purposes, the 180 barrels are treated as cost recovery oil. Under § 51.4996–1(b)(3)(i), 171 barrels of the cost recovery oil are allocated to B (95% of 180). Thus, for windfall profit tax purposes, A and B are treated as producers of 20 barrels and 380 barrels, respectively, for May.

Example (2). C, an independent producer, owns an oil and gas property that is burdened by an overriding royalty interest held by D. The overriding royalty agreement provides that D is entitled to the lesser of the proceeds from ¼ of the production from the property or 50 percent of the net profits from the property for a calendar quarter. The property produced 1,000 barrels at $30 per barrel for a calendar quarter and had net profits of $1,400. The proceeds from ¼ of the production for the quarter exceeded 50 percent of the net profits. D is treated as the holder of a 50 percent net profits interest with respect to those barrels of crude oil for which D's share of the proceeds from production is determined by reference to 50 percent of net profits. D is treated as the producer of 500 barrels.

Example (3). E, an independent producer, owns an oil and gas property that is burdened by a net profits interest (determined before any reduction of the net profits for chapter 45 taxes) held by F. F is entitled to 10 percent of the net profits or $2,200 (or revenue from total production if revenue from production is $2,200 or less per calendar quarter) for a calendar quarter, whichever is greater. For a calendar quarter gross income from the property is $26,010 (867 barrels at $30 each) and expenses are $4,800. F's share of net profits is $2,121 (($26,010−$4,800)×10%). F receives $2,200 because this amount exceeds 10 percent of net profits. F is treated as the holder of an 8.45829% royalty interest ($2,200 ÷ $26,010), and is treated as the producer of 73.33337

barrels of crude oil (867×8.45829%) with respect to that royalty interest.

Example (4). Assume the same facts as example (3) except that the expenses are $1,200. F's share of net profits is $2,481 (($26,010−$1,200)×10%). F is treated as the holder of an 8.45829% royalty interest ($2,200 ÷ $26,010) because F is entitled to the $2,200 without regard to net profits. F is also treated as the holder of a 1.24281% net profits interest because $281 ($2,481−$2,200) are determined by reference to net profits to net profits from production ($281÷$26,010−$1,200+$2,200). F is treated as the producer of 84.10853 barrels of crude oil. Of this amount, 73.33337 barrels are attributable to the royalty interest (867×8.45829%) and 10.77516 barrels are attributable to the net profits interest (867×1.24281%). F is treated as the producer of 1.24281% of the cost recovery oil, and, accordingly, is allocated $14.91372 of expenses (1.24281%×$1,200) for purposes of the net income limitation.

Example (5). On January 1, 1983, G and H enter into an agreement which provides for the following: (1) G will incur all expenses of exploring for and developing property Y, (2) G will receive all production from Y until G has recovered all expenses for exploration and development, and (3) after G has recovered all expenses for exploration and development, G and H will share equally the production remaining after G has recovered operating costs (determined without regard to the tax imposed by chapter 45). Y begins producing crude oil on July 1, 1983. G recovers all expenses for exploration and development as of December 31, 1983, and on January 1, 1984, G and H begin sharing the production from Y remaining after G has recovered operating expenses. For purposes of paragraph (b)(3)(ii)(A) of this section, H is not treated as receiving a share described in paragraph (b)(3)(iii)(B) of this section until January 1, 1984.

Example (6). Assume the same facts as example (5) except that the agreement provides that after G has recovered all expenses for exploration and development, G and H will share equally the revenue and expenses of production from Y. The agreement between G and H is not a net profits agreement because H's share of production after G has recovered all expenses for exploration and development is burdened by the expenses of such production.

Example (7). J, an independent producer, owns property Z which produces tier 1 and tier 2 oil. J's interest is burdened by a 95 percent net profits interest held by K whose interest is a qualified charitable interest. The net profits agreement between J and K provides that the amount of net profits is determined by substracting from gross income from the sale of crude oil and natural gas production from property Z all operating expenses except the windfall profit tax. The agreement also provides that the proceeds from the production of natural gas shall be used to reimburse J for all operating expenses for the production of crude oil and natural gas from property Z. Fifty percent of the gross income from property Z is attributable to the production of crude oil and 50 percent is attributable to the production of natural gas. However, 80 percent of the operating expenses of property Z are attributable to the production of crude oil while only 20 percent are attributable to the production of natural gas. During January of 1984, property Z produces 900 barrels of crude oil which sell for $27,000 ($30 per barrel) and 10,000 MCF of natural gas which also sell for $27,000. The operating expenses of property Z for that month are $4,500, $3,600 of which are attributable to the production of crude oil and $900 of which are attributable to the production of natural gas. Because 80 percent of the operating expenses are attributable to the production of crude oil, cost recovery oil shall be deemed to exist to the extent of 80 percent of the operating expenses. Accordingly, there are 120 barrels of cost recovery oil ($3,600 (operating expenses attributable to crude oil) ÷ $30 (removal price of each barrel of crude oil). During the immediately preceding calendar quarter, 50 percent of the crude oil removed from the premises was tier 1 and 50 percent was tier 2. Accordingly, of the 120 barrels of cost recovery oil, 60 barrels are treated as tier 1 and 60 barrels are treated as tier 2.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-22936 Filed 8-28-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[LR-149-84]

Requirement to Maintain Lists of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirement to maintain a list of investors in potentially abusive tax shelters. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 29, 1984. The regulations are proposed to apply to any interest in a potential abusive tax shelter other than an interest that was acquired by an investor before September 1, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-149-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224 (Attention: CC:LR:T), (202) 566-3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR Part 301) to provide rules under sections 6112 and 6708 of the Internal Revenue Code of 1954. The text of those temporary regulations serves as the comment document for this notice of proposed rulemaking.

Section 6112 provides that any person who organizes, or sells any interest in, a potential abusive tax shelter must maintain a list of investors in that tax shelter. Any person who is required to maintain a list under section 6112 must make the list available for inspection upon request of the Secretary, and generally must retain any information required to be included on the list for 7 years.

Section 6708 provides that any person who fails to meet any requirement under section 6112 shall be subject to a penalty of $50 for each person with respect to whom there is such a failure, unless it is shown that the failure is due to reasonable cause and not to willful neglect. The penalty imposed by section 6708 on a person who fails to meet the requirements of section 6112 shall not exceed $50,000 for any calendar year. The penalty imposed by section 6708 is in addition to any other penalty provided by law.

The regulations under sections 6112 and 6708 are to be issued under the authority contained in sections 6112 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 681, 68A Stat. 917; 26 U.S.C. 6112, 7805). For the text of the temporary regulations, see FR Doc. 84-22939 (T.D. 7969) published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed

herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

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

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

Drafting Information

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

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-22938 Filed 8-24-84; 3:31 pm]

BILLING CODE 4830-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2661-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice announcing extension of public comment period.

SUMMARY: On July 17, 1984, (49 FR 28888) the U.S. EPA proposed to change the sulfur dioxide designation for Columbiana and portions of Summit Counties in Ohio from nonattainment to attainment of the National Ambient Air Quality Standard (NAAQS). In addition U.S. EPA proposed to deny the State of Ohio's request for the redesignation of Clermont, Coshocton, Cuyahoga, Lake, Lorain, Morgan, Washington and portions of Summit Counties. In that notice U.S. EPA also proposed to take no action on the redesignation request for Gallia, Lucas and Jefferson Counties.

A 30-day comment period was provided which was scheduled to end on August 16, 1984. In response to a commenter's request to extend the comment period an additional 30 days, the public comment period is being extended to September 17, 1984.

DATE: Comments must be received on or before September 17, 1984.

ADDRESSES: Comments should be submitted to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio (312) 886-6088.

Dated: August 15, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-22904 Filed 8-28-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300096; FRL-2661-5]

Methyl Esters of Higher Fatty Acids; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption for methyl esters of higher fatty acids from the requirement of a tolerance when used as a surfactant in pesticide formulations. This proposed regulation was requested by Domain, Inc.

DATE: Written comments must be received on or before September 28, 1984.

ADDRESS: By mail, submit written comments identified by the document control, number [OPP-300091] to: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Domain, Inc., the Administrator proposes amending 40 CFR 180.1001(c) by expanding the existing exemption from the requirement of a tolerance for methyl esters of higher fatty acids for the additional use as a surfactant in pesticide formulations. A separate entry is not necessary in order to reflect this change.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust

carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Methyl esters of higher fatty acids.

Name and address of requestor. Domain, Inc., New Richmond, WI.

Bases for approval. (1) The methyl esters of higher fatty acids are already cleared under 40 CFR 180.1001 (c) and (e) under the general heading "Methyl esters of higher fatty acids conforming to 21 CFR 573.640" as an antidusting agent. Methyl esters of higher fatty acids also have a clearance for use in animal feeds in 21 CFR 573.640. The present clearance can be amended to reflect this modest change of an additional use as a surfactant.

(2) The Agency does not consider this additional use of methy esters of higher fatty acids as a surfactant to be of toxicological significance. Accordingly, the present entry in 40 CFR 180.1001(c) can be amended to reflect this additional use of methyl esters of higher fatty acids as a surfactant.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300096]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 16, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by revising the entry for methyl esters of higher fatty acids, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	* Uses
* * * * *		
Methyl esters of higher fatty acids conforming to 21 CFR 573.640.	.....	Antidusting agent, surfactant.
* * * * *		

* * * * *

[FR Doc. 84-22909 Filed 8-28-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[W-9-FRL-2661-8]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate the existing dredged material disposal site located adjacent to the San Francisco main ship channel as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material resulting from the annual dredging of the San Francisco main ship channel.

DATE: Comments must be received on or before October 15, 1984.

ADDRESSES: Send comments to: Mr. T.A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460

The Environmental Impact Statement (EIS) concerning this proposed site designation and the proposed monitoring plan are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region IX, 215 Fremont Street, San Francisco, California

FOR FURTHER INFORMATION CONTACT: Mr. T.A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was last extended on February 7, 1983 (48 FR 5557 et seq.). That list established the San Francisco Channel Bar site as an interim site and extended its period of use until January 31, 1984. The interim designation of this site was further extended to January 31, 1985, on March 9, 1984 (49 FR 8923 et seq.), in order to provide a site necessary for the disposal of dredged material from the San Francisco area until such time as rulemaking for an ocean disposal site for continuing use can be completed.

The purpose of this notice is to provide the public with an opportunity to comment on the proposed final designation, as an EPA approved Ocean Dumping Site, of a site adjacent to the San Francisco main ship channel for the continuing disposal of dredged material.

The proposed site is located 3 nautical miles west of the San Francisco Peninsula and 1 nautical mile south of, and running parallel to, the main ship channel. It is a rectangular area, 4,572 x 914 meters, with corner cordinates as follows:

37°44'55" N 122°37'18" W;
37°45'45" N 122°34'24" W;
37°44'24" N 122°37'06" W;
37°45'15" N 122°34'12" W.

The site lies with its long axis at right angles to the San Francisco Channel Bar. Water depths within the site range from 14.3 meters in the southwest and northeast corners to 11 meters in the center. The proposed site has received an annual volume of dredged material ranging from 950,000 cubic yards to 1,500,000 cubic yards.

EPA has prepared an Environmental Impact Statement (EIS) in accordance with EPA's Statement of Policy for Voluntary Preparation of EIS's (39 FR 16186, May 7, 1974; 39 FR 37119, October 21, 1974. On November 28, 1980, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register.** This draft EIS envisioned restricting site use to dredged material that was composed "predominately of sand, gravel, rock, or any other naturally occurring bottom sediment" from an area of high wave energy, and to compatible dredged material "for beach nourishment or restoration." (40 CFR 227.13(b).) A revised draft of the San Francisco Channel Bar EIS was subsequently issued recommending that disposal be allowed of other dredged material found environmentally acceptable for ocean disposal after testing as outlined at 40 CFR 227.13. As recommended by the revised draft EIS, the quantity and acceptability of material for ocean disposal at this site would be considered by EPA and the Corps of Engineers on a case-by-case basis within each project EIS or permit application evaluation.

On February 26, 1982, a notice of the availability of the revised draft EIS for public review and comment was published in the **Federal Register** (47 FR 8402). The public comment period on this revised draft EIS closed April 12, 1982. On September 10, 1982, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (47 FR 39886). The public comment period on the final EIS closed October 12, 1982. Anyone desiring a copy of the EIS may obtain one from the address given above.

EPA has attempted to select the most environmentally acceptable location for the ocean disposal of materials dredged from the San Francisco main ship channel when ocean disposal is found to be necessary for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and site designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impact at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. These general criteria are set forth in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The existing San Francisco Channel Bar dredged material disposal site satisfies the five general criteria for continuing use. As discussed below under the 11 specific factors considered in determining compliance with these criteria, use of the site does not interfere with other marine activities, studies have shown that dumping at the site has not caused impacts outside the disposal site, and the site is in a location where effective monitoring is feasible. This site is not off the Continental Shelf; however, there are minimal environmental risks associated with use of the existing site, and use of an off-the-Shelf site would increase difficulty of monitoring and increase costs of disposal without a corresponding environmental benefit.

EPA established the 11 specific factors in § 228.6 to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make critical comparisons between the alternative sites and are the bases for final site selection. The characteristics of the existing site are reviewed below in terms of these 11 criteria.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR § 228.6(a)(1).]

The site is approximately a rectangle, 4,572 x 914 meters. Its corner coordinates are given above. Water depth ranges from 11 to 14.3 meters. The only prominent features on the sea floor are sand ripples.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Many species of fish and invertebrates spawn throughout the Gulf of the Farallones or within areas in the Gulf where they occur as adults; nursery areas are similarly distributed. However, few spawning or nursery grounds have been identified in the Gulf because the areas used for these purposes are usually widespread and indistinct from the general habitat of a given species. Thus the site may serve as an established, though minor, portion of the range for these activities.

Juvenile Dungeness crabs may occur in the proposed site during disposal operations. Crabs are highly motile, however, and studies of behavior of the species as discussed in the EIS show that they should have little difficulty escaping the thin layer of sand or finer grained material deposited during disposal operations. Fine grained or highly cohesive material if deposited so as to form thick layers could possibly immobilize the crabs. However, as noted in the discussion under factor 6, the currents at this site are such that mounding which could create thick layers does not occur.

Salmon migrate through the Golden Gate during spring and may pass through the proposed site. Salmon migrating into the Bay during disposal operations would be diverted from the site but would not be prevented from entering the Golden Gate. The site may also be used as a spawning area by English sole, and juveniles of English sole, sanddabs, and California halibut may be found there.

Considering the extent of the region in which spawning and nursery areas occur, disposal of dredged material at this site presents no significant threat to reproducing populations of fishes. The limited area of the disposal site and the infrequency of disposal operations

minimize the direct exposure of these species to dredged material.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The proposed site is approximately 3 nautical miles from the San Francisco coastline. The beaches in this region are undeveloped and experience light to moderate public use.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).]

The location of the present interim site was chosen by the Corps of Engineers in 1972 partly in anticipation that the sand disposed of at the site would build up eroding beaches south of the site. Dredged material from the entrance of the main ship channel is the only material currently disposed at the proposed site and is excluded from further testing in compliance with 40 CFR 227.13(b)(1). This material is composed primarily of fine- and medium-grained sands, essentially identical to the material at the proposed site. Annual volumes have range from 950,000 cubic yards to 1,500,000 cubic yards.

Dredged material from other locations may be disposed of at this site provided it has been tested and found environmentally acceptable in accordance with the requirements of § 227.13 and is primarily sand of a grain size compatible with the natural sediments at the site.

The dredged material is presented transported by a hopper dredge equipped with subsurface release mechanisms. None of the material is packaged in any manner.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The optimum surveillance range of the United States Coast Guard Vessel Traffic Service (VTS) is 16 nautical miles from Point Bonita. Thus, the proposed site is well within radar range, and surveillance would not be difficult. Monitoring is feasible at the proposed site.

A monitoring plan for the site has been developed and is available for inspection at the addresses given above. Monitoring by the Corps of Engineers, EPA, and permittees will continue for as long as the site is used. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of the significant adverse environmental effects is found, notice of availability of reports on such findings and proposed actions will be published in the Federal Register.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Strong tidal currents are the dominant influence on water movement at the proposed site and in the adjacent areas. The mean direction of the current alternates with the tidal cycle, between southwest and northeast, and the net water movement is to the southwest. Average current velocity is less than 1 knot.

Dredged material dumped at the proposed site quickly reaches the bottom but is widely dispersed in the process by the strong current, so that no mounding takes place. The settled material forms a uniform bottom layer with an average thickness to two inches.

Long-term sediment transport oscillates between inshore and offshore movements, and the proposed site is located in an area of the California coastline which exhibits limited net littoral transport. Thus, the majority of dredged material dumped at the proposed site would exhibit some oscillatory local movement but would remain within the region of the site. The dredged material acceptable for disposal at the site is similar to the natural sediments of this site, and any transport of the material past the actual boundaries of the disposal site would not be a matter of concern, particularly since the benthic fauna throughout the area are adapted to continuing natural sediment movement. In addition, any net littoral transport of the material toward shorelines would assist in building up eroding beaches.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

The majority of the benthic fauna at the proposed site are motile and able to withstand temporary burial. Any fish in the site vicinity would not be significantly affected by the transient post-disposal effects, such as the turbidity plume, and could escape by swimming away from the site. The Corps of Engineers concluded that there is little chance that disposal of dredged material at the proposed site has any long-term adverse effect on the indigenous biological community of the Bar. Based on review of the information provided to EPA by the Corps of Engineers and other data reported in the EIS on the site, EPA agrees with the Corps' conclusions.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Extensive shipping, fishing, and recreational activities take place in the Gulf of the Farallones throughout the year. Past disposal of dredged material at the proposed site and at other nearby disposal sites has never interfered with these activities.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Water quality at the proposed site is influenced by San Francisco Bay and entrained ocean waters. The Corps of Engineers monitored water quality at the proposed site following dredged material disposal in 1974 and observed that effects on salinity, pH, dissolved oxygen, and turbidity were either nonexistent or dissipated within several minutes. It was noted that waters ebbing from San Francisco Bay increased turbidity at the site more significantly than the disposal operations.

The material dredged from the main ship channel is nearly identical in silt content to the natural sediments of the proposed site. Thus, the dredged material from the entrance channel would not substantially alter the natural sediments to which the endemic fauna are adapted, and a change in the benthic ecology by such an effect is precluded. Large amounts of fine-grained or cohesive material from other areas, disposed in a relatively short period of time, could change the grain size composition of the site, and this proposed site designation does not allow the disposal of large amounts of such materials at this site. However, because of the high energy nature of the site, the small amounts of these materials disposed over an extended period as part of predominantly sand dredged material would not be expected to materially changed the grain size composition of the sites.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

Nuisance species are rare in open coastal waters. The dynamic natures of many features of the marine environment seem to disrupt conditions which favor nuisance species. At the proposed site, the sediments would not be significantly altered by the disposal of dredged material, and the original inhabitants of the site would quickly recolonize the impact area. In general, since few nuisance species have been reported in the substantially organically enriched areas near California's sewage outfalls, it is unlikely that the organic inputs associated with dredged material

disposal at the site, which would receive any organic enrichment from such outfalls, would encourage development of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11.]

The Bureau of Land Management (BLM) maintains an inventory of cultural and historic resources for the Pacific Coast, including offshore areas. Based on this inventory, BLM mapped shipwreck zones for the Gulf of the Farallones. The proposed site is in an area classified as Zone 2 (cluster of at least three shipwrecks within five nautical miles or a single shipwreck within one nautical mile). However, the location data vary widely in precision and accuracy. In certain cases the wreck has been completely salvaged or currents have carried the vessel to a new location. The National Maritime Museum in San Francisco determined that the only areas to be excluded from dredged material disposal by reason of shipwrecks with historical interest are Drake's Bay and the waters off Tennessee Cove in Marin County. Neither of these areas would be affected. No other natural or cultural features of historical importance exist at or near the proposed site.

The existing site is compatible with the criteria used for site evaluation. EPA considered whether it would be preferable to designate a different site and evaluated three other areas: an inshore area, mid-shelf areas, and a shelf-break (i.e., off the edge of the Continental Shelf) area. For the following reasons, EPA has determined that the existing (proposed) site is the preferable site for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

Sediment dredged from the main ship channel is nearly identical to the natural sediment of the proposed site in grain size; thus, the suitability of site sediments for the existing types of fauna found in and around the site, or the inshore site, would not be altered.

The benthic fauna at the proposed and inshore sites are more resistent to burial than those at the mid-shelf and shelf-break sites.

The impact on fisheries would be minimized by use of the proposed or inshore sites. While even a total loss of existing feeding grounds at the mid-shelf and shelf-break sites would be insignificant in comparison to the total feeding area available in the Gulf of the Farallones, such a negative impact can be avoided by designating either the proposed site or the inshore site. Since the proposed site has been historically used and the alternative sites offer no advantages from an environmental perspective and have the potential for greater adverse effects, EPA proposes that it receive final designation.

The final EIS includes the Agency's assessment of the six comments received during the comment period on the revised draft EIS. Comments correcting facts presented in the revised draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment. Two comments were received on the final EIS. One comment was that the concerns expressed on the draft EIS had been satisfactorily addressed. In the other comment, the National Marine Fisheries Service (NMFS) recommended that the channel bar site not be used for disposal of fine-grained material until an analysis is completed which can document that disposal of such material would not significantly impact biota at the site. EPA believes that the dredged material resulting from the operation and maintenance of existing channels would be sandy material which would be compatible with the natural sediments of the proposed disposal site. This may include dredged material from the main ship channel itself which may be excluded from further testing, and dredged material from other areas which has been tested and found environmentally acceptable under § 227.13 and had grain sizes compatible with the natural sediments at the proposed site, which are approximately 95 percent sand.

The data presently available are not adequate to assess the impact of the disposal of fine-grained material at the proposed site. Accordingly, this site designation does not apply to dredged material which contains more than 5 percent of material with a grain size less than .075 millimeters. Should consideration be given in the future to the disposal of fine-grained material at the proposed site, appropriate studies of the impact of the disposal will be necessary and the designation of the site would need to be modified before such disposal could be permitted.

Based on the information reported in the EIS, EPA proposes to designate the existing San Francisco Channel Bar site for continuing use for the ocean disposal of specified dredged material where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

The designation of the existing San Francisco Channel Bar dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region IX. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: August 21, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Part 228, Chapter I of Title 40 is proposed to be amended by removing paragraph (J) from paragraph (a)(1)(iii) of § 228.12 and adding to § 228.12(b), paragraph (24), an ocean dumping site for Region IX as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(24) San Francisco Channel Bar Dredged Material Site—Region IX.

Location: 37°45'55" N, 122°37'18" W; 37°45'45" N, 122°34'24" W; 37°44'24" N, 122°38'06" W; 37°45'15" N, 122°34'12" W.

Size: 4,572 x 914 meters.

Depth: Ranges from 11 to 14.3 meters.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to material from required dredging operations at the San Francisco Bay entrance channel, and other dredged materials meeting the requirements of 40 CFR 227.13 and composed primarily of sand having grain sizes compatible with naturally occurring sediments at the disposal site and containing no more than 5 percent of particles having grain sizes less than .075 millimeters.

[FR Doc. 84-22902 Filed 8-28-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6560]

Proposed Flood Elevation Determinations; Tennessee

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed Rule; Revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of Sumner County, Tennessee.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 48 FR 48264 on October 18, 1983 and in the *Gallatin News Examiner* published on or about August 31, 1983 and September 7, 1983, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Building Inspector's Office, Sumner County Courthouse, Gallatin, Tennessee 37066.

Send comments to: Mr. Bethel Brown, County Executive or Mr. Paul Freelf, Building Inspector, Sumner County Courthouse, Gallatin, Tennessee 37066.

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: Proposed base (100-year) flood elevations are listed below for selected locations in the unincorporated areas of Sumner County, Tennessee 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)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Tennessee	Unincorporated areas of Sumner County	Station Camp Creek	Approximately 540 feet upstream of Long Hollow Pike	*490
			Just upstream of the confluence of Station Camp Creek and Strother Branch.	*570
		Bledsoe Creek	Approximately 530 feet upstream of State Highway 25	*455
			Just downstream of the Louisville and Nashville Railroad.	*504
		East Fork Bledsoe Creek	At Summer-Trousdale County Line	*601
		East Camp Creek	Approximately 80 feet upstream Wallace Road	*549
			Just downstream of Linsey Road	*562
		Drakes Creek	Approximately 170 feet upstream of Sandy Valley Road.	*553
			Approximately 260 feet upstream of Shell Road	*556
		Hogan Branch	Approximately 130 feet upstream of Shackle Island Road.	*547
		Deshea Creek	Just downstream of Louisville and Nashville Railroad	*491
			Just downstream of U.S. Highway 31 East	*505
		Mansker Creek	Approximately 142.5 feet upstream of U.S. Highway 41	*485

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Cumberland River	Just upstream of the City of Hendersonville eastern corporate limits.	*451
			Just downstream of the City of Gallatin western Extra-territorial Jurisdiction Limits.	*452
			Approximately 5,000 feet downstream of the Sumner County-Trousdale County Line.	*457
		Lick Creek	Approximately 170 feet upstream State Highway 25 (downstream crossing).	*484
			Just upstream of State Highway 25 (upstream crossing).	*498

(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. 40001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

Issued: August 23, 1984.

[FR Doc. 84–22885 Filed 8–28–84; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket 84–29]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to reinstate the recently removed requirement that ocean freight forwarders file their agreements with the Commission pursuant to section 15 Shipping Act, 1916. The purpose is to solicit comments as to the statutory basis for the filing of agreements between freight forwarders.

DATE: Comments due on or before October 29, 1984.

ADDRESS: Comments (Original and twenty (20) copies to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On May 3, 1984, the Commission published, at 49 FR 18839, Interim Rules and Request for Comments on certain amendments to its freight forwarder regulations, contained at 46 CFR Part 510, made necessary by the enactment of the Shipping Act of 1984 (1984 Act) Pub. L. 98–237, 98 Stat. 67 (46 U.S.C. app. 1701 *et seq*). One of the amendments removed 46 CFR 510.36 which: (1) Required that a copy of every agreement between an ocean freight forwarder and any other such forwarder, common carrier, or other person subject to the Shipping Act, 1916 (1916 Act) (46 U.S.C. 801 *et seq.*) be filed with the Commission pursuant to 46 CFR Part 522 (now 46 CFR Part 560) and section 15 of the 1916 Act; and (2) exempted certain non-exclusive cooperative working arrangements among forwarders from the filing and approval requirements of section 15. The Commission's reason for deleting § 510.36 was that the 1984 Act does not require ocean freight forwarders operating in the United States' foreign commerce to file any of their agreements with the Commission.

Several conferences of ocean common carriers (the Conferences) filed joint comments urging the Commission to retain § 510.36. [1] The Conferences argue that, while "the Shipping Act of 1984 itself does not subject agreements among forwarders to its provisions governing the filing of agreements, the 1984 Act preserves the applicability of section 15 of the Shipping Act, 1916 to such agreements." The Conferences point out that the 1984 Act does not repeal the section 15 requirement that "other persons" file their agreements with the Commission. [2] In this regard, the Conferences note that the 1916 Act defines the term "other person" to include:

> . . . any person not included in the term "common carrier by water" *carrying on the business of forwarding* or furnishing wharfage, dock . . . or other facilities in connection with a common carrier by water. [3] (Emphasis supplied).

The Conferences conclude that the Commission cannot depart from the clear language of the 1916 Act requiring freight forwarders, as "other persons," to file agreements for approval under section 15 of that Act by deleting section 510.36. They therefore urge the Commission to modify its freight forwarder regulations to reinstate the requirement that forwarder agreements be failed with it for approval.

The Commission agrees with the Conferences that the plain meaning of sections 1 and 15 of the 1916 Act indicates that ocean freight forwarders are required to file their agreements with the Commission. This would include agreements among forwarders that relate to the foreign commerce of the United States. [4] The legislative

[1] Comments were filed on behalf of the "8900" Lines, the North Atlantic Israel Freight Conference, the North atlantic Mediterranean Freight Conference, the U.S. Atlantic and Gulf/Australia-New Zealand Conference and the United States Atlantic Ports/Italy, France and Spain Freight Conference (hereinafter, "the Conferences").

[2] Section 15 provides that: "[e]very common carrier by water in interstate commerce, or other person subject to the Shipping Act, 1916, shall file immediately with the Commission a true copy. . . . of every agreement with another such carrier or other person subject to the Act" 46 U.S.C app. 814.

[3] Section 1 of the 1916 Act (46 U.S.C app. 801), defines a "common carrier by water" in terms of interstate and foreign commerce. "Carrying on the business of forwarding" is defined in the 1916 Act as handling the formalities of and dispatching shipments by ocean going common carriers in commerce from the United States, its territories or possessions to foreign countries or between the United States, its territories or possessions. These are the same services as those which an ocean freight forwarder under section 3 of the 1984 Act is expected to perform. However, the "ocean freight forwarder" defined in the 1984 Act performs its services exclusively in the foreign commerce of the United States.

[4] As noted by the Conferences, such agreements were not made subject to the filing requirements of the 1984 Act.

history of the 1984 Act on the other hand suggests that Congress intended to limit the applicability of the 1916 Act to domestic offshore commerce and the 1984 Act to the foreign commerce of the United States. H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 39 (1983).

Because the language retained in the 1916 Act appears to be clear on its face, the Commission proposes to reinstate section 510.36 [5] as well as the exemption for non-exclusive cooperative working arrangements that § 510.36 previously afforded and to seek comments on this significant proposal from all interested persons. The Commission has modified the proposed rule in certain minor respects in order to limit its application to those agreements that are included within section 15 of the 1916 Act.

Pursuant to 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that the rule proposed herein will not have a significant economic impact on a substantial number of small entities.

This proposal is intended to bring the Commission's regulations in line with existing legislation. Further, the proposal, if adopted, merely reestablishes a pre-existing requirement. In this latter regard, the collection of information requirements that are contained in this proposal have been approved previously 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 control number 3072–0018.

List of Subjects in 46 CFR Part 510

Freight forwarders, Maritime carriers, Rates, Surety bonds, Exports and Agreements.

PART 510—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1716 and 1718); and sections 1, 15, 21, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. 801, 814, 820, 833(a) and 841a), the Commission proposes to amend Part 510 by adding § 510.26 to read as follows:

§ 510.26 Agreements.

(a) *Filing For Approval.* A copy of each written agreement and a true and complete memorandum of each oral agreement between a licensee and any other licensee, or between a licensee and a common carrier by water in interstate commerce, or "other person," subject to the Shipping Act, 1916, and modifications or cancellations thereof, must be filed with the Commission for approval in accordance with Part 560 of this Chapter and section 15 of the Shipping Act, 1916, unless such agreements have been exempted from the filing or approval requirements. Such submission shall clearly show the nature of the agreement, the parties thereto, the port(s) involved, and subject matter in detail, and shall refer to any previously filed agreement to which they may relate. Except as provided in paragraph (b) of this section, no agreements, or modifications or cancellations thereof, shall be implemented without prior approval of the Commission.

(b) *Exemptions.* Nonexclusive cooperative working agreements between persons carrying on the business of forwarding, as defined in the Shipping Act, 1916, which provide for the completion of documentation and performance of other forwarder services on behalf of the parties to the agreements, are exempt from the provisions of section 15 of the Shipping Act, 1916, and need not be filed with the Commission for approval, but shall be retained in the forwarders' files. Such agreements shall be in the following format:

Nonexclusive Cooperative Working Agreement

Parties to the agreement are:
(a) (Company name) ———— (Street address) ———— (City, State, Zip) ————

FMC No. ————
(b) (Company name) ———— (Street address) ———— (City, State, Zip) ————

FMC No. ———
Terms of the Agreement:
1. This is a cooperative, nonexclusive working arrangement (exempted under 46 CFR 510.26(b)) in which either party may complete documenttion and perform other freight forwarder functions on behalf of the other party. Either of the parties may engage or be engaged by other forwarder(s) under a similar nonexlcusive working agreement or pursuant to an agreement approved by the Federal Maritime Commission under the provisions of section 15 of the Shipping Act, 1916, as amended.
2. Forwarding fees are to be divided between the parties as follows: ————.
3. Ocean freight compensation is to be divided between the parties as follows: ————.
4. This agreement shall not be terminated on less than 15 days' notice to the other party.
(Signature) (Official Title) ————
(Date) ————
(Type in company name) ————
(Signature) (Official Title) ————
(Date) ————
(Type in company name) ————

By the Commission.
Francis C. Hurney,
Secretary.

[FR Doc. 84–22911 Filed 8–28–84; 8:45 am]
BILLING CODE 6730–01–M

[5] The proposed rule is also being designated § 510.26 to conform to the recent reorganization and renumbering of the various parts of 46 CFR, including that governing freight forwarders.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–231]

Implementation of BC Docket No. 80–90 to Increase the Availability of FM Broadcast Assignments; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of reply comment period.

SUMMARY: Action taken herein grants an extension of time to file reply comments in response to requests from the law firm of Pierson, Ball & Dowd, on behalf of several of its clients and from Cherokee Broadcasting Company by its counsel. The extension is for nine days to reply to comments filed in response to the omnibus Notice of Proposed Rule Making in MM Docket 84–231.

DATE: Reply comments must be filed on or before August 31, 1984.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Order Extending Time in Which To File Reply Comments

In the matter of implementation of BC Docket 80–90 to Increase the Availability of FM Broadcast Assignments; MM Docket No. 84–231.

Adopted: August 20, 1984.
Released: August 21, 1984.

By the Acting Chief, Mass Media Bureau.

1. On July 23, 1984, the Commission released a *Public Notice*, 49 FR 31720, published August 8, 1984, listing those channels for which expressions of interest had been received as well as counterproposals seeking assignments to communities other than those listed in the *Notice of Proposed Rule Making*. The *Public Notice* established a reply comment deadline of August 22, 1984, for responding to the comments and counterproposals concerning the 686

communities as well as comments concerning the general allocation issues raised in the *Notice*.

2. On August 15, 1984, the law firm of Pierson, Ball & Dowd filed a request on behalf of several of its clients requesting a thirty-day (30) extension of time in which to file reply comments. It states that the record consists of approximately 25 volumes of material, filed by date of receipt. Therefore, in order to locate a single document, a search of each volume is necessary. Further, its attempt to utilize the Commission's copying contractor, International Transcription Services ("ITS") has not been consistently successful. ITS has been unable to locate a number of documents or has not been able to fill the requests promptly due to a demand for pleadings. Pierson, Ball & Dowd further state that the results of the rule making will affect the utilization of the FM spectrum for many years. Therefore, the requested additional time is necessary in order to enable interested parties sufficient opportunity to present the needed analysis of the countervailing comments and counterproposals. Cherokee Broadcasting Company urges an extension of two weeks for filing comments citing the same reasons.

3. We believe that sufficient cause has been shown for a brief extension of time. The Commission is aware of the difficulty that parties are experiencing in searching this voluminous record for comments pertaining to selected areas of interest. However, ITS now has in its possession a complete and better organized set of pleadings and states that it is able to respond to requests in a timely fashion. In view of this, we believe that a shorter extension of nine (9) days is sufficient. The expeditious processing of this proceeding is of major importance to the public as well as to the Commission.

4. Accordingly, it is ordered, that the requests of Pierson, Ball and Dowd and of Cherokee Broadcasting Company are granted to the extent that the reply comments date is extended to and including August 31, 1984.

5. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

[FR Doc. 84–22872 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–803; RM–4822]

TV Broadcast Station in Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 24 to Steamboat Springs, Colorado, in response to a petition filed by Colorado Communicatons. The proposal could provide a first UHF television service to that community.

DATES: Comments must be filed on or before October 15, 1984, and reply comments on or before October 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Steamboat Springs, Colorado); MM Docket No. 84–803, RM–4822.

Adopted: August 15, 1984.
Released: August 23, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Colorado Communications ("petitioner"), requesting the assignment of UHF Television Channel 24 to Steamboat Springs, Colorado, as that community's first television broadcast service. The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned. Channel 24 can be assigned to Steamboat Springs in conformity with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

2. Steamboat Springs (population 5,098) [1], seat of Routt County (population 13,404), is located in northwestern Colorado, approximately 180 kilometers (112 miles) northwest of Denver, Colorado.

3. Since the proposed assignment could provide a first local television broadcast service to Steamboat Springs, the Commission believes it appropriate to propose amending the Television Table of Assignments. § 73.606(b) of the Commission's Rules, as follows:

[1] Population figures were extracted from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Steamboat Springs, CO		24+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before October 15, 1984, and reply comments on or before October 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Kirk Tollett, National Communications Consultants, First National Bank Building, Public Square, Sparta, Tennessee 38583, (Consultant to Colorado Communications).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte presentation and shall not be considered in the proceeding.*

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to appear for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-22923 Filed 8-28-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-802; RM-4800]

TV Broadcast Station in Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of VHF Television Channel 3 to Key West, Florida, as its third TV assignment, in response to a petition filed by Contemporary Communications.

DATES: Comments must be filed on or before October 15, 1984, and reply comments on or before October 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Station. (Key West, Florida), MM Docket No. 84-802, RM-4800.

Adopted: August 15, 1984.

Released: August 23, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Contemporary Communications ("petitioner") requesting the assignment of VHF Television Channel 3 to Key West, Florida as that community's third commercial television assignment. Petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Key West (population 24,382)[1] seat of Monroe County (population 63,188) is located at the southern tip of Florida approximately 200 kilometers (125 miles) southwest of Miami, Florida.

3. We believe the petitioner's proposal warrants consideration. The channel can be assigned consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. In view of the foregoing and the fact that the proposed assignment could provided a third local television broadcast service to Key West, the Commission believes it is appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Key West, FL	165+ and 22+	3+, 61+, 22+, and *13.[1]

[1] In a separate rule making (RM-4821), Channel 13 is proposed for Key West as a noncommercial educational assignment.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before October 15, 1984, and reply comments on or before October 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Contemporary Communications, c/o Larry G. Fuss, Sr., P.O. Box 3976, Jackson, Georgia 20233.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and*

[1] Population figures were extracted from the 1980 U.S. Census.

604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceeding, such as this one which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply in directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communitations Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84–22922 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–804; RM–4789]

TV Broadcast Station in Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposes to assign VHF Television Channel 9 to Sheridan, Wyoming, in response to a petition filed by The Chrysostom Corporation. The proposal could provide a third television service to that community.

DATES: Comments must be filed on or before October 15, 1984, and reply comments on or before October 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Sheridan, Wyoming): MM Docket No. 84–804 RM–4789.

Adopted: August 15, 1984.

Released: August 23, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by The Chrysostom Corporation ("petitioner"), requesting the assignment of VHF Television Channel 9 to Sheridan, Wyoming, as a third commercial assignment.[1] The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Sheridan (population 15,146)[2] county seat of Sheridan County (population 25,048) is located in northern Wyoming approximately 165 kilometers (100 miles) southeast of Billings, Montana.

3. We believe petitioner's proposal warrants consideration. Channel 9 can be assigned to Sheridan in conformity with the minimum distance separation requirements of § 73.610 of the Commission's Rules and could provide a third local commercial television station to this community. In view of the above, comments are invited on the proposal to

[1] The Chrysostom Corporation is currently involved in a comparative proceeding, (MM Docket No. 84–87), which involves 2 applicants for Channel 7 in Sheridan.

[2] Population figures are taken from the 1980 Census.

amend the Television Table of Assignments, § 73.606(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Sheridan, WY.	7 and 12+	7, 9+, and 12+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before October 15, 1984, and reply comments on or before October 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James L. Blair, Bernstein and Longest, One Central Plaza—Seventh Floor, 11300 Rockville Pike, Rockville, Maryland 20852, (counsel for the petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be excepted to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was required for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules).

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84–22924 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1805, 1807, 1808, 1809, 1813, 1815, 1816, 1817, 1819, 1823, 1825, 1828, 1830, 1832, 1836, 1842, 1843, 1845, 1846, 1850, 1851, 1852, and 1853

Acquisition Regulations; Promulgation of NASA FAR Supplement Directive 84–2

AGENCY: Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes miscellaneous amendments to the NASA acquisition regulations contained in NASA FAR Supplement Directive (NFSD) 84–2.

EFFECTIVE DATE: Comments are due not later than September 28, 1984.

ADDRESS: Comments should be addressed to Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP), Office of

Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–2118.

SUPPLEMENTARY INFORMATION: NASA FAR Supplement (NFS) amendments incorporated in proposed NFSD 84–2 affect the following acquisition regulatory subjects: OMB Approval Number, Deviations from the Federal Acquisition Regulation (FAR) and NFS, Other Improper Business Practices, Contracts Between NASA and Former NASA Employees, Contract Distribution, NASA Contract Reporting, Synopsis of Contract Awards, Review and Approval of Master Buy Plan Proposals, Required Sources of Supplies and Services, Responsibility of Prospective Contractors, Fast Payment Procedure, Imprest Fund, General Requirements for Negotiations, Determinations and Findings to Justify Negotiations, Solicitation and Receipt of Proposals and Quotations, Price Negotiation, Cost-Reimbursement Contracts, Set-Asides for Small Business, Potentially Hazardous Items, Foreign Acquisition, Inter-Party Waiver of Liability During STS Operations, Waiver of CAS Requirements, Advance Payments, Architect-Engineer Services, Contract Administration Office Functions, Funding Data Citations in Contract Modifications, Government Property, Warranties, Indemnification of NASA Contractors Involved in Space Activities, Contractor Use of Government Supply Sources, Solicitation Provisions and Contract Clauses, Obtaining Forms, Forecast of Propellant Requirements, Contract Financing, Cost Accounting Standards, Financial and Contractual Status (FACS) Reporting System, Revision to Master Buy Plan Procedures, Applicability of PRD Items not included in the NFS, and editorial changes.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed rule will provide uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

List of Subjects in 48 CFR Ch. 18

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch. 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FEDERAL ACQUISITION REGULATION SUPPLEMENT

2. Section 1801.105–1 is revised to read as follows:

1801.105–1 NASA FAR Supplement requirements.

The following OMB control numbers apply:

NASA FAR Supplement Segment: All
OMB Approval Number: 2700–0043
Expiration Date: 03/31/87.

1801.471 [Amended]

3. Section 1801.471, paragraph (a) is amended in the second sentence by changing the word "his" to read "that person's."

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. Subpart 1803.5 is added to read as follows:

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported in accordance with 1809.470.

5. In section 1803.7001, paragraph (c) is amended by adding a sentence at the end of the paragraph to read as follows:

1803.7001 Policy.

(c) * * * Such documentation is not required if formal advertising is used.

* * * * *

1803.7002 [Amended]

6. Section 1803.7002 is amended beginning with the word "except." by adding "except IFB's" after "solicitations" and before the period.

PART 1804—ADMINISTRATIVE MATTERS

7. In section 1804.202, paragraph (a) is revised to read as follows:

1804.202 Agency distribution requirements

* * * * *

(a) For research or research and development projects one copy of the contract plus a copy of the contractor's technical proposal and/or Statement of Work will be furnished to the Scientific and Technical Information Office, Code NIT–4, NASA Headquarters.

* * * * *

1804.671–1 [Amended]

8. In section 1804.671–1, paragraph (a)(3), (a)(4) and paragraph (b)(1) and (b)(2) are amended by revising the dollar amount at each paragraph to read "$25,000" in place of "$10,000."

9. Section 1804.671–4 is amended as follows:

a. Paragraph (c), the codes in paragraph (e), the entry for code 53 in paragraph (f), and paragraphs (x) and (dd) are revised.

b. Paragraph (i) is amended by removing "Code HM–1" and inserting in its place "Code HM".

c. Paragraph (o) is amended by revising the last two sentences in the introductory text.

d. Paragraph (w)(3)(i) is amended by removing "NASA FAR Supplement 70" and inserting in its place "Supplement 50"; (w)(4) and (5) are amended by removing "Supplement 70" and inserting in its place "Supplement 50".

e. Paragraph (ii) is amended by removing "$10,000" and inserting in its place "$25,000".

f. Paragraph (mm) is amended by removing "NBS–LO–1967" and "NBS–10–1967" and inserting in their places "NBS–LC–1067". It is further amended by removing "leave this item blank" and inserting in its place "enter U.S.".

1804.671–4 Preparation of individual procurement action report (NASA Form 507).

* * * * *

(c) *Contract numbering scheme.*

(1) The method of numbering contracts and purchase orders is set forth in 1804.71 (*e.g.*, NAS9–14000, NAS10–9080, NASW–2080).

(2) The method of numbering grants is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1B paragraph 306.1 (*e.g.*, NAGW–1, NAG2–308).

(3) The method of numbering cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1B, paragraph 306.2 (e.g., NCC 2–1).

(4) Utility Contracts/Purchase Orders Serial Number Scheme.

* * * * *

(e) *Item 4—Accounting installation number* (2 positions). * * *

Code and Installation

10—NASA Headquarters
17—Agency Reimbursable Financial Operations
21—Ames Research Center
22—Lewis Research Center
23—Langley Research Center
51—Goddard Space Flight Center
55—NASA Resident Office—JPL
62—George C. Marshall Space Flight Center
64—National Space Technology Laboratories
72—Lyndon B. Johnson Space Center
76—John F. Kennedy Space Center
* * * * *

(f) *Item 5—Procuring installation number* (2 Positions). * * *
* * * * *
53—Wallops Flight Facility
* * * * *

(o) *Item 15—Procurement placement code (2 positions).* * * * Refer to the procurement placement code (PPC) matrix (see Supplement 50, Subpart 1). See paragraph 1804.671–6 for special Procurement Placement Codes.
* * * * *

(x) *Item 24—Proposed procurement synopsized* (1 position). Enter "1" if the procurement was synopsized prior to award in the Department of Commerce publication "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards." Enter "2" if the procurement was not synpsized. Enter "3" if the procurement was not synopsized due to unusual or compelling emergency.
* * * * *

(dd) *Item 30—Subcontracting program plan* (1) position). Enter Y (yes) or N (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674). Enter W (Waiver) if there are no subcontracting opportunities or other waivers.
* * * * *

10. Section 1804.671–6 if amended by changing the dollar amount in the heading and paragraphs (b) and (c) to read "$25,000" in place of "$10,000" and by adding new paragraphs (d) and (e) to read as follows:
* * * * *

1804.671–6 Special procurement placement codes (PPC) for certain procurements under $25,000 (no NASA Form 507 required.
* * * * *

(d) All procurement awards over $25,000 and the Accounting copies on procurement actions under $25,000 (no NASA Form 507 required) placed through the Small Business Administration to a disadvantaged business firm under Section 8(a) of the Small Business Act shall be coded with PPC *PS.* (See PPC matrix.)

(e) All procurement awards funded through the Small Business Innovation Research (SBIR) program shall be coded with PPC *HS.* (See PPC matrix.)

11. Section 1804.677 is added to read as follows:

1804.677 Reporting requirements under Public Law 98–72.

(a) NASA is required annually to report to the Congress with respect to negotiations for award of each applicable sole source contract (see 1815.105–2 (c) and (d) and each contract resulting from an unsolicited proposal (see 1815.507(c)) if the head of the procuring activity or his deputy did not approve the authority to enter into such contract.

(b) NASA contracting offices shall record the number of such negotiations and annually submit it to Assistant Administrator for Procurement (Attn: Code HM).

PART 1805—PUBLICIZING CONTRACT ACTIONS

12. Section 1805.303–70 is amended by revising pagagraph (a)(1)(iii) to read as follows:

1805.303–70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) * * *

(iii) After the date established for receipt of bids or proposals, the names of firms which submitted bids or proposals; and
* * * * *

PART 1807—ACQUISITION PLANNING

13. In section 1807.7102, paragraphs (a), introductory text, (a)(2), and (d)(2) are revised, and paragraph (d)(3) is added to read as follows:

1807.7102 Applicability.

(a) The Master Buy Plan Procedure is applicable to each negotiated procurement, when the expected dollar value of that procurement, or aggregate amount of follow-up procurements (see 1807.103(b)(2)), is expected to equal or exceed the dollar value in paragraph (c) below, for the installation making the award. This procedure is also applicable to the following special procurements which are less than the paragraph (c) amounts—
* * * * *

(2) Procurement of architect-engineer services for $1,000,000 or more including those services described at 1815.903–70.
* * * * *

(d) * * *

(1) * * *

(2) A supplemental agreement (except one that provides only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof) where any one of which (new work or an individual change order) equals or exceeds the dollar value in paragraph (c) above for the installation making the award.

(3) A supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature which, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, notwithstanding the fact that the monetary amount under consideration does not equal or exceed the installation's limitation in paragraph (c) above.
* * * * *

14. In section 1807.7104 the existing paragraph is designated as (a) and paragraph (b) is added to read as follows:

1807.7104 Procedures for procurements selected for Headquarters review and approval.
* * * * *

(b) When selecting procurements from field installation Master Buy Plans, responsible Headquarters Officials will decide whether to also require a Headquarters review of the associated request for proposals. Where responsibility for review of a request for proposals is delegated to the field installation, it may subsequently be rescinded if a Headquarters review is deemed more appropriate. Headquarters reviews will normally be conducted by the Assistant Administrator for Procurement with the Attendance of the cognizant Program Associate Administrator or Deputy Associate Administrator, the Assistant General Counsel for Procurement Matters, and the NASA Chief Engineer. The following procedure shall apply:

(1) Appropriate personnel in the Program Operations Division, Code HS, shall establish an acceptable schedule for conducting the review upon notification by the field installation that the draft request for proposals is near completion.

(2) Ten working days prior to the scheduled review, field installations shall submit to the Assistant Administrator for Procurement (Code HS) ten copies of the following documents:

(i) The draft request for proposals containing, as a minimum, the Statement of Work, evaluation factors and criteria, as appropriate (including order of relative importance), the proposed sample contract, and any other data having an impact on proposal evaluation.

(ii) Any special or unusual provisons to be included in the request for proposals or negotiated into any resultant contract, such as ceilings on rates, change control procedures reporting requirements, type of contract.

(iii) The Source Evaluation Board evaluation methodology, including the rationale for the selection of the Mission Suitability Factors and their associated evaluation criteria, the expected significant discriminators that should result, and the proposed method to be used in developing the Source Evaluation Board probable-cost comparison. Any other significant cost or other factors that are expected to have a bearing on the evaluation should be discussed. Numerical weightings to be employed in the evaluation process shall not be disclosed in the request for proposals.

(3) After a preliminary review of the documentation submitted under paragraph (b)(2) above and coordination with cognizant Headquarters offices, a determination will be made, in consultation with the field installation involved, as to the need for either a meeting in Headquarters or a telephone conference to discuss the request for proposals. If either should be required, participation should be limited to officials-in-charge of cognizant Headquarters offices or their designees. Field installation attendees should be limited to those determined by the Procurement Officer to be necessary for the review. The Assistant Administrator for Procurement, with the concurrence of the Program Associate Administrator or Deputy Associate Administrator, will have the results of the request for proposals review documented and forwarded to the Procurement Officer of the involved field installation for implementation.

1807.7105 [Amended]

15. Section 1807.7105(a) is amended by revising the words "paragraph 403 of that manual," to read "paragraph 403 of NHB 5103.6A, as amended."

16. Section 1807.7106 is amended by revising the introductory text and notes (2) and (6) and the parenthetical material at the end of the section. Also notes (7), (8), and (9) are added.

1807.7106 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103–1 and 1807.7103–2, Master Buy Plans and amendents to Master Buy Plans will be prepared in the following format:

* * * * *

(2) Include N to indicate new or FO to indicate follow-on procurement.

* * * * *

(6) List procurements from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed (1807.7103–1).

(7) Name and FTS number of cognizant installations procurement person under Remarks.

(8) List one procurement per page and number sequentially.

(9) Number each page.

(Form should be prepared on 8½ x 11 size paper. Use separate sheets as necessary.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

17. In section 1808.002–74, the last sentence in paragraph (f)(1) is revised and paragraph (f)(3) is added as follows:

1808.002–74 Acquisition of propellants.

* * * * *

(f) *Reporting requirements.* (1) * * * Reports shall be submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

* * * * *

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858, and OMB Approval Number 0701–0013 shall be cited.

* * * * *

1808.002–75 [Amended]

18. Section 1808–002–75 is amended by revising the second word in paragraph (b)(1) to read "for" in place of "from."

PART 1809—CONTRACTOR QUALIFICATIONS

19. Sections 1809.104 and 1809.104–1 are added to read as follows:

1809.104 Standards.

1809.104–1 General standards.

FAR 9.104–1(d) provides that a prospective contractor, to be determined responsible, must have a satisfactory record of integrity. Prior to rejecting an offer based on a determination that the offeror is nonresponsible because of a lack of integrity, the contracting officer shall promptly furnish the offeror notice of the specific reasons for the determination and establish a reasonable time for the offeror to respond. A formal hearing is not required.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

20. Section 1813.302 is added to read as follows:

1813.302 Conditions for use.

Pursuant to FAR 13.302(a), the dollar limitation for NASA is hereby established as the small purchase ceiling for defense agencies.

1813.403–70 [Amended]

21. Section 1813.403–70 is amended as follows:

a. Paragraph (a) is amended by removing "Financial Management Manual paragraphs 9650–2 through 9650–15" and inserting in its place "Financial Management Manual 9650".

b. Paragraph (c)(1) is amended by removing "Finanical Management Manual paragraph 9650–5" and inserting in its place "Finanical Management Manual 9650".

c. Paragraph (c)(2)(ii) is amended by removing "Financial Management Manual paragraph 9650–10(c)." and inserting in its place "Financial Management Manual paragraph 9650."

1813.405 [Amended]

22. Section 1813.405(f)(1) is amended by removing "Financial Management Manual paragraph 9650–9" and inserting in its place "Financial Management Manual 9650".

PART 1815—CONTRACTING BY NEGOTIATION

1815.105 [Amended]

23. Section 1815.105–70 is amended in paragraph (d), introductory text, by removing "The original and 10 copies" and inserting in its place "The original and 2 copies (or other quantities required for installation purposes)". Paragraph (d)(1) is amended by removing "For purchases of $1,000 or less" and inserting in its place "For small purchases over $1,000".

24. Section 1815.303 is added to read as follows:

1815.303 Class D&F's.

The effective period specified in each class D&F shall not ordinarily exceed one year except when used in conjunction with a definitive Phased Procurement Plan such as those based upon NMI 7121.1B, dated July 1, 1972, entitled "Planning and Approval of Major Research and Development Projects," in which case the period shall not normally exceed three years. When periods longer than the foregoing are considered appropriate and necessary,

they should be stated with the reasons therefor.

25. Section 1815.307–71 is amended by redesignating paragraph (a) to read (a)(1) paragraphs (1), (2) and (3) to read (i), (ii), and (iii) paragraph (b) to read (2). Newly redesignated paragraph (a)(2) is further amended by changing "Code HS–1" to read "Code HS." New paragraph (b) is added to read as follows:

1815.307–71 Determinations and findings below the Administrator level.

* * * * *

(b) D&F's under the authority of 10 U.S.C. 2304(a) (2), (7), (8), or (10) may be executed by the contracting officer for individual purchases and contracts.

1815.371–3 [Amended]

26. Section 1815.371–3 is amended by revising the parenthetical reference in the last sentence of paragraph (b) to read "(see 1815.303)" in place of "see paragraph (c) below."

27. In section 1815.413, a new sentence is added to the end of the paragraph to read as follows:

1815.413 Disclosure and use of information before award.

* * * (See 1805.303–70(a)(1)(iii) regarding release of the names of firms which submitted bids or proposals.)

28. In section 1815.805–5, paragraph (e) is added to read as follows:

1815.805–5 Field pricing support.

* * * * *

(e) When the threshold at 1815.805–5 (a) is met and the cost proposal is for a product of a follow-on nature, notwithstanding any other provision of this 1815.805–5, a complete field pricing report shall be requested from the cognizant contract administration office. The field pricing report shall include, but not be limited to, actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis.

29. In section 1815.807–70(c), the existing paragraph immediately after the italicized heading is designated (1) and paragraph (2) is added as follows:

1815.807–70 Content of the Prenegotiation Position Memorandum.

(c) *Cost and profit/fee analysis.*

* * * * *

(2) Include particulars of the disposition of audit recommendations here. Resolution shall be considered accomplished when negotiation approval is granted. If, for some reason, they cannot be included in the Prenegotiation Position Memorandum, the disposition of the audit recommendations must be documented in the price negotiation memorandum (see FAR 15.808) or in other relevant file memoranda.

1815.871 [Amended]

30. Section 1815.871 is amended by removing paragraph (c).

31. Section 1815.872 is added to read as follows:

1815.872 Tracking and resolution of expenditure and system audit findings.

(a) This section is NASA's implementation of OMB Circular A–50. Expenditure and system audit recommendations shall be resolved by formal review and approval procedures analogous to those at 1815.807–71 and 1815.807–72.

(b) On expenditure or system audits where a major disagreement exists between the contracting officer and auditor and that disagreement, in the opinion of the Procurement Officer, produces a significant impact on the action involved, the planned resolution will be coordinated with NASA Headquarters, Code HC, prior to final action.

(c) The contract audit follow-up system will track all audit recommendations arising out of expenditure and system type audits where NASA has cognizant determination authority. Included will be audits involving actions such as contract incurred costs, indirect cost settlements, termination settlements, defective pricings, final pricings or contract closings, estimating systems surveys, accounting systems and internal control reviews, CAS non-compliance reports, and operations audits. The objective of the tracking system is to insure that resolutions of audit recommendations will occur as expeditiously as possible, but at a maximum, within six months of the date of the audit report. All audit recommendations involving questioned cost in the aforementioned covered categories shall be tracked. (Audit recommendations involving the placement of contracts shall *not* be included in the tracking system.)

(d) The identification and tracking of expenditure and system audits under NASA cognizance will be accomplished in cooperation with DCAA by means of a form called the "Contract Audit Followup Summary Sheet." The original form will be attached to the original audit report and sent to the contracting officer having negotiation or resolution responsibility. The second, and only other copy, will be sent to the NASA Headquarters focal point, (Code HC). The summary sheet will identify the total costs questioned or considered avoidable and whether the audit recommendations, in the opinion of the auditor, are considered significant. The form also identifies the responsible contracting officer and provides a space to be completed by the contracting officer upon resolution of the matter with a statement describing how the audit recommendation was resolved including, where appropriate, dollar values.

(e) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

32. Section 1815.903–70 is added to read as follows:

1815.903–70 Contracting officer authority for negotiating architect-engineer fees.

It is NASA policy that if a contract, regardless of type, covers any type services other than the production and delivery of designs, plans, drawings, and specifications, that part of the contract price for such other services shall not be subject to the 6 percent fee limitation.

PART 1816—TYPES OF CONTRACTS

33. In section 1816.301–3, the existing paragraph is designated as (a) and paragraph (b) is added to read as follows:

1816.301–3 Limitations.

* * * * *

(b) Set forth below is a format for the D&F's to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, cost-plus-award fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (see FAR 16.301–3(c)). The format may be modified as appropriate.

National Aeronautics and Space Administration

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a ...(1)... basis.

Findings

1. The ...(2)... proposes to enter into a ...(1)... contract for the procurement of ...(3)... at an estimated cost of $...(4)....

2. The work to be performed is...(5)....

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract. (6)

[Alt: The use of the proposed type of contract is likely to be less costly than other methods.] (6)

[Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method.] (6)

2. the estimated cost of the proposed contract is $...(4)...(7)

Date ————.

Notes:

(1) Enter type of contract to be used, *i.e.*, fixed-price incentive, cost-plus-incentive-fee, cost, cost-plus-fixed-fee, or cost-plus-award fee.

(2) Installation.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for the type of contract proposed, see the pertinent paragraphs of FAR Part 16, that show why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note (5) above.

(7) Determination to be made when a cost-plus-fixed fee contract is proposed.

PART 1817—SPECIAL CONTRACTING METHODS

34. Section 1817.207–70 is added to read as follows:

1817.207–70 Exercise of options for extensions to service contracts.

(a) Where the proposed extension requires negotiation to firm up the contractual arrangements, the option provision is considered merely an agreement to agree. In such cases, the following documentation is required in the contract file:

(1) A new determination and finding (D&F) authorizing negotiation.

(2) A new method of contracting D&F.

(3) A Justification for Noncompetitive Procurement (JNCP) is *not* required to negotiate with the incumbent contractor for the proposed extension period, provided the proposed extension period was included in the Source Selection Official's (SSO) selection statement and the applicable approved procurement plan. In such circumstance, a "Justification for Source Selection" signed by the Procurement Officer which clearly and convincingly demonstrates the advantages to the Government in contracting with the incumbent contractor for the proposed extension period must be prepared in lieu of the JNCP.

(4) A copy of the approved procurement plan and a copy of the SSO's selection statement.

(b) If the proposed extension can be effected without negotiation by the exercise of an existing firm priced option and the initial D&F authorizing negotiation included the option, no new D&F is required. The requirements of FAR Subpart 17.2 must be adhered to by the contracting officer.

PART 1819—SMALL BUSINESS AND DISADVANTAGED BUSINESS CONCERNS

35. Section 1819.502–2 is added to read as follows:

1819.502–2 Total set-asides

(a) In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed procurement for the best mix of cost, performance, and schedules.

(b) Every proposed procurement for construction, including maintenance and repairs, in excess of $25,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the small business specialist has initiated a set-aside request and the procedures of FAR 19.501(g) shall apply.

(c) Every proposed procurement of $2 million or more for construction or $1 million or more for dredging shall be considered on an individual procurement basis under FAR 19.502–2.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

36. Section 1823.303 and 1823.303–70 are added to read as follows:

1823.303 Contract clause.

1823.303–70 NASA clause.

Any solicitation involving the procurement of potentially hazardous items shall contain as a line item, and the resulting contract shall contain as a line item of the Schedule, a requirement for the contractor or subcontractor to furnish complete design information and drawings showing all details of construction, including materials, for those items or components which are designated as potentially hazardous. In addition, the contracting officer shall include the clause at 1852.223–72, potentially Hazardous Items, in all solicitations and contracts for potentially hazardous items.

PART 1825—FOREIGN ACQUISTION

37. Section 1825.103 is amended by removing the word "or" at the end of paragraph (b)(1), inserting the word "or" after paragraph (b)(2), and adding new paragraph (b)(3) to read as follows:

1825.103 Agreements with certain foreign governments.

* * * * *

(b) * * *

(3) Contracts for basic and applied research in Canada. (See NMI 1362.1.)

PART 1828—BONDS AND INSURANCE

38. Section 1828.371 is added to read as follows:

1828.371 Clause for inter-party waiver of liability during STS Operations.

Contracting officers shall insert the clause at 1852.228–72, Inter-Party Waiver of Liability During STS Operations, in all NASA prime contracts, new work modifications or extensions to existing contracts, and solicitations of $100,000 or more where the work is to be performed in support of STS Operations (as defined in paragraph (d) of the clause). In addition, the contracting officer shall insert the clause in all contracts containing either, of the indemnification under Public Law 85–804 clauses prescribed at 1850.403–3. At the discretion of the contracting officer, this clause may be used in contracts, new work modifications or extensions to existing contracts, and solicitations under $100,000 in appropriate circumstances such as when the value of contractor property on a Government installation used in the performance of the contract is significant.

PART 1830—COST ACCOUNTING STANDARDS

39. Section 1830.304 is revised to read as follows:

1830.304 Waiver.

All requests for waiver of CAS requirements shall be forwarded through the Procurement Officer to NASA Headquarters, Code HC, for review and submitted to the Assistant Administrator for Procurement for authorization of contract award after the contracting officer has made the determination required by FAR 30.304(a).

PART 1832—CONTRACT FINANCING

40. Section 1832.406–70 is revised to read as follows:

1832.406–70 Federal Cash Transaction Report.

The report required by paragraph (m) of the clause at FAR 52.232–12, Advance Payments, shall be submitted on Standard Form 272, Federal Cash Transaction Report, and if appropriate, Standard Form 272A, Federal Transition Report Continuation.

41. Section 1832.470 is revised to read as follows:

1832.470 Reporting of installation advance payment approvals.

Each Installation procurement office shall report to Headquarters no later than 30 days after the end of each fiscal year, Attention: Code HS, a listing of Advance Payment amounts and recipients approved at the Installation during the prior fiscal year.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

42. Section 1836.601–1 is amended by adding paragraph (c) to read as follows:

1836.602–1 Selection criteria.

* * * * *

(c) NASA will consider the immediate past 10 years as the period of time for evaluation under FAR 36.601–1 (a)(2) and (4).

PART 1842—CONTRACT ADMINISTRATION

43. Subpart 1842.3, consisting of 1842.302 and 1842.302–70, is added to read as follows:

Subpart 1842.3—Contract Administration Office Functions

1842.302 Contract administration functions.

1842.302–70 Modified functions.

In connection with the functions listed at FAR 42.302(a)(11)(ii) and (iii) the following exception applies: for those contractors with whom advance agreements are negotiated of the type discussed under FAR 31.205–18, the Government contracting officer responsible for such agreements shall have full authority for determinations related to CAS 420.

PART 1843—CONTRACT MODIFICATIONS

44. Subpart 1843.3, consisting of 1843.301, is added to read as follows:

Subpart 1843.3—Forms

1843.301 Use of forms.

(a) FAR 43.301(a)(1)(iv) requires the use of Standard Form 30 for administrative changes such as changes in accounting and appropriation data. However, contract modifications need only include fund citations (i.e., accounting and appropriations data) applicable to the particular modification. The cumulative inception-to-date listing of funding citations for previous modifications is discouraged unless there is a contractual requirement which requires such a listing. Modifications should include the prior total, the change taking place, and a new total value as a minimum.

(b) When an internal administrative transfer of funding citations on a contract is required, the official determining the need for such action shall initiate, acquire approvals, and forward documentation to the financial management officer and the contracting officer to facilitate the change. An administrative modification of the contract will not be required, in most cases, unless it affects the billing or reporting requirements placed upon the contractor.

(c) These procedures in no way reduce the contracting officer's responsibility for ensuring that obligations are made only on the basis of duly appropriated funds.

PART 1845—GOVERNMENT PROPERTY

1845.104 [Amended]

45. Section 1845.104 is amended by removing existing paragraph (a) and redesignating existing paragraph (b) as paragraph (a) and existing paragraph (c) as paragraph (b). At the end of newly redesignated paragraph (a), remove the words "Supplement 3" and insert "1845.72" in its place.

46. Section 1845.104–70 is revised to read as follows:

1845.104–70 Contract property administration by the Government.

Contract property administration by the Government shall be conducted by DOD or NASA in accordance with 1845.72.

47. In section 1845.106–70, paragraph (a) is amended by changing the words "for preparing DD Form 1419)." to read "on preparing DD Form 1419)." The introductory text of paragraph (b) is amended by changing the colon at the end to a period and adding two sentences, paragraph (b)(1) is revised, paragraphs (b)(2) and (b)(3) are redesignated as (b)(3) and (b)(4) and new paragraph (b)(2) is added to read as follows:

1845.106–70 NASA contract clauses.

* * * * *

(b) * * * The nature and extent of such property shall be identified in the Schedule of the contract and the property made available to the contractor on a no-charge-for-use basis by the installation supply and equipment management officer. The applicable installation property management directives shall also be listed in the contract.

(1) The clause may also be used when Government property is provided to off-site local support service contractors. In the latter case, the concurrence of the installation supply and equipment management officer must be obtained and indicated in the procurement request.

(2) To preclude diluting contractor responsibilities when they include separate procurement authority and responsibility, such contractors may be precluded from utilizing the installation's central receiving facility for receiving contractor-acquired property. When it is desired to accomplish this, the clause shall be used with its Alternate 1. The contracting officer should then review the acquisitions reported by the contractor for their appropriateness, and the supply and equipment management officer should ensure the items are placed on records as materials inventory or controlled equipment, as appropriate.

* * * * *

48. Section 1845.301 is revised to read as follows:

1845.301 Definitions.

"Provide," as used in this Subpart, as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided propery," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

"Space property," (see 1845.501).

49. Sections 1845.302–2 and 1845.302–270 are added to read as follows:

1845.302–2 Facilities contracts.

1845.302–270 Extension and termination.

A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at its election, to extend the time during which it is entitled to use the property provided under the facilities contract.

50. Section 1845.302–70 is added to read as follows:

1845.302–70 Securing approval of facilities projects.

(a) If a facilities project involves construction, expansion, modification, rehabilitation, repair, or replacement of real property, facility project approval pursuant to NASA Management Delegation A730.1B dated December 13, 1974 shall be secured prior to providing or authorizing use of Government-owned facilities.

(b) The scope of any project shall not be changed, and the estimated cost of any facility project shall not be exceeded, unless approved in writing by the approving authority.

51. Subpart 1845.6, consisting of sections 1845.604 through 1845.615, are added to read as follows:

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

Sec.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

1845.604–70 Other restrictions.

(a) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by it to be NASA employees or civilian or military personnel of the Department of Defense who were or are engaged in the administration or termination of NASA contracts.

(b)(1) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve—

(i) A sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(ii) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(2) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606 Inventory schedules.

1845.606–1 Submission of inventory schedules.

See 1845.505–6 for special instructions on intra-agency screening of Centrally Reportable Equipment.

1845.607 Scrap.

1845.607–70 [Reserved].

1845.607–71 [Reserved].

1845.607–72 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this Part. Production scrap and production spoilage may be disposed of through the contractor's approved scrap procedure.

(b) A plant clearance case shall not be established for property that is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedure, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change that generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this NASA FAR Supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Service, DPDS–R, Federal Center, Battle Creek, Michigan 49016, for disposition instructions.

1845.608 Screening of contractor inventory.

1845.608–1 General.

In addition to the screening instructions described in FAR 45.608, EVS Coordinators are the focal points at NASA installations for intra-agency screening of Centrally Reportable Equipment (see 1845.505–6). Property Disposal Officers (PDO's) are the focal points at NASA installations for intra-agency screening of all other contractor inventory. EVS Coordinators/PDO's shall acknowledge receipt of inventory schedules within 30 days of receipt and, at the same time, provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4200.1 and NHB 4300.1.

1845.608–6 Waiver of screening requirements.

The Chief of Supply and Equipment Management (Code NIE) has been designated to authorize exceptions to screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610–2 Exemptions from sale by GSA.

Letters seeking exemptions from GSA conducted sales shall be directed to the Chief of Supply and Equipment Management, Code NIE.

1845.610–3 Proceeds of sale.

When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the Government Property clause provides that the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until he or she has verified that credit has in fact been applied unless another Government representative has specifically assumed this responsibility.

1845.610-4 Contractor inventory in foreign countries.

Foreign disposal shall comply with NHB 4300.1.

1845.613 Property disposal determinations.

Determinations to abandon or destroy NASA contractor inventory shall be referred to the installation PDO for subsequent review by the Property Disposal Review Board under NHB 4300.1.

1845.615 Accounting for contractor inventory.

In addition to the distribution requirements for SF 1424, Inventory Disposal Report, a copy of the form shall be provided to the NASA installation Industrial Property Officer or Property Disposal Officer.

52. Subpart 1845.72, consisting of sections 1845.7201 through 1845.7212-13, is added to read as follows:

Subpart 1845.72—Contract Property Management

Sec.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.

"Category," as used in this subpart, means a major segment of a contractor's property control system (*e.g.*, acquisition, receiving, records, storage and movement, consumption, utilization, maintenance, physical inventories, subcontractor control, and disposition).

"Characteristic," as used in this subpart, means a segment of a functional area subject to analysis or review. Characteristics are classified as Class I, which is subject to statistical sampling, and Class II, which is subject to judgment or observation techniques.

"Lot," as used in this subpart, means an aggregation of documents, records, articles, or actions selected for review due to common characteristics. For evaluation of the lot all characteristics for which a lot is tested must be common to all units within the lot.

"Supporting responsibility," as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

"Property control system," as used in this subpart, identifies a contractor's internal management program encompassing the protection, preservation, accounting for, and control of property from its acquisition through disposition.

1845.7202 General.

This subpart describes three major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in the possession of contractors and grantees). It applies to all NASA installation personnel charged with such responsibility, including Industrial Property Officers and Specialists, Property Administrators, and Plant Clearance Officers. It also provides detailed procedures for the performance of property administration. The NASA Contract Property Management Program includes the following major elements:

(a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.

(b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.

(c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations, pursuant to 1842.175.

1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance is performed in accordance with DOD's applicable regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by NASA Headquarters, Supply and Equipment Management Branch, Code NIE, and are available from that office upon request. NASA installations shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code NIE before issuance.

1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain the property administration and plant clearance function, such as for contract work performed on the installation awarding the contract and not subject to the clause in 1852.245-71, Installation-Provided Government Property. In these cases, property administration will be performed in accordance with Subparts 2 through 7 of this Supplement; plant clearance will be performed in accordance with FAR 45.6 and 1845.6. (Under the provisions of the clause at 1852.245-71, property administration and plant clearance are neither delegated nor retained; they are simply not required because the property is treated as installation property rather than contract property.)

1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is outlined below. Beyond individual contracting officers, each NASA installation has designated an Industrial Property Officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire Contract Property Management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are as follows:

(a) Provide a focal point for all contract property management matters. This includes Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry, and to grantees as well as to contractors.

(b) Provide guidance to contracting, grant, and other personnel on the NASA FAR Supplement and Grant Handbook property provisions.

(c) To the extent feasible, review property provisions of procurement plans, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries which disclose any unsatisfactory conditions. Advise Headquarters Code NIE of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Work with the Equipment Visibility System (EVS) Coordinator and contracting officers to ensure contractor reporting to and screening of the EVS.

(1) Monitor contractor's performance in submitting DD Form 1419's before acquiring Centrally Reportable Equipment (CRE) and in submitting DD Form 1342's after receiving CRE.

(2) Ensure an annual EVS verification is performed in accordance with 1845.505–670(c) and NHB 4200.1B, paragraph 5.406b.

(h) Review and analyze NASA Form 1018's, Reports of Government-Owned/Contractor-Held Property.

(1) Ensure an annual comparison of 1018's with EVS is made in accordance with NHB 4200.1B, paragraph 5.406c, to detect possible over/under reporting to EVS and possible failure to screen EVS.

(2) Check new disparities disclosed by paragraph (h)(1) above with the appropriate property administrator and document the results.

(i) Negotiate, or ensure the negotiation of, Facilities contracts when required by FAR 45.302 and 18–45.302. Advise Headquarters Code NIE annually of new and completed Facilities contracts.

(j) Review property administrator's approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(k) Make recommendations to source evaluation boards and performance evaluation boards regarding property management, when appropriate, also, make recommendations on award fee criteria and evaluation regarding property management, when appropriate.

(l) Monitor plant clearance status to preclude delays in contract closeout.

(m) Maintain contract property files for all transactions and correspondence associated with each contract/grant. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract/grant and forward for inclusion with the official completed file.

(n) Perform on-site property administration and plant clearance when not delegated to DOD and the property is not subject to the clause in 1852.245–71. (The remainder of this Subpart provides detailed guidance on such property administration).

1845.7206 Responsibilities of property administrators and plant clearance officers.

1845.7206–1 Property administrators.

(a) The property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. These responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval of the system;

(3) Advising the contracting officer of the contractor's noncompliance with approved procedures and other significant problem areas which the property administrator cannot resolve, whether this information is obtained through a formal system survey or through other means, and recommending appropriate action, which may include disapproval;

(4) Resolution of property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Office of the Inspector General, Defense Contract Audit Agency (DCAA) and of other Government agencies; and

(5) Recognition of the functions of other Government personnel having cognizance of Government property, and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) Property administrators' (or other Government industrial property personnel) participation in pre-award surveys/post-award orientations is required whenever significant amounts of Government property will be involved in order to reveal and resolve property management problems early in the procurement cycle.

1845.7206–2 Plant clearance officers.

When not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, Supply and Equipment Management Officer, other federal agencies, or higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses on any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

1845.7207 Initiation of property administration.

1845.7207-1 Control of assignments.

(a) The Procurement Officer or designee shall establish and maintain a Contract Assignment Control Register for each contractor, showing—

(1) The contractor's name and address;

(2) Contract number;

(3) Type of contract;

(4) Date of assignment of the property administrator and his or her name; and

(5) Date of completion or rescission of the contract, or transfer of the property administrator.

(b) Property reported to have been received at a contractor's plant without contractual coverage shall be carried in a suspense file, pending investigation and resolution by the property administrator.

1845.7207-2 Analysis of contract and establishment of contract property control data files.

(a) The property administrator shall analyze each contract providing for Government property to estimate the property administration effort which must be applied. The analysis shall be sufficient to establish the management controls necessary for assuring compliance with contract requirements and the development of a suitable system survey program.

(b) A Property Summary Data Record shall be established by the property administrator containing—

(1) Contractor's name and address, and the contract number;

(2) Type of contract, modifications (including change orders), and special or nonstandard clauses pertaining to Government property;

(3) Date of final review and date of execution and transmittal of the DD Form 1593 or equivalent;

(4) Supporting property administration assignments; and

(5) Name(s) of the property administrator(s) and date(s) of tenure.

(c)(1) The property administrator shall establish a Contract Property Control Data File which shall include as a minimum—

(i) Property Summary Data Record;

(ii) Copy of the contract or extract of provisions thereof pertinent to property administration, and comparable data regarding any subcontracts involving Government property;

(iii) Record of initial review, evaluation, and approval of the contractor's property control system; and, if applicable, record of withdrawal of approval and basis therefor, reinstatement of approval, and deviations granted;

(iv) Record of visits, property system surveys performed including appropriate work papers, deficiencies disclosed and corrective actions taken;

(v) Contractor's receipts for Government property, when required;

(vi) Record of final review and execution of property administrator's statement of closure of the contract property account;

(vii) Other pertinent correspondence and documents, including as applicable, inventory adjustments, investigations, recommendations, and determinations;

(viii) Records concerning supporting property administration delegations; assist actions involving special reviews; and other applicable reviews at subcontractor's plants;

(ix) Records of inspection and audits performed by other activities; and

(x) Reports relating to Government property prepared by the contractor pursuant to the contracts.

(2) When more than one contract is involved at the same contractor's location, records relating to more than one contract shall be transferred to a contractor's General File and the Property Summary Data Record shall be so annotated.

1845.7208 Initial evaluation and approval of contractor's property control system.

1845.7208-1 General.

Normally, the initial contact by the Contract Administration Office with a contractor is through a post-award orientation conference or post-award letter. When a conference is held, the property administrator shall assure suitable discussion of property administration requirements and responsibilities. When a conference is not held, the property administrator, upon assignment of a contract, shall forward a letter to the contractor—

(a) Inviting at tention to the contractor's responsibilities regarding Government property under the contract, including any specialized controls, and the extent of the contractor's liability for loss, damage or destruction of Government property during any period in which the contractor's property control system does not have the written approval of the property administrator;

(b) Requesting the name of the contractors representatives to contact for review and discussion of the proposed property control system; and

(c) Requesting that policies, instructions and procedures necessary to fully implement the property control system be available for evaluation.

1845.7208-2 Review of procedures.

(a) Following assignment of an initial contract, the property administrator shall review the contractor's property control system to determine—

(1) Inadequate or questionable areas in the proposed procedures for compliance with NASA contract requirements;

(2) Essential controls not provided by the proposed procedures;

(3) Areas in the proposed procedures requiring physical observation or verification; and

(4) Subcontractors, or secondary locations of prime contract performance, and the need for physical observation or verification of property controls at those locations.

(b) It is normal industry practice to provide for the control of property by means of written procedures that communicate company standards, techniques, and instructions to operational personnel for uniform application. However, a contractor with few employees may not have a need for written procedures for effective management of Government property. In such cases, the property administrator shall evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and observation of the application thereof, and shall prepare a brief description of the applicable procedures for inclusion in the Contract Property Control Data File. In the latter instance, the contractor's signature shall be

obtained signifying its concurrence with the property administrator's written description.

(c) The contractor's plant will be visited to determine that its operation of the system provides adequate controls for the Government property to be furnished or acquired.

(d) The choice of the methods to be used to obtain the information necessary for approval of the contractor's property control system is a matter of judgment by the property administrator. Test examinations and verification in specific categories may be necessary to assure the reliability of the final evaluation and conclusions as to the acceptability of controls for all categories and the system as a whole.

(e) The property administrator shall examine the contractor's procedures to be used to determine the extent to which they meet the criteria for property control required by the contract requirements, as appropriate. He or she shall make necessary tests of the contractor's system, and as each portion is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon as the basis for preparation of the record of system evaluation (see 1845.7208–4).

(f) When the contractor's property control system has previously been approved and a new contract requires the expansion of existing or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact on the Property Summary Data Record for the contract. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property control system does not adequately meet the new contract requirements, the Property Summary Data Record for the contract involved shall be appropriately annotated and the contractor shall be notified in writing of the required changes.

(g) In the review of the contractor's property control system, the property administrator shall consider the provisions of 1845.505.14 and shall assure that the contractor's system provides for maintenance of financial data and the furnishing of required reports within the time limits specified.

1845.7208–3 Exit interview with the contractor.

Upon completion of the property administrator's review, he or she shall hold an exit interview with the contractor to discuss any category in which the controls or procedures were found to be inadequate and will advise where corrective action is required before an approval of the system can be granted. When the contractor is willing to correct a deficiency or questionable practice immediately, the documentation supporting the property administrator's findings and conclusions shall include a statement to this effect. The contracting officer responsible for the predominant value of NASA property at the facility shall also attend the exit interview with the contractor when major deficiencies exist in the property control system, past deficiencies remain uncorrected, or the dollar value of the personal property involved is in excess of $1,000,000.

1845.7208–4 Record of system evaluation.

Upon completing the evaluation of the contractor's system, the property administrator shall prepare a written summary of findings to support approval of the system or requirement for corrective action prior to such approval. A report of visit or other documentation may be utilized if the participating contractor and Government personnel are listed, actions taken are adequately described, and the property administrator's determination is clearly stated.

1845.7208–5 Notification of deficiencies.

The property administrator shall prepare a letter to the contractor for signature by the contracting officer who attended the exit interview, listing the deficiencies found during the evaluation of the contractor's property control system and noting any agreement by the contractor to correct deficiencies. The contractor shall be requested to respond within 30 days and to provide the precise action to by taken and the time required to correct each deficiency.

1845.7208–6 Resolution of differences.

When the contractor's response to the contracting officer's letter is unsatisfactory, the contracting officer, along with the property administrator, shall meet with the contractor in an effort to arrive at a corrective program that is mutually satisfactory. The contractor will be requested to confirm in writing any new commitments arising out of these discussions. In the event the contractor fails to correct deficiencies in its property control system within a reasonable period, the contracting officer will refer the matter by memorandum to appropriate levels of management within the NASA installation and Headquarters staff offices, depending on the criticality of the problem involved. The memorandum shall include—

(a) A specific, concise, and documented statement of the problem;

(b) A statement of the contractor's position; and

(c) The recommended action.

1845.7208–7 Letter of approval.

(a) The approval of a contractor's property control system by the property administrator shall be conditioned upon a joint determination by the property administrator and the contracting officer who attended the exit interview, that no deficiencies exist in the property control system or that where minor deficiencies exist the contractor has agreed to take satisfactory corrective action.

(b) When the contractor's property control system is acceptable, the property administrator shall advise the contractor in writing. However, when the approval has been preceded by an exchange of correspondence between the contracting officer and the contractor (1845.7208–5 and 6), the property administrator will make reference to the correspondence in the approval and advise the contractor that the corrective action taken or planned is acceptable. A copy of the letter of approval shall be sent to the contracting officer who attended the exit interview.

(c) When the contract involves Government property at subcontractor plants or prime contractor secondary locations, or both, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

1845.7209 Property administration during contractor performance.

1845.7209–1 Property administration plan.

(a) A property administration plan shall be developed for each contractor's plant covering the property control system utilized in connection with Government contracts. The plan shall provide for surveys and shall be augmented to cover responsibilities imposed by new contracts, changing conditions, or marginal performance. In the event approval of the contractor's system is unduly delayed at inception of the contract due to failure of the contractor to provide an acceptable system, or is withdrawn due to unsatisfactory conditions disclosed after approval, the property administration plan shall be expanded to the degree necessary to reasonably assure that loss, damage, or destruction of Government property is disclosed in a timely manner. Further, special attention

shall be given to reasonably assuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reapproval.

(b) The property administrator must exercise judgment in developing the plan and in determining what categories (see Annex I to this subpart) of the contractor's property control system warrant examination. Limited dollar amounts and activity, types of property, complexity of the contractor's system, risk to the Government, and previous experience regarding the adequacy of contractor controls are factors determining the extent and scope of the system survey plan.

1845.7209-2 System surveys: surveillance.

A complete system survey shall be conducted at least once each calendar year to obtain thorough knowledge of the contractor's system of property control and the contractor's efficiency. Completion of a system survey, involving complex property control systems, may require detailed tests and evaluations over an extended period of time. If deficiencies in physical control or records are disclosed, corrective action must be secured, and the effectiveness of such correction evaluated. In such instances, test and evaluation of any one category shall be completed as expeditiously as possible, and the working papers and analysis retained for consideration and incorporation into the summary and survey case file.

1845.7209-3 System surveys: scheduling and planning.

(a) At the beginning of each calendar year, the property administrator shall prepare a schedule showing the names of the contractors and the projected dates on which each system survey shall be initiated and completed.

(b) Prior to initiation of any system survey, the property administrator shall establish a survey plan which shall provide, as a minimum—

(1) Identification and listing of the categories, functional areas and characteristics to be evaluated (see Annex I);

(2) Evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions thereof that should be reviewed with operating personnel for possible updating (if any functional area of the property control system is not covered by procedures, no attempt should be made to survey that area at that time, but that portion of the system should be recorded as unsatisfactory and action taken to correct the condition); and

(3) Preparation of work papers necessary to document the file.

1845.7209-4 Testing the system.

In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas:

(a) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to—

(1) Tracing inbound transportation units from (i) bills of lading or other transportation documents to receiving reports, in order to determine that the receiving reports are accurately prepared and that proper action is taken on shortages, damages, or other discrepancies, and (ii) stock records to assure that the receipts were accurately posted;

(2) Abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(3) Tracing posting of credits to (i) stock records (by date, reference number, and quantity) and (ii) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(4) Determining to what extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on plant floor rather than being held under better security in stores.

(b) *Custodial items.* Issues shall be traced from store's records to tool cribs, office stock rooms, uniform rooms, and the like, to determine that they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms designed to assure return, or ability to locate items which are to be returned, assuring that new items are not issued without return of worn-out items or that suitable explanation is provided.

(c) *End items.* General techniques for survey of materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(d) *Plant equipment costing less than $5,000.* In the event summary record accounting is utilized for this class of property, examination using the "bulk quantities" approach in paragraph (a) above is applicable but shall also cover—

(1) Identification is required pursuant to FAR 45.505-5; any identification numbers shall be physically verified; and

(2) Location as prescribed in FAR 45.505(g), creating need for physical verification of presence or absence of the property in the location shown by the location record.

(e) *Plant equipment costing $5,000 or more.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether—

(1) Government screening and approval requirements are observed;

(2) Classification of property is accurate, both at time of requisition or purchase and at time of receipt through the use of Cataloging Handbooks H2-1, H2-2, and H2-3;

(3) An item is actually applied to the requirement for which acquired, and, if deviation is made, that necesary notice and Government approval (when applicable) have been obtained;

(4) Receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required and the DD Form 1342 (DOD Property Record) is prepared and processed when required by 1845.505-670;

(5) From physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(6) Disposition action is initiated as required when a piece of equipment is no longer required at the plant (examination shall include adequacy of procedure for the preparation and submission of DD Form 1342 (Property Record) where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(f) *Special test equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $5,000 or more except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the

assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(g) *Special tooling.* Testing for plant equipment, as in paragraphs (d) and (e) above, may be used as a guide to establishment of the method and sampling to be utilized for special tooling. When option as to title to special tooling is involved under terms of the contract (see the clause at FAR 52.245–17, Special Tooling), examination need only be sufficient to comply with the request of the contracting officer.

(h) *Real property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

(i) *Scrap and salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in paragraph (a) above. However, special attention should be given to—

(1) Tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(2) Determining from analysis of consumption of materials over a given period of time that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(3) Determining that when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected, or is readily available in the approved contractor procedure.

(j) *Analyzing consumption of materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other production materials, unit allowance (equalling amount required per end-item plus normal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawing of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted standards of the industry.

(k) *Testing of physical inventories.* The property administrator has the option of conducting tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to FAR 45.508–2.

(l) *Examination of maintenance program.* The actions scheduled shall be traced to determine that they are or have been performed and that the actions stated by the contractor's procedures have been included. Also, the records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

1845.7209–5 Performing the system survey.

(a) In performing the survey, the property administrator shall follow the procedures in paragraphs (b) through (e) below.

(b)(1) The lot size shall be estimated. Insofar as possible, lots selected shall consist of all the following current operations of the contractor:

(i) Those transactions (excepting disposition transactions) which have occurred during the last 90 days immediately preceding the date of sampling and the documents recording those actions. (If no transactions have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey.) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II to this Subpart).

(ii) Articles in the possession or control of the contractor at that time.

(iii) Disposition actions occurring since the last survey was made.

(2) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are *not* common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II to this Subpart).

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decisions as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) When any category is found to be unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be subjected to survey actions in order to ascertain the existence of other defective areas and the full scope of defectiveness in the overall system.

(e) Problems disclosed during the survey shall be discussed with the contractor's personnel as they are noted, or during the exit interviews. Every effort shall be made to resolve differences on an informal basis. Resolved problem areas shall be reported in the record of system evaluation with the notation that they were corrected.

1845.7209–6 System survey summary.

(a) A formal record shall be prepared by the property administrator at the conclusion of each system survey in the format set forth below:

(1) *Introduction:* contractor's name and address, period of survey, and types of property involved.

(2) *Method used:* explain method of performing the survey.

(3) *Conclusions:* state conclusions reached (In event of finding of unsatisfactory categories, functional areas, or characteristics, identify the defects found).

(4) *Action required:* state actions, if any, necessary to correct unsatisfactory conditions.

(b) A summary of the system survey shall be forwarded to the contractor. The contractor shall be advised of any unsatisfactory conditions and requested to correct them within the time limitations agreed to during the exit interview. The contractor shall also be advised by letter that failure to correct the unsatisfactory conditions may result in disapproval of its property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When

conditions dictate, *i.e.*, indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government, the purchasing office and the pre-award survey monitor shall also be advised in writing.

1845.7209-7 Correction of unsatisfactory conditions.

In the case of disclosure of unsatisfactory conditions, the property administrator shall maintain follow-up to ascertain that corrective action is taken. In the event the contractor fails to take corrective action or to respond to the letter forwarded as prescribed in 1845.7209-6 above, the property administrator shall proceed in accordance with 1845.7208-6 and FAR 45.104(c).

1845.7209-8 Survey case file.

A case file shall be established for each system survey performed, containing the survey plan, work papers, and the summary. The case file shall be maintained in the Contract Property Control Data File or the Contractor's General File.

1845.7209-9 Statistical sampling.

(a) *General.* Statistical sampling is a tool to support the property administrator's judgment; it does not supplant his judgment. Statistical sampling is accomplished by examination of characteristics, as to defects, in order to evaluate and determine the performance level for each functional area and category within each property control system. The lot should encompass the maximum possible number of line items of property, records and documents. Care should be exercised, however, to assure that the items in the lot have common characteristics and that the same control elements of the property control system apply; otherwise, more than one lot will be necessary. Items selected for sampling may be used to examine characteristics of more than one category (*i.e.*, items selected under records may be used to examine characteristics of acquisition, stock control, storage and movement, maintenance, physical inventory, utilization, and consumption).

(b) *Use of statistical sampling plants.* The Government's risk shall not exceed 10% (a 90% confidence level) excepting any slight variations due to changes in lot sizes. Annex II contains sampling plans for use in achieving a confidence level of 90 percent. A table of random numbers which may be used is available from the NASA Headquarters Supply and Equipment Management Branch. The number of samples examined shall be equal to the sample sizes given in the tables. Either table, however, may be used.

(c) *Random number table.* (1) The following information is a guide which may be used in drawing a sample with a table of random numbers. Other randomization techniques may be applied *provided* they are defined beforehand in the property administration survey plan and exhibit clear protection against bias. Care must be exercised to assure that the number of items in the lot is not overestimated so as to avoid selection of random numbers greater than the lot. For example, if the lot is 9,000, only numbers lower than 9,001 shall be selected. Using a random table to draw a random sample requires the following four steps:

(i) *First step:* A pattern must be established between the numbers in the table and items in the lot to be sampled. It is possible to use the whole random number or any portion thereof. For instance, the number 18,967 may appear in the table. If the lot size is more than 99 but less than 1,000, a three digit number is required and either the first three digits (189) or the last three (967) may be used. If the lot size is more than 999 but less than 10,000, a four digit number is required and either the first four digits (1,896) or the last four (8,967) may be used. Once this pattern has been established, it must be consistently used throughout the sample selection process.

(ii) *Second step:* A procedure for selecting the numbers from the table must be selected. Any systematic path for going through the table, if the path is clear and does not cross over or re-use any number previously used, is acceptable. It is possible to proceed across rows, down columns, diagonally, clockwise, counter-clockwise, or in some combinations of these methods; however, it is usually desirable to choose a simple pattern and go down columns or across rows.

(iii) *Third step:* The starting point in the table shall be selected at random. The most used method is to open the table of random numbers to any page and to use the number upon which the pencil point falls as the starting point.

(iv) *Fourth step:* Beginning at the starting point and proceeding through the table as planned in the second step, record the numbers found in succession in the table, using all or part of the number as planned in the first step. Duplicate numbers shall be skipped. The selection process shall be continued until the required sample size is drawn.

(2) Numbers taken from the the random table shall be arranged and recorded in numerical order. If the units of the lot to be examined are already consecutively numbered, the units having the numbers corresponding to those taken from the random table become the sample units. Otherwise, the sample units shall be found by counting to the numbers taken from the random table.

1845.7209-10 Additional administrative responsibilities.

The initial review, evaluation, and subsequent visits should provide the property administrator with a reasonable indication of future workload with each contractor. Loss, damage, destruction, or excessive consumption of Government property are areas which demand significant and prompt attention by the property administrator. This is particularly important in the case of a contractor whose system is in an unapproved status.

1845.7029-11 Declaration of excess property.

A problem area often disclosed by systems surveys is the failure of a contractor to report Government property which is not needed (is excess) in performance of the contract. The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall maintain followup to assure prompt disposition action. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports (DD Form 1342 or equivalent) required of the contractor;

(b) Accomplish such verifications as necessary to permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

1845.7210 Closure of contracts.

1845.7210-1 Completion or termination.

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

1845.7210-2 Final review and closing of contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administration shall perform a final review which shall include a signed determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The Contract Property Control Record File is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) above reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, *Contract Administration Completion Record*, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer and the Property Summary Data Record shall be so annotated, and shall be retired with the contract file.

1845.7211 Special subjects.

1845.7211-1 Government property at alternate locations of the prime contractor and subcontractor plants.

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for such property.

(b) A Government property administrator cognizant of the location where the property is situated shall normally be designated to perform required surveys of the property control system and exercise surveillance over such property as a supporting responsibility.

(c) When the property administrator determines that supporting property administration is required, he or she shall direct a written request to the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property is to be located;

(4) A listing of the property to be furnished, or, if property is to be acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property is to be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) above, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor indicates that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it shall be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be so located, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) That the prime contractor's records shall adequately reflect the location and use being made of such property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis to perform special reviews or such other support as may be necessary. Repeated requests for such assistance indicate a requirement for requesting supporting property administration.

1845.7211-2 Loss, damage, or destruction of Government property.

(a) Normally, contract provisions provided for assumption of risk of loss, damage, or destruction of Government property as described below:

(1) Advertised and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder (see the clause at FAR 52.245-2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder, with the exceptions set forth in the clause at FAR 52.245-2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)) provide that the Government assume the risk for all Government property provided thereunder when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the terms of the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks which the contract expressly requires the contractor to insure against. Therefore, contract clauses should be thoroughly reviewed and understood before a conclusion is reached by the property administrator or a determination made by the contracting officer. Advice shall be obtained from appropriate legal counsel on questions of legal meaning or intent.

(5) "Willful misconduct" may involve any intentional or deliberate act or failure to act which causes, or results in, the loss, damage, or destruction of Government property.

(6) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or his authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued by authorized Government personnel.

(b) In the event any portion of the contractor's system is found to be unsatisfactory, increased surveillance of the deficient portion will be instituted to prevent, to the extent possible, any loss, damage or destruction of Government property. Further, special attention shall be given to reasonably assuring that any loss, damage or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reinstatment of approval.

1845.7211-3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report to him or her all cases of loss, damage, or destruction of Government property in its possession or control (including such property in the possession or control of its subcontractors) as soon as such fact becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose (1) consumption of Government property that is considered unreasonable by the property administrator, or (2) loss, damage, or destruction of Government property that has not been reported by the contractor, the property administrator shall prepare a statement of the items and amount of loss involved. This statement shall be furnished to the contractor for investigation and submission of a written statement to the property administrator relative to the incidents reported.

(c) The contractor's report and statement referenced in paragraphs (a) and (b) above shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) the contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged destroyed, or unreasonably consumed and cost or repairs in instances of damages (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent) and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part of interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determination of liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to (1) liability of the contractor for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and (2) the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, the industrial specialist, the insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. In the event analysis of contact provisions and circumstances establishes that the loss, damage, destruction, or consumption consititutes risks assumed by the Government, the property administrator shall so advise the contract in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor should be liable for the loss, damage, destruction, or unreasonable consumption of Government property, the administrator shall forward the complete file with his or her conclusion and recommendations to the contracting officer for review and determination. The file shall contain—

(i) A statement of facts as supported by investigation;

(ii) Recommendations as to contractor's liability, and the amount thereof;

(iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) Requirements for disposition, repair, or replacement of the damaged property; and

(v) Other pertinent comments.

(2) A copy of the determination shall be furnished to the contractor and to the property administrator, and a copy shall be retained in the files of the contracting officer. The property administrator's copy shall be filed in the Contract Property Control Data Files for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7211-4 Financial reports.

The property administator is responsible for obtaining financial reports as prescribed in 1845.505-14 for all contracts assigned to him or her. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (1852.245-73) except as noted in 1845.7101, paragraph 4(c).

1845.7212 Contractor utilization of Government property.

1845.7212-1 Utilization surveys.

(a) Responsibility for assuring that the contractor has effective procedures to evaluate Government property utilization rests with the property administrator. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of the contractor's utilization procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular is to be provided to a contractor, the property administrator shall require the contractor to establish procedures and techniques for controlling the utilization of Government-owned plant equipment. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate the procedures established by the contractor for effective utilization of plant equipment. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. In the event the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) Follow-up surveys of the contractor's utilization procedures related to Government-owned equipment shall be performed at least annually. At contractor facilities having a substantial quantity of plant equipment items, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Such follow-up surveys shall be conducted to the degree determined necessary considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to support the retention of all Government-owned plant equipment by data keyed to specific Government programs. Maximum use will be made of contractor's machine loading data, order boards, production planning records,

and machine time records and other production methods.

(d) Special surveys shall be conducted when a significant change occurs in the contractor's production schedules. Examples of such changes are terminations, completion of contracts or major adjustments in programs. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, Government-owned plant equipment will be identified and reported in accordance with FAR 45.502(g) and FAR 45.509-2(b)(4). Items which are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contract administration office shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

1845.7212-2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions and recommendations at the conclusion of each survey. Where appropriate, the record of the property administrator may be limited to a statement expressing concurrence with the reports of other specialists. One copy of each record shall be retained in the property administration file. Additional copies shall be prepared and distributed as findings and conclusions may necessitate.

1845.7212-3 Scope of survey.

The following matters are among those which shall be considered and used to the extent applicable in preparing for, conducting, and recording the results of the plant equipment utilization surveys:

(a) Identification of contracts under which plant equipment was furnished or acquired.

(b) Number and dollar value of plant equipment items in contractor's possession.

(c) Adequacy of equipment usage records.

(d) Identification of contracts for which use of plant equipment is authorized.

(e) Other authorized use (Government or commercial) of the plant equipment, whether required approvals have been obtained, and whether rental payment is required.

(f) Planned machine loadings (including performance of a physical review of selected plant equipment items).

(g) Whether contractor-owned equipment of like function is loaded prior to loading Government-owned plant equipment.

(h) Items reported by quality assurance representatives or other personnel to be in a questionable use and utilization status.

(i) Items of plant equipment that may be made available for other use by combining work of two or more machines on a single machine with low utilization rate. In such case the survey record should indicate the date the DD Form 1342, DoD Property Record or equivalent, was forwarded to the NASA contracting officer.

Annex I to Subpart 1845.72

Categories, Functional Areas, Characteristics

(This is not an exclusive list and may be modified as necessary.)

Category 1

Acquisition. The process of acquiring Government property either through requisition or transfer from Government sources or through purchase, including those made from contractors stores.

a. Functional Area: Government-furnished property.

Class and Characteristic

I—(1) Item is contractually authorized.
I—(2) Requesting document is properly prepared and processed.
I—(3) Quantity requested is reasonable but not available in existing stocks at the plant site for use of the requiring contract.
I—(4) Requests are controlled until items are received or requirement cancelled. Status file is maintained.
II—(5) Requests are submitted in a timely manner to minimize use of emergency priorities.

b. Functional Area: Contractor-acquired property.

I—(1) Item is contractually authorized.
I—(2) Quantity ordered is reasonably required but not available in existing stocks at the plant site for use on requiring contract.
I—(3) Distribution, cancellation, and change of purchase orders is properly controlled.
I—(4) Item description, contract number, price, are reflected in purchase order.
I—(5) Consent or approval by the contracting officer as required.

Category 2

Receiving. The process of Government property initially entering into a contractor's custody.

Functional Area: Receiving process.

Class and Characteristic

I—(1) Receiving report adequately describes item and shows count and condition. Where quantity, condition, or description differs from that shown on inbound shipping document, proper adjustment document is prepared and property administrator notified.
I—(2) Receiving report is promptly and properly prepared and controlled, and distribution includes copy to property accounting organization.
I—(3) Item received is properly classified (e.g., special tooling).
I—(4) Item is properly identified and marked during the receiving process.
II—(5) Returnable and reusable containers are properly controlled and accounted for.
II—(6) Misdirected shipments are adequately controlled pending receipt of disposition instructions.

Category 3

Records. The official accounting and subsidiary records maintained by a contractor to show status and to control all Government property furnished to it or otherwise acquired by it.

a. Functional Area: Inventory control (real and personal property).

Class and Characteristic

I—(1) Accounting record conforms to FAR and NASA FAR Supplement requirements and is accurate.
I—(2) Documentation in support of accounting entries is sufficient.
I—(3) Accounting entries are made without undue delay.
I—(4) Stock levels and reorder points are reflected on record, are reasonably sound, and are consistent with contract provisions.
I—(5) Accounting records are closed by means of proper accounting entry, adequately supported by documentation.
I—(6) Locator system is adequate and accurate.

b. Functonal Area: Fabrication records.

I—(1) Records of items fabricated conform to FAR requirements and are accurate.
I—(2) Documentation in support of accounting entries is sufficient.

c. Functional Area: Receipt and issue file.

I—Records of items conform to FAR and NASA FAR Supplement requirements and are accurate.

d. Functional Area: Custodial records.

I—(1) Custodial record is adequate and accurate.
I—(2) Records are properly closed.

e. Functional Area: Scrap and salvage records.

I—(1) Scrap and savage records are adequate and accurate.
I—(2) Items reclaimed during salvage operations are properly classified.
I—(3) Documentation in support of record is adequate.
I—(4) Records are properly closed.

f. Functional Area: Multicontract cost and material control system.

I—(1) Records conform to FAR requirements and are accurate.
I—(2) Documentation in support of record is adequate.
I—(3) Accounting entries are made promptly.
I—(4) Records are properly closed.

Category 4

Storage and movement. The process of storing and moving all types of Government property includes movement from one point

to another, for any purpose, and protection during movement and storage.

a. Functional Area: Warehousing.

Class and Characteristic

II—(1) Housekeeping is adequate.
II—(2) Government property is segregated from contractor property.
II—(3) Adequate protection of Government property is provided including hazardous material, precious metals, sensitive items, etc.
II—(4) Adequate measures for corrosion prevention, age control, etc.

b. Functional Area: Internal and external movements.

II—(1) Item is moved under proper authority, supported by issue slip, shipping ticket, location change order, etc.
II—(2) Adequate protection is provided during movement, such as packing, covering, skidding, proper handling equipment and techniques, and safety precautions.
II—(3) Loss or damage occurring during movement is reported to the property administrator.

Category 5

Consumption. The process of incorporating Government-owned property into an end item or otherwise consuming it in performance of a contract.

a. Functional Area: Reasonableness of consumption.

Class and Characteristic

I—(1) Quantities consumed are reasonable when compared to bill of material, material requirement lists, established scrap rates, etc.
II—(2) Serially numbered or selectively matched items are incorporated in appropriate end item.

b. Functional Area: Conservation.

II—(1) Excesses are promptly returned to stores and recorded.
II—(2) Where appropriate, maximum use is made of repair and salvage procedures in lieu of using new items.
II—(3) Where appropriate, a first-in first-out (FIFO) system is employed with respect to "dated" items.

Category 6

Utilization. The process of utilizing plant equipment, special tooling, special test equipment, material, and space property for the purpose for which furnished or acquired.

a. Functional Area: Plant equipment, special tooling, special test equipment.

Class and Characteristic

I—(1) Item is being used for purpose authorized by contract (not diverted to other use).
I—(2) Degree of utilization justifies retention.

b. Functional Area: Material and space property.

I—(1) Item is used for purpose for which authorized (not diverted to other use).
I—(2) Degree of utilization justifies retention of stock on hand.

Category 7

Maintenance. The process of providing the amount of care necessary to obtain a high quality of production and the most useful life of Government property.

a. Functional Area: Preventive and corrective maintenance.

Class and Characteristic

I—(1) Item is scheduled for periodic maintenance (including technical order compliance).
I—(2) Maintenance is performed according to schedule.
I—(3) Records of normal maintenance and corrective actions are adequate and accurate.

b. Functional Area: Capital-type rehabilitation (includes real property).

I—(1) Inspection is scheduled to determine need for major repair, replacement, or other rehabilitation.
II—(2) Inspection is performed as scheduled and results are reported.
II—(3) Rehabilitation is acomplished when authorized.
II—(4) Records of major repair, replacement, or other rehabilitation, including cost, are adequate and accurate.

Category 8

Physical inventories. The process of physically inventorying Government property and comparing it to records of such property includes locating and counting, tagging or marking, describing, recording, and reporting results to the property administrator.

a. Functional Area: Performance.

Class and Characteristic

II—(1) Periodic physical inventories are performed.
II—(2) Physical inventories are performed upon termination or completion of contract unless waived by property administrator.
I—(3) Inventoried property is appropriately tagged/marked.
I—(4) Inventory count is accurate.
II—(5) Inventory procedures provide that personnel who perform inventory are not those who maintain the property records or have custody of the property unless the size of the contractor's operation is so small as to make this impracticable.
II—(6) Results of inventories are reported to property administrator within 30 days.

b. Functional Area: Reconciliation and adjustment.

II—(1) Each instance of loss and discovery of unrecorded property is investigated.
II—(2) Causes are determined for above discrepancies.
II—(3) Actions necessary to prevent recurrence are determined and taken for above discrepancies.
II—(4) Adjustments to records (other than for property losses) are made within 30 days.
II—(5) Adjustments to records for property losses are made within 30 days of contracting officer's or property administrator's notification of relief of responsibility or other determination.

Category 9

Subcontract control. The process of prime contractor control over subcontractor with respect to Government property.

a. Functional Area: Prime contractor controls.

Class and Characteristic

I—(1) Subcontract reflects adequate instructions with respect to subcontractor responsibilities.
I—(2) Records of Government property in possession of subcontractor conform to FAR and NASA FAR Supplement requirements.
I—(3) Adequate documentation supports accounting entries.
I—(4) Prime contractor surveillance over Government property in possession of subcontractors is adequate.

b. Functional Area: Subcontractor control. If the prime contractor has designated records and controls of a subcontractor as the official contract records and controls of Government property in the possession of the subcontractor or if adequacy of controls cannot be determined by review of the prime contractor's control, the subcontractor's property control system will be evaluated in the same manner as that of a prime contractor, in accordance with procedures and criteria set forth in this Subpart 18-45.72.

Category 10

Disposition. The process of requesting disposition instructions and effecting disposal of Government property.

a. Functional Area: Disclosure of excess.

Class and Characteristic

I—(1) Excess items are screened against need on other contracts prior to declaration as excess.
I—(2) Items determined excess are promptly reported.
I—(3) Declaration as excess is complete and accurate.
I—(4) Item was allocable to contract from which declared excess.

b. Functional Area: Disposal.

I—(1) There is proper authority for disposition.
I—(2) Item was disposed of within a reasonable time period after disposal authority was received.
I—(3) Identification tag is removed from item prior to disposal when appropriate.
I—(4) Documentation of disposition is complete and reflects authority, disposal action, and date of disposal and is posted to record.
I—(5) When appropriate, proceeds have been credited to the Government.

Annex II to Subpart 1845.72

SINGLE SAMPLING PLAN

[90 pct. confidence of rejecting lots having 10 pct. or more defectives]

Lot size	Sample size	Limits	
		Satisfactory	Unsatisfactory
1 to 17	All	0	1
18–50	17	0	1
51–90	31	1	2
91–150	44	2	3
Over 150	65	3	4

DOUBLE SAMPLING PLAN

[90 pct. confidence of rejecting lots having 10 pct. or more defectives]

Lot range	Sample size 1	Accept if defects in sample 1 are	Reject if defects in sample 1 are	Continue with sample 2 if defects in sample 1 are	Sample size 2	Accept if sum of defects in samples 1 and 2 equals or is less than	Reject if sum of defects in samples 1 and 2 equals or exceeds
1 to 8	All	0	1				
19 to 50	18	0		1			
51 to 90	21	0	2	1	21	1	2
91 to 150	25	0	3	1 or 2	25	2	3
151 to 500	32	0	4	1, 2 or 3	32	3	4
401 to 10,000	34	0	4	1, 2 or 3	34	3	4
10,001 to 35,000	40	0	5	1, 2, 3, or 4	40	4	5
35,000 to 100,000	46	0	6	1, 2, 3, 4, or 5	46	5	6
100,000 plus	52	0	7	1, 2, 3, 4, 5, or 6	52	6	7

PART 1846—QUALITY ASSURANCE

53. Subpart 1846.7, consisting of sections 1846.703 through 1984.770, is added to read as follows:

Subpart 1846.7—Warranties

Sec.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703–70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) cost of correction or replacement, either by the contractor of another source, in the absence of a warranty.

(b) operation of the warranty as a deterrent against furnishing of defective or nonconforming supplies.

(c) whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program.

(d) reliance on "brand-name" integrity.

(e) whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703 and FAR 46.703.

(b) Except for the warranty clause for commercial items covered in FAR 46.709 and FAR 46.710(a)(2), and warranties contained in federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a federal, military, or construction specification shall be made only upon the written authorization of the Procurement Officer or his designee. This decision may be made either for individual procurements or for classes of procurements.

(c) Warranties required by applicable architect-engineer specifications shall be included in advertised or negotiated construction contracts.

1846.709 Warranties of commercial items.

1846.709–70 Limitation.

In either formally advertised or negotiated procurements involving a commercial supply or service or construction, the contracting officer may include in the solicitation a warranty clause which is standard or customary in the trade, or one which is substantially similar to and not in excess of a standard or customary trade warranty—*provided* in either case the contracting officer, after reviewing the factors listed in 1846.703 and FAR 46.703, decides that inclusion of such a clause is in the best interests of the Government.

1846.770 Administration.

When the contracting officer is notified of a defect in warranted items, he should ascertain whether the warranty is currently in effect and assure that proper and timely notice of the defect is given to the contractor.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

54. Subpart 1850.4, consisting of sections 1850.402 through 1850.470, is amended to read as follows:

Subpart 1850.4—Residual Powers

Sec.

Subpart 1850.4—Residual Powers

1850.402 General.

All proposals for the exercise of indemnification authority shall be forwarded to the Assistant Administrator for Procurement (Code HS), who will review and forward the Contractor requests for indemnification through channels to the Administrator for approval. If the Administrator approves the use of indemnification authority, the Administrator shall sign a Memorandum Decision.

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403–1 Indemnification requests.

(a) In addition to the information required at FAR 50.403–1(a), the contractor's request for indemnification shall also include a copy of the relevant third-party comprehensive liability policies and products liability policies or the equivalent.

1850.403–2 Action on indemnification requests.

(b) In accordance with FAR 50.403–2, the contracting officer shall forward contractors' requests for indemnification for which the contracting officer recommends approval to the Assistant Administrator for Procurement (Code HS) for final processing to the Administrator.

1850.403-3 Contract clause.

(a) In lieu of the claus or the clause with its Alternate I prescribed at FAR 50.403.3, the following clauses shall be used:

(1) To indemnify the contractor against unusually hazardous or nuclear risks in fixed-price contracts when approved in accordance with FAR Subpart 50.4 and this Subpart 1850.4, the contracting officer shall insert the clause at 1852.250-70, Indemnification Under Public Law 85-804—Fixed-Price Contracts (AUGUST 1984).

(2) To indemnify the contractor against unusually hazardous or nuclear risks in cost-reimbursement contracts when approved in accordance with FAR Subpart 50.4 and this Subpart 1850.4, the contracting officer shall insert the clause at 1852.250-71, Indemnification Under Public Law 85-804—Cost-Reimbursement Contracts (AUGUST 1984).

(b) The contracting officer shall insert the clause at 1852.250-72, Space Activity—Unusually Hazardous Risks (AUGUST 1984), in all contracts containing either of the indemnification under Public Law 85-804 clauses prescribed at 1850.403-3(a) above, unless the Administrator approves a different defnition of unusually hazardous risks to be used in a particular contract.

1850.403-70 Reporting and records requirements.

(a) Concurrent with including indemnification provisions in any NASA prime contract pursuant to the authority of an indemnification Memorandum Decision by the Administrator, the congnizant contracting officer shall submit a report directly to the Contract Adjustment Board which—

(1) References and provides two copies of the Administrator's Memorandum Decision;

(2) Provides two copies of any clause which deviates from the clauses prescribed at 1850.403-3;

(3) Complies with the reporting requirements of Pub. L. 85-804, 50 U.S.C. 1434, and Executive Order 10789, which currently states—

With respect to actions which involve actual or potential cost to the United States in excess of $50,000 the report shall * * *

(1) Name the contractor;

(2) State the actual cost or estimated potential cost involved;

(3) Describe the property or service involved; and

(4) State further the circumstances justifying the action taken.

(4) Provides the contract number and date of award.

(5) If applicable, provides the contract modification number and date.

(b) The Contract Adjustment Board shall be responsible for maintaining two copies of each Memorandum Decision required by FAR 50.403-2(b) and, for such duration deemed appropriate by the Board, one copy of each report submitted by cognizant contracting officers.

1850.470 Lead NASA Center.

(a) Contractors applying for indemnification shall be responsible for initially determining which NASA Center has the most significant amount of the contractor's procurement contracts, measured by either dollars or numbers, which are related to NASA space activities rather than total NASA business. The request for indemnification would be submitted to the Procurement Officer for that Center, who will then designate a cognizant contracting officer. This determination should be done at the highest entity of the firm possible to prevent duplicate requests from associate divisions, subsidiaries, or central offices of the Contractor. NASA reserves the right to reassign a lead Center for purposes of the processing indemnification requests made under this regulation.

(b) Relying on the Contractor's submission, the receiving contracting officer will process the request using the procedures at FAR Subpart 50.4 and this Subpart 1850.4. The receiving Center will become the lead Center and will remain so indefinitely. Lead Center designation may change to another Center if the losing and gaining Procurement Officers agree to the change. For example, a new award may so substantially alter the focus of a contractor's procurement contracts related to space activities toward a different Center that a change may be appropriate. Should a change occur in the lead Center, all records related to indemnification of that contractor shall be transferred to the gaining Center.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1852.203-70 [Amended]

55. Section 1851.102(c) paragraph (1)(i) in the format is amended by inserting in the first line after "property" the phrase "and/or services."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.203-70 [Amended]

56. Section 1852.203-70 is amended by adding at the end of the introductory sentence the words "except IFB's".

1852.215-10 [Amended]

57. Section 1852.215-10 is amended by revising the introductory text after the word "paragraphs" to read "(a), (b), (c) of FAR 52.215-10 in NASA solicitations." The clause is amended as follows:

NASA Alternate I (August 1984)

a. The date in the heading is revised to read "AUGUST 1984" in place of "(APRIL 1984)."

b. In the introductory text of paragraph (a) after the word "award", remove "is made."

c. In paragaph (a)(1) remove the word "mailed" and insert the word "postmarked."

d. In paragraph (b) after "award" remove "is made."

e. In paragraph (c), in the last sentence, after the word "award" remove "is made."

58. 1852.215-70 is amended by revising the provision to read as follows:

1852.215-70 Increases in estimated costs.

* * * * *

Increases in Estimated Cost (August 1984)

Once the apparent successful offeror has been selected, that offeror may not unilaterally increase the estimated costs submitted with its proposal except for:

(a) Changes resulting from updating of the certified cost or pricing data submitted with its proposal;

(b) Costs resulting from the Government's directed correction of identified weaknesses in the offeror's proposal which must be corrected as a condition of contracting; or

(c) Minor changes in the requirements of the requests for proposals. In such cases, the Government will consider only those increases arising from those requirements that are actually affected by the changes (irrespective of whether the changes result in an increase or decrease in the requirements or are initiated by the Government or the Offeror) and then only to the extent such changes are identified and justified.

(End of provision)

59. Section 1852.223-3 and 1852.223-370 are added to read as follows:

1852.223-3 Hazardous Material Identification and Material Safety Data.

1852.223-370 NASA Deviation.

When the clause at FAR 52.223-3 is included in a solicitation or contract, modify subparagraph (e)(5) thereof to delete the reference to the FAR clause at 52.227-18, Rights in Data, and substitute a reference to the NASA FAR Supplement clause at 1852.227-74, Rights in Data—General.

60. Section 1852.223-72 is added to read as follows:

1852.223-72 Potentially Hazardous Items.

As prescribed in 1823.303-70, insert the following clause:

Potentially Hazardous Items (August 1984)

(a) The Contractor agrees to furnish complete design information and drawings showing all details of construction, including materials, for the items or components which are designated in the Schedule of this contract as potentially hazardous to employees and subcontractors who are to perrform any work in connection with installing such items or components in combination with other equipment, or in testing such items or components either alone or in combination with other components, items or equipment, or in handling such items or components; and to inform such employees or subcontractors of the potentially hazardous nature of such items or components; before requesting or directing the performance of such work.

(b) The requirement herein for delivery of data supersedes any terms of this contract permitting withholding of data.

(c) The Contractor shall include this clause including this paragraph (c) in each subcontract at any tier awarded under the contract that calls for the manufacture or handling of the items or components designated in paragraph (a) as potentially hazardous.

(End of clause)

61. Section 1852.228-72 is added to read as follows:

1852.228-72 Inter-Party Waiver of Liability During STS Operations.

Insert the following clause as prescribed at 1828.371.

Inter-Party Waiver of Liability During STS Operations (August 1984)

(a) The contractor undertakes the obligations of, agrees to be bound by, and shall receive the protection and benefits of a NASA contractor under the no-fault, no-subrogation inter-party waiver of liability provision with users for Space Shuttle services to the extent provided for and reprinted in paragraph (d) below.

(b) This inter-party waiver of liability shall not apply to damage caused by NASA to the contractor's employees or property nor shall it apply to damage caused by the contractor to NASA's employees or property.

(c) This clause, including this paragraph (c) shall be included in all subcontracts hereunder where the work is to be performed in support of STS Operations.

(d) The applicable definitions and the no-fault, no-subrogation inter-party waiver of liability provision which is contained in NASA agreements with users for Space Shuttle services provides in relevant part:

1. *General.*

a. [Paragraph a. of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.]

b. For purpose of this [Shuttle Launch] Agreement, the following definitions shall be applicable:

(1) "Liability" shall include payments made pursuant to United States' treaty, any judgment by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the User, settlement payments.

(2) "Damage" shall mean bodily injury to or death of any person, damage to or loss of any property, and loss of revenue or profits or other direct, indirect or consequential damages arising therefrom.

2. [Paragraph 2 of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.]

3. *Damage to Persons or Property Involved in STS Operations.*

a. For purposes of this Paragraph 3., the following definitions shall be applicable:

(1) "STS Operations" shall mean:

(a) All Space Transportation System activity:

(b) All Payload activity:

(c) All tangible personal property (including ground support, test, training and simulation equipment) related to (a) and (b) above;

(d) Research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to (a), (b) or (c) above.

(e) Performance of any services related to (a) through (d) above.

(2) "Protected STS Operations" shall mean a period of time during which STS Operations are being performed as follows:

(a) Beginning with the signature of an Agreement or Arrangement with NASA for Space Transportation System services and (i) when any employee, Payload or property arrives at a United States Government Installation, or (ii) during transportation of such to the installation by a United States Government conveyance or (iii) at ingress of such into an Orbiter, for the purpose of fulfilling such Agreement or Arrangement, whichever occurs first.

(b) Ending with regard to any employee when (i) the employee departs a United States Government Installation, or (ii) the Orbiter if it lands at other than such Installation, or (iii) a United States Government conveyance which transports the employee from such Installation or Orbiter, whichever occurs last.

(c) Ending with regard to a Payload or property, not Jettisoned or Deployed, under the same conditions as set forth in Subparagraph 3.a.(2)(b) above.

(d) Ending with whichever occurs last with regard to a Deployed or Jettisoned payload or property (i) after such impacts the earth; or (ii) if retrieved by the Orbiter, under the same conditions set forth in Subparagraph 3.a.(2)(b) above.

b. NASA and the User (the parties) will respectively utilize their property and employees in STS Operations in close proximity to one another and to others. Furthermore, the parties recognize that all participants in STS Operations are engaged in the common goal of meaningful exploration, exploitation and uses of outer space. In furtherance of this goal, the parties hereto agree to a no-fault, no-subrogation, inter-party waiver of liability pursuant to which each party agrees not to bring a claim against or sue the other party or other users and agrees to absorb the financial and any other consequences for Damage it incurs to its own property and employees as a result of participation in STS Operations during Protected STS Operations, irrespective of whether such Damage is caused by NASA, the User, or other users participating in STS Operations, and regardless of whether such Damage arises through negligence or otherwise. Thus, the parties, by absorbing the consequences of damage to their property and employees without recourse against each other or other users participating in STS Operations during Protected STS Operations, jointly contribute to the common goal of meaningful exploration of outer space.

c. The parties agree that this common goal will also be advanced through extension of the inter-party waiver of liability to other participants in STS Operations. Accordingly, the parties agree to extend the waiver as set forth in Subparagraph 3.b. above to contractors and subcontractors at every tier of the parties and other users, as third party beneficiaries, whether or not such contractors or subcontractors causing damage bring property or employees to a United States Government Installation or retain title to or other interest in property provided by them to be used, or otherwise involved, in STS Operations. Specifically, the parties intend to protect these contractors and subcontractors from claims, including "products liability" claims, which might otherwise be pursued by the parties, or the contractors or subcontractors of the parties, or other users or the contractors or subcontractors of other users. Moreover, it is the intent of the parties that each will take all necessary and reasonable steps in accordance with Subparagraph 3.e. below to foreclose claims for Damage by any participant in STS Operations during Protected STS Operations, under the same conditions and to the same extent as set forth in Subparagraph 3.b. above, except for claims between the User and its contractors or subcontractors and claims between the United States Government and its contractors and subcontractors.

d. The parties intend that the inter-party waiver of liability set forth in Subparagraphs 3.b. and 3.c. above be broadly construed to achieve the intended objectives.

e. NASA will require all Space Transportation system users entering into Launch and Associated Services Agreements with NASA after December 1, 1982, to agree to the inter-party waiver of liability as set forth in Subparagraphs 3.b. and 3.c. above. The User, and each other user, will require the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all persons and entities to whom it assigns all or part of its right to Launch and Associated Services; (ii) any person or entity to whom it has sold or leased or otherwise agreed to provide all or any portion of its Payload or Payload services prior to the completion of NASA's launch services for a particular Payload; (iii) all its prime contractors; and (iv) all its subcontractors who will have persons or property involved in STS Operations during Protected STS

Operations. NASA will require all the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all its prime contractors; and (ii) all its subcontractors who will have persons or property involved in STS operations during Protected STS Operations. Furthermore, NASA has required all STS users entering into Launch and Associated Services Agreements prior to December 1, 1982, to agree to a more limited waiver of liability, a copy of which is available from NASA upon request. Failure of any party to obtain a waiver agreement required above shall not affect such party's right to the protections otherwise provided by this Paragraph 3.

(End of clause)

1852.243-70 [Amended]

62. Section 1852.243-70 is amended by changing clause date to read "August 1984" in place of "April 1984," and the citation in paragraphs (a) and (b) of the clause to read "DOD-STD-480A" in place of "MIL-STD-480."

1852.245-70 [Amended]

63. Section 1852.245-70 is amended by revising the clause date to read "May 1984" in place of "April 1984," by designating the first paragraph in the clause as (a) and the second paragraph as (b). In paragraph (a), internal designations are revised to read "(1)," "(2)," and "(3)" in place of "(a)," "(b)," and "(c)." In paragraph (b) of the clause, the parenthetical statement in the first sentence is revised to read "unless for incorporation into flight qualified or flight monitoring deliverable end items)."

64. Section 1852.245-71 is amended by adding after the clause "Alternate I" as follows:

1852.245-71 Installation-provided government property.

* * * * *

Alternate I (AUGUST 1984). If the contract includes procurement authority for property, separate from the installation procurement process, and it is desired to preclude the Contractor from utilizing the installation's central receiving facility, the following shall be added to paragraph (b) of the clause:

The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

65. Section 1852.245-570 is added to read as follows:

1852.245-570 NASA Deviation.

When using the clause at FAR 52.245-5 with its Alternate I, make the following changes in subparagraph (c)(4) of Alternate I: in the first line change "equipment" to "equipment (and other tangible personal property)." In the first and second sentence change $1,000 to $5,000.

1852.250-1 [Removed]

66. Section 1852.250-1, Indemnification under Pub. L. 85-804, is removed.

67. Sections 1852.250-70, 1852.250-71, and 1852.250-72 are added to read as follows:

1852.250-70 Indemnification Under Public Law 85-804—Fixed-Price Contracts.

Insert the following clause as prescribed in 1850.403-3(a)(1):

Indemnification Under Public Law 85-804—Fixed-Price Contracts (August 1984)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government but excluding loss of profit; to the extent that such a claim, loss or damage (i) arises out of or results from a risk defined in this contract to be unusually hazardous in nature and (ii) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b)(1) The Government shall not be liable for:

(i) Claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) Losses affecting the property of such Contractor; when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. (For purposes of this clause, the term "principal officials" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Contractor's business, or

(B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) A separate and complete major industrial operation in connection with the performance of this contract.); or

(iii) Loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000,000. Specifically, the Government shall only be liable for such loss, damage and loss of use in excess of the Contractor's insurance or $500,000,000 whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of libility has been specifically authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Administrator or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to this obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Administrator is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (1) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (3) immediately furnish to the Government copies of all pertinent

papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

1852.250-71 Indemnification Under Public Law 85-804—Cost-Reimbursement Contracts.

Insert the following clause as prescribed in 1850.403-3.

Indemnification Under Public Law 85-804—Cost-Reimbursement Contract (August 1984)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) Loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) Loss of, damage to, or loss of use of property of the Government but excluding loss of profit; to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b)(1) The Government shall not be liable for:

(i) Claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) Losses affecting the property of such Contractor when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. (For purposes of this clause, the term "principal officials" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Contractor's business, or

(B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) A separate and complete major industrial operation in connection with the performance of this contract.); or

(iii) Loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000,000. Specifically, the Government shall only be liable for such loss, damage and loss of use in excess of the Contractor's insurance or $500,000,000, whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specificially authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasaonable by the Administrator or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontractors providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractors may be liable.

(e) If insurance coverage or other financial protection program approved by the Administrator is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self-insurance), covering a risk defined in this contract as unusually hazardous shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" and "Limitation of Government's Obligation" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

1852.250-72 Space Activity—Unusually Hazardous Risks.

Insert the following clause as prescribed at 1850.403-3(b).

Space Activity—Unusually Hazardous Risks (August 1984)

The risks for which indemnification is authorized are solely those risks resulting from or arising out of the use or performance of the following products or services in NASA's space activities. For this purpose, the use or performance of such products or services in NASA's space activities begins only when such products or services are provided to the U.S. Government at a U.S. Government installation for one or more Shuttle launches and are actually used or performed in NASA's space activities:

(a) Provision of Space Transportation System and cargo flight elements or components thereof.

(b) Provision of Space Transportation System and cargo ground support equipment of components thereof.

(c) Provision of Space Transportation System and cargo ground control facilities and services for their operation.

(d) Repair, modification overhaul support and services, and other support and services directly relating to the Space Transportation System, its cargo, and other elements used in NASA's space activities.

(End of clause)

PART 1853—FORMS

68. Section 1853.107 is revised to read as follows:

1853.107 Obtaining forms.

NASA installations and offices may obtain forms prescribed in the FAR or in this Part from Goddard Space Flight Center, Code 853.9. Orders should be placed on a NASA Form 2.

69. Section 1853.208-70 is amended by revising the section title and paragraph (b) to read as follows:

1853.208-70 Other Government sources (SF 1080, AF 858, DOE EV 375, NRC 3131).

* * * * *

(b) *Air Force Form 858, Forecast of Propellant Requirements.* AF 858,

prescribed at 1808.002–74(f), shall be used to report periodic estimated requirements for missile propellants and related items to the Department of the Air Force.

* * * * *

70. Section 1853.232 is revised to read as follows:

1853.232 Contract financing (SF 272, 272A).

(a) *Standard Form 272, Federal Cash Transaction Report* prescribed at 1832.406–70, will be submitted by non-profit organizations that receive advance funding.

(b) *Standard Form 272A, Federal Cash Transaction Report* Continuation, prescribed at 1832.406–70, is used in conjunction with SF–272 when reporting, more than one contract.

1853.303 [Amended]

71. Section 1853.303 is amended by removing 1853.303–558, NASA Form 558, and by adding 1853.303-AF–858, Air Force Form 858, Forecast of Propellant Requirements.

1853.303-AF-858

FORECAST OF REQUIREMENTS (Missile Propellants and Pressurants)	DATE OF PREPARATION (YYMMDD)	REPORT CONTROL SYMBOL	OMB APPROVAL NO. 0701–0013

REPORTING ACTIVITY (Name and address as listed in DOD Activity Address Directory)	REPORTING PERIOD (YYMMDD) FROM	TO
SHIP TO (Name and address of activity where forecasted product will be delivered and used)	METHOD OF SHIPMENT (Check applicable boxes) ☐ TANK CAR ☐ CYL/DRUM ☐ TRUCK TRAILER	
MARK FOR (As required)		

STOCK NO. AND NOUN	UNIT OF ISSUE	STORAGE AVAILABILITY AT DESTINATION	MAXIMUM QUANTITY SHIPMENT ACCEPTANCE

CONTRACT NUMBER						
PROGRAM SUPPORTED						
FUNDING DATA (Leave blank if unknown)	FUNDS					
	SYSTEMS MGT CODE					
	SALES CODE					
CY	MO/QTR	QUANTITIES (Must be compatible with Unit of Measurement)				
(Enter first six months by months; remainder by qtr)						

METHOD OF COMPUTATION AND REMARKS (Explain new or unusual requirement)

REPORTING ACTIVITY

PREPARED BY (Signature)	DATE (YYMMDD)	APPROVED BY (Signature)	DATE (YYMMDD)

APPROVING ACTIVITY
(Major Command or Funds Management Office Controlling Funding for Propellant and Pressurant Requirements being forecast)

APPROVED BY (Signature)	DATE (YYMMDD)	APPROVED BY (Signature)	DATE (YYMMDD)

AF FORM JUN 82 858 PREVIOUS EDITION IS OBSOLETE

[FR Doc. 84–22897 Filed 8–28–84; 8:45 am]

BILLING CODE 7510–01–M

Notices

Federal Register
Vol. 49, No. 169
Wednesday, August 29, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Preemption of State Regulation, and Representation by Non-Lawyers

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Committee meeting.

Agenda: The Committee will meet with its consultants to discuss the progress of its projects. Current projects are: (1) Preemption of state regulation, and (2) representation by non-lawyers in agency proceedings.

Date and Time: September 7, 1984, 9:30 a.m.

Location: Administrative Conference of the U.S., 2120 L Street, NW., Library, Washington, D.C. 20037.

Public participation: Attendance at the Committee's meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The Committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request to the contact person. This meeting is subject to the Federal Advisory Committee Act (Pub. L. 92–463).

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. 20037. Telephone: (202) 254–7065.

Subjects: 1. Preemption; 2. Lawyers.

SUPPLEMENTARY INFORMATION:

Preemption of State Regulation

The Committee will review the initial report of consultant Dean Richard J. Pierce of the University of Pittsburg School of Law. Dean Pierce's report is entitled "Regulation, Deregulation, Federalism and Administrative Law." Dean Pierce has also submitted a draft of a proposed recommendation. This project will center on the criteria and procedures appropriate for use when a federal agency that is in the process of deregulating an activity must decide whether regulation of the same activity by the states should also be limited.

Representation by Non-Lawyers

The Committee will review responses to questionnaires sent to federal agencies and professional associations. The Committee will also discuss the publication of a future **Federal Register** notice inviting comments. This project is currently limited to a study of representation by non-lawyer experts in the areas of finance and economic regulation. The Committee will consider whether to broaden the coverage to all or most areas of representation, including social security and immigration cases.

Dated: August 24, 1984.

Richard K. Berg,

General Counsel.

[FR Doc. 84–22901 Filed 8–28–84; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 24, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed shold be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washingon, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Office of Internal Cooperation and Development

Automated Skills Inventory System (ASIST)

OICD 73

On occasion

Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; 7,500 responses; 7,500 hours; not applicable under 3504(h)

Charles H. Cook (202) 475–5246

Jane A. Benoit,

Acting Department Clearance Officer.

[FR Doc. 84–22970 Filed 8–28–84; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Delegations of Authority for Lands Transactions

Pursuant to 7 CFR 2.7 and the delegation of authority to the Chief, Forest Service, at 7 CFR 2.60, the Chief of the Forest Service hereby delegates the following authorities through the Deputy Chief for the National Forest System to the Regional Forester, Deputy Regional Foresters and the responsible Lands Director of each Forest Service Region:

(a) Execute all documents for acquisition and disposition of lands and interest in lands pursuant to the Act of January 12, 1983 (96 Stat. 2535)

commonly known as the Small Tracts Act, and in accordance with regulations at 36 CFR Part 254, Subpart C. This Small Tracts Act authority is also delegated to the Forest Supervisor of Each National Forest subject to the Regional Forester's approval.

(b) Execute all documents for the acquisition and disposition of lands and interest in lands pursuant to the following Acts:

(1) Adjustment of Land Titles Act of July 8, 1943 (Pub. L. 78–120; 57 Stat. 388; 7 U.S.C. 2253);

(2) Quitclaim Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872);

(3) National Forest Townsite Act of July 31, 1958, as amended (72 Stat. 483; 16 U.S.C. 478a); and

(4) Santini-Burton Act of December 23, 1980 (Pub. L. 96–586; 94 Stat. 3381).

(c) Perform the following Acts under the authority of the various land exchange laws:

(1) Approve exchanges, except timber-for-timber and direct cut land-for-timber. Approval of exchanges under $25,000 is further delegated to the Forest Supervisor of each National Forest subject to the Regional Forester's approval.

(2) Sign land exchange deeds,

(3) Accept title to nonfederal land,

(4) Request issuance of patents from appropriate State Director, Bureau of Land Management.

(d) Perform the following Acts under the authority of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 533), and in accordance with the Regulations of the Secretary, 36 CFR 212.10:

(1) Grant easements for road rights-of-way,

(2) Execute Road Rights-of-Way Construction and Use Agreements and Supplements.

(3) Terminate easement granted under this authority with the consent of the owner of the easement.

This delegation of authority supersedes related delegations previously made and published in 49 FR 1259 dated January 10, 1984, 45 Fr 171169 dated March 18, 1980, and 44 FR 75690 dated December 21, 1979, and shall be effective August 30, 1984.

Done at Washington, D.C. this 22d day of August 1984.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 84–22907 Filed 8–28–84; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MO.114—Texas County Livestock Market, Inc. Cabool, Missouri.	Nov. 17, 1959.
TN–158—McNairy Livestock & Auction Corp., Selmer, Tennessee.	Feb. 26, 1970.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register.** This notice shall become effective upon publication in the **Federal Register.**

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, D.C. this 23rd day of August 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

FR Doc. 84–22905 Filed 8–28–84; 8:45 am]

BILLING CODE 3410 KD–M

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1981, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
IA–257—LaPorte City Sale Barn, LaPorte City, Iowa.	July 31, 1984.
IA–258—Manchester Livestock Auction, Inc., Manchester, Iowa.	Aug. 2, 1984.

Done at Washington, D.C., this 23rd day of August 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–22906 Filed 8–28–84; 8:45 am]

BILLING CODE 3410–KD–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limit for Certain Wool Apparel Products Exported From Panama Under a New Bilateral Agreement

August 24, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 30, 1984. For further information contact Kyle Poole, Trade Reference Assistant (202) 377–4212.

Background

The Governments of the United States and the Republic of Panama have exchanged diplomatic notes on a new bilateral agreement concerning trade in wool textile products in Category 445/446, produced or manufactured in Panama and exported during the two-year period which began on December 1, 1983 and extends through November 30, 1985. The agreement established a specific limit of 44,000 dozen for wool sweaters in Category 445/446 exported during the first agreement year which began on December 1, 1983 and extends through November 30, 1984. In the directive to the Commissioner of Customs which follows this notice, the new limit is established and charges are provided for imports in both categories, exported during the period which began on December 1, 1983. When the data become available, further charges will be made to account for merchandise in Category 445 imported during the period which began on July 1, 1984 and extends to the effective date of this action.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16,1984 (49 FR 28754).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 24, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Effective on August 30, 1984, this letter cancels and supersedes the directive of March 5, 1984.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of August 7 and August 21, 1984, between the Governments of the United States and the Republic of Panama; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 30, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in Panama and exported during the twelve-month period which began on December 1, 1983 and extends through November 30, 1984, in excess of 44,000 dozen.[1]

Textile products in Category 445/446 which have been exported to the United States prior to December 1, 1983 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limit set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of August 7 and August 21, 1984, between the Governments of the United States and the Republic of Panama provide, in part, that: (1) Specific limits may be increased for carryover and carryforward. Any appropriate future adjustments under the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Panama and with respect to imports of wool textile products from Panama has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-22894 Filed 8-28-84; 8:45 am]
BILLING CODE 3510-DR-M

[1] The restraint limit has not been adjusted to reflect any imports exported after November 30, 1983. Charges for such imports during the period December 1, 1983 through June 30, 1984 have amounted to 2,710 dozen in Category 445 and during the period December 1, 1983 through the effective date of this action to 21,133 dozen in Category 446.

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia to Review Trade in Category 320pt; (Other Woven Fabrics)

On July 31, 1984, the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to Category 320pt. (other woven fabrics of cotton, n.e.s. in TSUSA numbers 320.–92, 321.–92, 332.–92, 326.–92, 327.–92, and 328.–92). This request was made on the basis of the agreement, between the Governments of the United States and the Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982, as amended. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, CITA pursuant to the agreement, as amended, may establish a prorated specific limit of 2,996,810 square yards for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 320pt., produced or manufactured in Indonesia and exported to the United States during the period which began on July 31, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution to invoke import controls on this category during the 90-day consultation period (July 31–October 28, 1984) at a level of 952,353 square yards. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the period which began on July 31, 1984 and extends through June 30, 1985.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Anyone wishing to comment or provide data or information regarding the treatment of Category 320pt, under the Bilateral Cotton, Wool and Man-Made Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments of 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. Because 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 Textile 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."

Effective Date: August 30, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 320pt.—TSUSA Nos. 302.–92, 321.–92, 322.–92, 326.–92, 327.–92, and 328.–92

August 1984.

U.S. imports of Category 320 from Indonesia during the first four months of 1984 were 3.2 million square yards. Approximately 66 percent or 2.1 million square yards of this was printcloth entered under TSUAS Nos. 326.2092 and 326.3092. Indonesia's printcloth imports entering under these TSUSA numbers were mostly cotton/polyester blended printcloth of 82x50 printcloth from Indonesia.

The fabrics entering under TSUSA No. 326.—92 from Indonesia are not entered as printcloth since the warp ends of 82 amount to 62.1 percent of the total warp and filling yarns of 132. The Tariff Schedules of the United States Annotated, Subpart A statistical headnotes; 1 (e) limit printcloth classification to fabrics which the warp yarn or the filling yarn ends are less than 62 percent of the total. By modifying fabrics to have the warp yarn ends accounting for 62.1 percent of the ends, these Indonesian fabrics are not subject to the specific limit provided for in the textile bilateral. However, these 82x50 constructions are printcloth from a use standpoint and adversely affect the domestic market for cotton printcloth. Other suppliers of these types fabrics have limits under the bilateral agreements.

The cotton printcloth market in the United States is adversely affected by imports. Imports were equal to 101.9 percent of domestic production during the first quarter of 1984 compared with 54.9 percent for calendar 1983. First quarter 1984 domestic production was down five percent from the same period in 1983 whereas imports increased 69 percent. Imports of cotton printcloth during January-April 1984, excluding the 82x50 fabric imported from Indonesia and other sources, amounted to 113 million square yards compared with 67 million during the same period in 1983.

Imports of cotton printcloth from Indonesia were entered under TSUSA Nos. 326.2092 and 326.3092. The duty-paid landed values of these fabrics from Indonesia were below the U.S. producer price for comparable fabrics.

August 24, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 30, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 320pt.[1] produced on manufactured in Indonesia and exported during the ninety-day period which began on July 31, 1984 and extends through October 28, 1984, in excess of 952,353 square yards.[2]

Textile products in Category 320pt.[1] which have been exported to the United States prior to July 31, 1984 shall not be subject to this directive.

Textile products in Category 320pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of cotton textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-22893 Filed 8-28-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 320, only TSUSA numbers 320.–92, 321.–92, 322.–92, 326.–92, 327.–92, and 328.–92).

[2] The level of restraint has not been adjusted to reflect any imports exported after July 30, 1984.

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD-University Forum; Working Group on Export Controls Advisory Committee Meeting

SUMMARY: The Working Group on Export Controls of the DOD-University Forum will meet in open session on September 14, 1984, from 9:00 a.m. until noon, at No. 1 Dupont Circle, Washington, D.C. 20036.

The mission of the DOD-University Forum Working Group on Export Controls is to assess the impact on universities of proposed international export controls.

The meeting is scheduled to discuss development of procedures for complying with draft national policy statement on transfer of Scientific and Technical Information of May 24, 1984.

Public attendance will be accommodated as space permits. Public attendees are requested to telephone Mr. Frank Sobieszczyk in the DOD Office of Research and Laboratory Management on Area Code 202/694–0205 before COB September 12, 1984, to be advised of the room number and seating accommodations.

Dated: August 24, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-22896 Filed 8-28-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency; DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of Panel of the DIA Scientific Advisory Committee has been scheduled as follows: Thursday, 20 September 1984, The Pentagon, Washington, D.C.

The entire meeting, commencing at 0800 hours is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Special Actions.

DATED: Thursday, 20 September 1984.

Dated: August 24, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-22895 Filed 8-28-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Operation and Management of Energy Analysis and Diagnostic Centers

AGENCY: Department of Energy (DOE).

ACTION: Notice of Solicitation for a Cooperative Agreement Award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of a cooperative agreement for the operation and management of Energy Analysis and Diagnostic Centers.

FOR FURTHER INFORMATION CONTACT: Tyler E. Williams, Jr., CE–122, U.S. Department of Energy, Office of Industrial Programs, Washington, D.C. 20585.

Solicitation Number: DE–01–84CE40699.

Authority: DOE Organization Act, Pub. L. 95–91, 42 U.S.C. 7101; Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 42 U.S.C. 5905–6; DOE Financial Assistance Rules, 10 CFR Part 600, 600.7(b), (47 FR 44086, October 5, 1982).

Program Scope

This cooperative agreement will provide for the operation and management of the ten current Energy Analysis and Diagnostic Centers (EADCs) and training of two Historically Black College (HBC) EADC candidates. Eligibility for award of the cooperative agreement is being limited to the University City Science Center (UCSC) because of its unique capability to maintain existing operations while concurrently providing training to HBC schools. The UCSC provides at this time the only demonstrated capability (1) to establish an EADC at a new institution and (2) to ensure that each EADC performs useful and effective energy audits. The term of the cooperative agreement shall be from December 1, 1984 to September 30, 1985. The amount of DOE funds awarded shall be $1,260,000.

Issued in Washington, D.C., August 20, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84–22886 Filed 8–28–84; 8:45 am]
BILLING CODE 6450–01–M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Benard C. Rusche is the Director of the Office of Civilian Radioactive Waste Management in the Department of Energy. It has recently been determined that Mr. Rusche has a pecuniary interest in E. I. duPont de Nemours and Company that was created as a result of his prior employment by the company.

It has been established to my satisfaction that requiring Mr. Rusche to divest his interest in DuPont would impose an exceptional hardship on him and that the interest is a pension, within the meaning of section 602(c) of the Act.

Accordingly, effective with the commencement of his employment with the Department of Energy, I have granted Mr. Rusche a waiver of the divestiture requirements of section 602(a) of the Act with respect to his vested interest in the DuPont Pension and Retirement Plan. This waiver will remain in effect for the duration of his employment with the Department Plan.

In accordance with section 208 of title 18, United States Code, Mr. Rusche has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon E. I. duPont de Nemours and Company unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: August 23, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84–22988 Filed 8–28–84; 8:45 am]
BILLING CODE 6450–01–M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any precuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. William J. Purcell is under consideration for the position of Associate Director for Geologic Repositories in the Office of Civilian Radioactive Waste Management of the Department of Energy. Mr. Purcell has pecuniary interests in the Westinghouse Electric Corporation that were created as a result of his employment by the company.

It has been established to my satisfaction that requiring Mr. Purcell to divest his interests in Westinghouse would impose an exceptional hardship on him, and that the interests so designated below are pension, insurance, or other similarly vested interests, within the meaning of section 602(c) of the Act.

Accordingly, I have granted Mr. Purcell a waiver of the divestiture requirements of section 602(a) of the Act—

(1) For the duration of his employment with the Department, with respect to his interest in the Westinghouse Electric Corporation's Executive Pension Supplement;

(2) For the duration of his employment with the Department, with respect to his vested interest in the Westinghouse Deferred Arrangement for Incentive Compensation; and

(3) For the duration of his employment with the Department, with respect to his interest in medical/dental and life insurance benefits provided to individuals who are entitled to receive benefits under the Westinghouse Pension Plan.

In accordance with section 208 of title 18, United States Code, Mr. Purcell will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Westinghouse unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may except of him.

In addition, in accordance with subsections (a) and (b) of section 606 of the Department of Energy Organization Act, Mr. Purcell will be directed not to participate—

(1) For a period of one year after terminating his employment with

Westinghouse Electric Corporation, in any Department proceeding in which Westinghouse is substantially, directly, or materially involved, other than a rulemaking proceeding having a substantial effect on numerous energy concerns; and

(2) For a period of one year after commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Westinghouse;

Unless the Secretary makes a written finding that the application of such prohibition would be contrary to the national interest.

Dated: August 23, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84-22964 Filed 8-28-84; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95-91)

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. James R. Hilley is under consideration for the position of Associated Director for Storage and Transportation Systems, in the Office of Civilian Radioactive Waste Management of the Department of Energy. Mr. Hilley has pecuniary interest in E. I. duPont Nemours and Company that were created as a result of his employment by the company.

It has been established to my satisfaction that requiring Mr. Hilley to divest such interests in duPont would impose an exceptional hardship on him and that the interests so designated below are pension, insurance, or other similarly vested interests, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Hilley a waiver of the divestiture requirements of section 602(a) of the Act—

(1) Until December 31, 1984, with respect to his interest in stock credited to his account in the DuPont Tax Reform Act Stock Ownership Plan for calendar years before 1984;

(2) Until December 31, 1985, with respect to his interest in stock credited to his account in the DuPont Tax Reform Act Stock Ownership Plan for calendar year 1984;

(3) For the duration of his employment with the Department, with respect to his vested interest in the DuPont Pension and Retirement Plan;

(4) For the duration of his employment with the Department, with respect to his interest in medical, dental, and life insurance benefits provided to individuals who are entitled to receive benefits under the DuPont Pension and Retirement Plan; and

(5) Until March 31, 1985, with respect to the award that may be granted to him under the DuPont Incentive Compensation Plan for his service to the company before termination of his employment in 1984.

In accordance with section 208 of title 18, United States Code, Mr. Hilley has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon duPont unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsections (a) and (b) of section 606 of the Department of Energy Organization Act, Mr. Hilley will be directed not to participate—

(1) For a period of one year after terminating his employment with E. I. duPont de Nemours and Company, in any Department proceeding in which duPont is substantially, directly, or materially involved, other than a rulemaking proceeding having a substantial effect on numerous energy concerns; and

(2) For a period of one year after commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of duPont;

unless the Secretary makes a written finding that the application of such prohibition would be contrary to the national interest.

Dated: August 23, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84-22987 Filed 8-28-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI84-557-000]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

August 23, 1984.

Take notice that on August 21, 1984, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Applicant), P.O. Box 2819, Dallas, Texas 75221, filed an application, pursuant to sections 4 and 7 of the Natural Gas Act and the Commission's Regulations thereunder, for limited partial abandonment authorization and a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Applicant to conduct a short-term spot sales marketing program, hereinafter referred to as the ARCO Special Marketing Program ("ARCO Special"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas by Applicant for resale in interstate commerce; (2) permit temporary partial abandoment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the ARCO Special; and (5) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for the implementation of a short-term experimental spot sales marketing program. Under the ARCO Special, Applicant proposes to sell on a spot basis contractually committed natural gas qualifying for the section 102, 103, 107, or 108 rate under the Natural Gas Policy Act of 1978. Applicant will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be given relief from take-or-pay obligations for any volumes

of gas release and sold under the ARCO Special.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before August 31, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22973 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-548-001]

Bayou Interstate Pipeline Corp.; Initial Rate Schedule IT and Proposed Changes to FERC Gas Tariff

August 23, 1984.

Take notice that on August 3, 1984, Bayou Interstate Pipeline Corp. (Bayou) tendered for filing to be a part of its FERC Gas Tariff, Original Volume No. 1, an initial Rate Schedule IT, Interruptible Transportation, consisting of First Revised Sheet No. 10 and Original Sheet Nos. 11–12. Also submitted to reflect the addition of this rate schedule were First Revised Sheet No. 1, Original Sheet No. 3A, Second Substitute Sheet No. 4, and Original Sheet No. 13.

Bayou states that the proposed Rate Schedule IT will be applicable to all interruptible transportation performed by Bayou for interstate pipelines, intrastate pipelines and local distribution companies using Bayou's offshore facilities, which comprise 3.3 miles of pipeline running from West Cameron Block 292 to a proposed interconnection with the pipeline of Pelican Interstate Gas Corp. in West Cameron Block 289, offshore Louisiana.

Bayou has proposed an initial rate of three and four tenths cents (3.4¢) per Mcf for Rate Schedule IT. Bayou has requested that the tariff sheets filed herein be made effective thirty (30) days after they were tendered for filing.

Copies of this filing have been served upon Bayou's jurisdictional customer and upon the Public Service Commission of the State of Louisiana and the Department of Natural Resources Office of Conservation of the State of Louisiana.

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 August 29, 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. 84-22974 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-189-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 24, 1984.

Take notice that on August 10, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-189-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Maryland Cup Corporation (MCC) under the authorization issued in Docket No. CP83-76-000 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.

It is explained that by notice issued January 13, 1984, pursuant to the prior notice and protest procedure of § 157.205 of the Commission's Regulations, Columbia received authorization to transport up to 1,250 million Btu equivalent of natural gas per day to MCC's Owings Mills, Maryland, plant through August 10, 1984, and up to 250 million Btu equivalent of natural gas per day to MCC's Baltimore, Maryland, plant through September 13, 1984.

Columbia proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

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. 84-22975 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-600-000]

Duke Power Co.; Filing

August 23, 1984.

The filing Company submits the following:

Take notice that Duke Power Company (Duke) on August 15, 1984, tendered for filing a revision in Service Schedule C *Sale of Power and Energy* to its Interconnection Agreement dated October 17, 1983 with Yadkin, Inc., which Agreement was accepted for filing by the Commission on February 24, 1984. Service Schedule C provides for interruptible rates with no demand charge for off-peak sales. Based on the 12-month period ending June 30, 1985, Duke estimates that the proposed change in rates will increase annual revenues to Duke from Yadkin by approximately $24,420.

Duke requests an effective date of October 1, 1984 and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 6, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22976 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-602-000]

Florida Power & Light Co.; Filing

August 23, 1984.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on August 15, 1984, tendered for filing a document, entitled Amendment Number Fifteen to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Fort Pierce Utilities Authority (Rate Schedule FERC No. 68).

FPL states that under Amendment Number Fifteen, FPL will transmit power and energy for Fort Pierce Utilities Authority as is required by in the implementation of its interchange agreement with City of Starke, Florida.

FPL requests waiver of the Commission's Regulations be granted to allow the proposed Amendment to become effective immediately.

Copies of this filing were served on Director of Utilities, Fort Pierce Utilities Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 6, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22977 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 18, et al.]

Idaho Power Co.; Expiration

August 23, 1984.

So that Congress may have an adequate opportunity to decide whether, upon the expiration of the licenses, to take over the projects under section 14 of the Federal Power Act, 16 U.S.C. 807, so that the Licensees for the project and others may have adequate notice and opportunity to file applications for new licenses under section 15 of the Act, 16 U.S.C. 808, public notice is hereby given that the license issued for the designated and described projects on the appended tables will expire on the date specified therein.

Kenneth F. Plumb,

Secretary.

TABLE 11.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JAN. 1, 1984, AND DEC. 31, 1989 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING OR TAKEOVER[1]

License expiration date	Licensee	FERC project No.	State	County	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
June 10, 1984	Idaho Power Co	18	ID	Jerome and Twin Falls	Snake River	8,438	Dam, powerhouse, and transmission lines.	50
February 10, 1985.	Duke Power Co	1267	SC	Green, Laurens, and Newberry	Saluda River	15,000	Dam, reservoir, and powerhouse.	50
March 31, 1985	Pacific Gas and Electric Co	1988	CA	Fresno	Kings River North Fork Kings River, Helms Creek.	179,100	6 dams, 2 reservoirs, tunnel, 2 powerhouses, and transmission lines.	30
February 28, 1986.	Pacific Power & Light Co	308	OR	Wallowa	East Fork of Wallowa River	1,100	Dam, powerhouse	10
November 30, 1986.	South California Edison Co	1388	CA	Mono	Leaving Creek	10,000	Dam, power plant	50
Do	do	1389	CA	do	Rush Creek	8,400	do	50
Do	do	1390	CA	do	Mill Creek	2,400	do	50
Do	do	1394	CA	CA	Bishiop Birch and McGee Creek.	21,875	do	50
December 31, 1986.	Wisconsin Public Service Corp	1940	WI	Lincoln	Wisconsin Public	2,600	do	50
Do	Bango Hydro Electric Co	2403	ME	Penobscot	Penobscot River	8,400	Dam, reservoir, 2 powerhouses	50
Do	Great Northern Paper Co	2520	ME	Penobscot Aroostook	do	19,200	Dam, reservoir, powerhouse, transmission lines.	50
Do	Central Maine Power Co	2527	ME	York	Saco River	16,800	do	50
Do	do	2528	ME	do	do	6,650	4 dams, reservoir, powerhouse	50
Do	J.P. Stevens and Co	2428	SC	Anderson Greenville	Saluda River	[2]1,000	Dam, reservoir, powerhouse	50
Do	Beaver Falls Power Co	2593	NY	Lewis	Beaver River	1,500	do	50
Do	Central Maine Power Co	2531	ME	Cumberland	Saco River	6,625	Dam, reservoir, 2 powerhouses	50
Do	Bango Hydro Electric Co	2727	ME	Hancock	Union River	8,400	2 dams, 2 reserviors, 2 powerhouses.	50
Do	Public Service Co. of New Hampshira.	2457	NH		Pemigewasset River	3,000	Dam, powerhouse	50
Do	Utah Power & Light Co	2381	ID	Fremont	Snake River	6,300	2 dams, 2 powerhouses	50
Do	Central Maine Power Co	2519	ME	Cumberland	Presumpsoot River	2,250	Dam, powerhouse	50
Do	Potomac Edison Co	2343	WV	Jefferson	Shenandoah River	2,840	Dam, powerhouse	50
Do	Union Carbide Corp	2512	WV	Fayette	New River	107,450	2 dams, 2 reservoirs, 2 powerhouses.	50
Do	Bower Sock, Mills and Power Co.	2644	KS	Douglas	Kansas River	1,850	Dam, reservoir, powerhouse	50
Do	Central Maine Power Co	2335	ME	Somerset	Kennebec River	13,000	2 dams, powerhouse	50
Do	Central Vermont Public Service Corp.	2205	VT	Franklin	Lamoille River	16,880	4 dams, 4 reservoirs, 4 powerhouses, transmission lines.	50
Do	Wisconsin Public Service	1966	WI	Portage	Wisconsin River	17,240	2 dams, powerhouse	50
June 30, 1988	Montana Power Co	1473	MT	Dear Lodge & Granite	Flint Creek	1,000	Dam, powerhouse, reservoir	50
August 31, 1988	Alaska Electric Light & Power Co.	2307	AK	Juneau	Salmon and Annex Creek	9,100	2 dams, 3 powerhouses, reservoir, transmission lines.	25
October 26, 1988	CWC Fisheries, Inc	1432	AK	Kodiak	Unnamed Creek	75	2 reservoirs, powerhouse, dam	20
December 31, 1988.	Pacific Power & Light Co	2337	OR	Jackson	Rogue River	7,200	Dam, powerhouse, transmission line.	25
April 30, 1989	do	1354	CA	Madera	San Joaquin	20,425	Dams, 5 powerhouses, transmission lines.	50
Do	do	1333	CA	Talabe	Tule River	4,800	2 dams, powerhouse, transmission lines.	50
December 31, 1989.	Lake Superior District Power	2610	MI	Gogebic	Montreal River	1,250	Dam, powerhouse	50

[1] Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to Sec. 10(1). Sec. 14 is not applicable to any project owned by a state or municipality, pursuant to the Act of Aug. 15, 1953 (67 Stat 587).
[2] Minor License.

TABLE 12.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1984, AND DECEMBER 31, 1989, INCLUSIVE, THAT ARE NOT SUBJECT TO TAKEOVER[1]

License expiration date	Licensee	FERC Project No.	State	County	River	Installation (kilowatts)	Facilities under license	Period of license (Years)
April 16, 1984	Loup River Public Power District.	1256	ME	Platte, Nance, Madison, Stanton, Wayne, Dixon, Colfax, Dodge, Douglas, Butler, Saunders & Lancaster.	Loup River	47,738	Diversion dams, reservoirs, powerhouses, and transmission lines.	50
May 30, 1984	City of Pasadena	1250	CA	Los Angeles	San Gabriel	3,000	Diversion dam and powerhouse.	50
September 18, 1984.	Red Bluff Water Power Control District.	1280	NM	Eddy	Pecos[2]	2,300	Dam power plant	60
June 30, 1987	Nebraska Public Power District	1835	NE	Lincoln & Keith	North & South Platte Rivers	56,195	Dam, 2 reservoirs, powerhouse, transmission lines, canals.	44
July 29, 1987	Central Nebraska	1417	NE	Keith, Lincoln Dowson, Gosper	Platte & North	104,000	2 Dams, 3 powerhouses, transmission lines, canal.	50
December 31, 1987.	Village Gresham	2484	WI	Shawano	Red River[2]	275	Dam, powerhouse	50
March 31, 1988	City of Holyoke	2388	MA	Hampden	Connecticut Canal System	800	Canal, powerhouse	50
May 24, 1988	Brazos River Authority	1490	TX	Young, Stevens, Jacks, Palo Pinto.	Brazos River	33,750	Dam, powerhouse, reservoir	50
October 31, 1988	City of Kaukauna	2677	WI	Outagamie	Fox River	8,000	Dam, 3 powerhouses, transmission line.	50
December 31, 1988.	Grand River Dam Authority	1494	OK	Mayes, Craig, Delaware, Ottawa.	Grand River	86,400	Dam, powerhouse, reservoir	50
March 31, 1989	City of Kaukauna	1510	WI	Outagamie	Fox River	4,800	Canal, powerhouse	50

[1] Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to Sec. 10(1) to the Act (16 U.S.C. 803(1). Section 14 is not applicable to any project owned by a state or municipality, pursuant to the Act of Aug. 15, 1953 (67 Stat. 587).
[2] Minor License.

[FR Doc. 84-22978 Filed 8-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-603-000]

Indianapolis Power & Light Co.; Filing

August 23, 1984.

The filing Company submits the following:

Take notice that on August 16, 1984, Indianapolis Power & Light Company ("IPL") tendered for filing a rate schedule in the form of an agreement which sets forth the rates, charges, terms and conditions for providing wholesale electric service to Boone County Rural Electric Membership Corporation ("Boone REMC"), which is the only REMC IPL serves. The new rates are intended to supersede and replace the existing agreement and rates designated as Indianapolis Power & Light Company Rate Schedule FERC No. 19, as supplemented, with respect to the type of service above-referenced.

The only customer affected by the proposed new rates is Boone REMC, which has executed an agreement with IPL dated as of August 1, 1984, which binds IPL to render, and Boone REMC to take, service under the new rate for a period of two (2) years after their effective date.

IPL alleges that the structure of the new rates has not been changed from the present rates; that the principal change in the new rates is to provide an increase in annual revenues from Boone REMC of $61,643.62, based upon the test year ended December 31, 1983, producing a rate of return for such test year of 12.39% on the original cost, less depreciation, of its facilities devoted to wholesale service to such REMC under the new rates.

IPL states that copies of this filing, together with exhibits, were sent to Boone REMC and to the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commissioin, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 September 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. 84-22979 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-63-000]

Interstate Power Co.; Application

August 27, 1984.

Take notice that on August 13, 1984, Interstate Power Company (Applicant) filed an application with the Commission pursuant to section 204 of the Federal Power Act for authorization to issue short-term promisory notes and/or commercial paper, not to exceed an aggregate of $50 million outstanding at any one time to be issued on or before December 31, 1985 and to mature not later than December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1984, file with the Federal Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22980 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-434-000]

LUZ Solar Partners Ltd., et al.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

August 27, 1984.

On July 27, 1984, LUZ Solar Partners Ltd., a California limited partnership, c/o WBL Solar Corporation, General Partner, 7820 Folsom Boulevard, P.O. Box 1168, Sacramento, California 95806 and LUZ Engineering Corporation, General Partner, 15720 Ventura Boulevard, Suite 504, Encino, California 91436, and First Interstate Bank of California, 707 Wilshire Boulevard, Los Angeles, California 90017 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. No determination has been made that the submittal constitutes a complete filing.

The facility will be a small power production facility using solar energy as its primary energy source. It will have a total generation capacity of 14.7 megawatts, and a net power production capacity of 13.8 megawatts. The facility will be located approximately 2 miles east of Daggett, California. The facility will consist of a solar collector field of approximately 560 solar collector assemblies, two oil storage tanks, a superheater, and a steam turbine generator, and may include an auxiliary natural gas-fired steam generator to be used during scheduled outages or to otherwise supplement steam generated by the solar field system.

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, N.E., 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. 84-22981 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-599-000]

Montaup Electric Co.; Filing

August 23, 1984.

The filing company submits the following:

Take notice that on August 15, 1984, Montaup Electric Company ("Montaup" or "the Company") tendered for filing an Exhibit A to Article 2.3 of the contract demand agreement between Montaup and the Town of Middleborough, Massachusetts ("Middleborough"). The Exhibit A provides the charge for radial transmission service to Middleborough for calendar year 1984 and is based on year-end 1983 investment and capitalization. As shown in Exhibit A,

that charge is reduced by $6,456 below the charges in effect for 1983, which were based on year-end 1982 investment and capitalization.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and Middleborough.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission 's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 6, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22982 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-61-000]

Pacific Power & Light Co.; Filing

August 24, 1984.

Take notice that on August 6, 1984, PacificCorp, doing business as Pacific Power & Light Company filed an application, for authority to issue and sell not more than 3,000,000 shares of its common stock in order to retire or replace senior equity securities pursuant to a recapitalization plan.

Pacific proposes to defer all losses or gains arising from the recapitalization until completion of the recapitalization plan. Pacific proposes to net all gains and losses for rate purposes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission 's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 6, 1984. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22983 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-606-000]

PacifiCorp, Doing Business as Pacific Power & Light Co; Filing

August 23, 1984.

The filing Company submits the following:

Take notice that PacifiCorp, doing business as Pacific Power & Light Company (Pacific), on August 20, 1984, tendered for filing, in accordance with § 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Idaho. The Revised Appendix 1 calculates an average system cost for the state of Idaho applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 30, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission, and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 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 September 11, 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. 84-22984 Filed 8-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-38-000]

Gulf Power Co.; Petition for Declaratory Order

August 27, 1984.

Take notice that on August 17, 1984, Gulf Power Company (Gulf Power) submitted for filing its petition for a declaratory order pursuant to Rule 207 of the Commisson's Rules of Practice and Procedure.

Gulf Power states that the Florida Public Service Commission (FPSC) has ordered Florida electric utilities, including Gulf Power, to file with the FPSC rates for wheeling power from qualifying facilities (QFs) located in Florida to other Florida electric utilities. Gulf Power further states that such rates for wheeling are within the exclusive jurisdiction of the Federal Energy Regulatory Commission, and that such jurisdiction cannot be waived or delegated to a State regulatory authority.

Gulf Power Requests that the Commission resolve the following 3 questions:

1. Does the Commission have jurisdiction over rates for transmission of energy across Gulf Power's transmission system from qualifying facilities located in Florida to other Florida utilities?

2. If the Commission does have such jurisdiction, is it exclusive jurisdiction which preempts the FPSC from revising or setting rates for such transmission service?

3. If the answers to both above questions are in the affirmative, can the Commission nevertheless legally waive or delegate its authority over such transmission rates to the FPSC.

Gulf Power requests the Commission issue a declaratory order that the Commission has exclusive and non-delegable jurisdiction under the Federal Power Act over the rates for transmission by Gulf Power of electric power generated by QFs in Florida and delivered to other Florida utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23136 Filed 8-28-84; 9:32 am]

BILLING CODE 6717-01-M

[Docket No. EL84-39-000]

Tampa Electric Co.; Petition for Declaratory Order

August 27, 1984.

Take notice that on August 16, 1984, Tampa Electric Company (Tampa Electric) submitted for filing its petition for a declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

Tampa Electric states that an order is needed to determine whether the Commission or the Florida Public Service Commission (FPSC) has jurisdiction over electric utility rates for the transmission of electric energy or capacity produced by cogeneration and small power production facilities (QF's), under circumstances where the QF-produced electricity is wheeled over one electric utility's transmission facilities for delivery to another electric utility.

Additionally, Tampa Electric requests a determination as to whether the Public Utility Regulatory Policies Act of 1978 (PURPA), or any Commission rule or regulation implementing PURPA, should be interpreted to require an electric utility serving a particular QF to wheel the QF's energy or capacity solely at the QF's option.

Tampa Electric requests the Commission to issue an order:

(1) Declaring that the Federal Energy Regulatory Commission has exclusive, non-delegable jurisdiction to establish rates for the transmission of energy or capacity from qualifying cogeneration and small power production facilities on Tampa Electric's transmission system to other utilities with which Tampa Electric is inter-connected; and

(2) Declaring that neither PURPA, nor any Federal Energy Regulatory Commission rule or regulation implementing PURPA, should be interpreted to require an electric utility serving a particular qualifying facility to wheel energy or capacity from the qualifying facility in the absence of mutual consent between the qualifying cogenerator or small power producer and the serving utility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23137 Filed 8-28-84; 9:32 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50622; FRL-2659-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471-EUP-85. Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 25 pounds of the herbicide N-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2,6-dimethoxybenzamide on non-crop areas to evaluate the control of various broadleaf weeds. A total of 25 acres are involved; the program is authorized only in the States of California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Wyoming. The experimental use permit is effective from July 18, 1984 to July 18, 1986. (Robert Taylor, PM 25, Rm. 251, CM No. 2 (703-557-1800))

45639-EUP-22. Issuance. NOR-AM Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 822 pounds of the insecticide bendiocarb on non-crop areas to evaluate the control of adult mosquitoes. A total of 8,600 acres are involved; the program is authorized only in the States of California, Georgia, and South Carolina. The experimental use permit is effective from July 18, 1984 to July 18, 1985. (Jay Ellenberger, PM 12, Rm. 229, CM No. 2 (703-557-2386))

264-EUP-59. Extension. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 4,750 pounds of the plant growth regulator ethephon on sugarcane to evaluate its ability to increase sucrose and to control flowering. A total of 6,000 acres are involved; the program is authorized only in the State of Hawaii. The experimental use permit is effective from July 19, 1984 to July 19, 1986. A temporary tolerance for residues of the active ingredient in or on sugarcane has been established. A food additive regulation for residues of the active ingredient in or on sugarcane molasses has been established (21 CFR 193.186). (Robert Taylor, PM 25, Rm. 245, CM No. 2, (703-557-1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: August 15, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-22659 Filed 8-28-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59164B FRL-2661-6]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA) TME-84-66. The test marketing conditions are described below.

EFFECTIVE DATE: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–215, 401 M St. SW., Washington, DC. 20460, (202–382–3741).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–84–66. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemical, and the levels and durations of exposure must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

TME 84–66.

Date of Receipt: July 12, 1984.

Notice of Receipt: July 20, 1984 (49 FR 29450).

Applicant: Hercules Incorporated.

Chemical: (G) Phenolic modified rosin ester.

Use: (S) Component of ink vehicles.

Import Volume: 40,000 kg.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: 6 months.

Commencing on: August 17, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 17, 1984.

Don R. Clay,

Director, Office of Toxic Substance.

[FR Doc. 84–22908 Filed 8–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–47003C; FRL–2642–3]

Acrylamide; Decision Not To Require Health Effects Testing

Correction

In FR Doc. 84–20112, beginning on page 30592 in the issue of Tuesday, July 31, 1984, make the following correction: On page 30594, first column, the twenty-second line should read "Strain A lung adenoma assay were not".

BILLING CODE 1505–01–M

[PF–380; OPP–FRL 2629–5]

Mobay Chemical Corp.; Pesticide Tolerance Petitions

Correction

In FR Doc. 84–18607, appearing on page 29135 in the issue of Wednesday, July 18, 1984, the second heading of the document should read as it appears in brackets above.

BILLING CODE 1505–01–M

[FRL–2661–7]

Organic Chemicals Manufacturing Plastics and Synthetic Fibers Pesticide Chemicals Manufacturing; Intent To Transfer Confidential Information to a Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to transfer confidential information to a contractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer or to grant access to confidential information collected under Section 308 of the Clean Water Act to selected EPA contractors. This information will assist the contractors in analyzing, revising, and reviewing the technical and economic data base which supports effluent limitations and standards and NPDES permits required by the Clean Water Act. This information will also assist contractors in analyzing technical data and information which supports hazardous waste listings established under Subtitle C of the Solid Waste Disposal Act as amended by the Resource, Conservation and Recovery Act of 1976.

DATES: Comments on the notice of transfer are due September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Lindsay, Organic Chemcials Branch, Effluent Guidelines Division (WH–552), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202)382–7174 or the individuals specified below.

SUPPLEMENTARY INFORMATION: The Clean Water Act of 1977 requires the Environmental Protection Agency to develop, revise, and review effluent limitations and standards for industrial point sources. The Office of Water Regulations and Standards is responsible for the industrial point source categories. EPA has awarded a prime contract to JRB Associated of McLean, VA including Environmental Science and Engineering, Incorporated (ESE), Gainesville, Florida, Interface Inc., Fort Collins, CO, and Environ, Washington, D.C. as subcontractors and Dr. Gary Liberson, Lloyd Associates, Inc., Washington, D.C. and Dr. William Lowenbach, George Washington University, Washington, D.C. as consultants (Contract NO. 68–01–6947), and other contractors as specified below to provide technical and economic analyses and other contract support to the Office of Water Regulations and Standards.

Executive Order 12291 requires the Agency to conduct a Regulatory Impact Analysis (RIA) for each major rule it proposes or promulgates. Technical assistance and other RIA contract support for the OCPSF industry study is provided to the Office of Policy Analysis by Industrial Economics, Inc. through Contract Nos. 68–01–6543 and 68–01–6558.

The Clean Water Act also requires EPA and authorized States to issue NPDES permits. EPA awarded a contract to JRB Associates of McLean, VA (Contract No. 68–01–6514) to provide technical assistance and other contract support to the Office of Water Enforcement and Permits. The data collected form questionnaires and from field sampling and analysis surveys will be used as a supplemental source of technical information to assure that appropriate permit conditions are established for each plant.

The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 creates under

Subtitle C a comprehensive management control system for the disposal of hazardous wastes designed to protect the public health and the environment from the improper disposal of such waste. Section 3001 of that Subtitle requires EPA to identify the characteristics of and list hazardous wastes. Wastes identified or listed as hazardous will be included in the management control system created by Sections 3002–3006 and 3010. Wastes not identified or listed will be subject to the requirements for nonhazardous waste imposed by the States under Subtitle D. EPA has awarded contracts to Industrial Economics, Inc., Cambridge, MA to provide economic analyses (Contract No. 68–01–6892); Development Planning and Research Associates to provide economic analysis (though Contract Nos. 68–01–6892 and 68–01–6621); and JRB Associates of McLean, VA to provide technical and economic analyses (Contract No. 68–01–6563) as well as other contract support to the Office of Solid Wastes.

One of the sources of information which EPA will use to assess effluent limitations and standards as well as hazardous waste listings is the data collected from questionnaires sent to various industries under authority of Section 308 of the Clean Water Act. Many of the responses to these questionnaires contain fundamental information about plant size and location, wastewater composition, wastewater treatment systems, wastewater volume, production processes, and solid waste disposal practices. The survey responses which EPA will use in the course of its assessment relate to industry survey questionnaires mailed since 1975 as well as follow-up communications and submissions for selected Standard Industrial Classifications (SIC). Many of these responses contain information which has been claimed as confidential by the responding company.

The Agency has also used the authority of Section 308 to conduct numerous conventional, nonconventional and toxic pollutant parameter field sampling and analysis surveys of in-plant and end-of-pipe wastewater sources within these industries. Portions of this data also have been claimed as confidential by the sampled facilities. The data collected by EPA from questionnaires and from field sampling and analysis surveys, including portions that have been claimed as confidential, will be transferred to EPA contractors.

The industrial point source categories, designated EPA contract person, selected contractors and EPA contract numbers receiving the data, SIC codes and descriptions of industries whose data is being transferred, and remarks are listed below:

1. Plastics an Synthetic Fibers and Organic Chemicals Manufacturing Point Sources Categories.

a. For further information contact: Carol Lindsay, EPA (WH–552), Washington, D.C. 20460, FTS: 8–382–7174, COMM: 202–382–7174.

b. Contractors: JRB Associates, McLean, VA (Contract Nos. 68–01–6947, 68–01–6912, 68–01–6514, and 68–01–6563) Environ, Washington, D.C. and ESE, Gainesville, FL (as subcontractors on JRB Contract No. 68–01–6947); Dr. Gary Liberson, Lloyd Associates, Inc., Washington, D.C., Dr. William Lowenbach, George Washington University, Washington, D.C., and Dr. Dale Rushneck, Interface Inc., Fort Collins, CO (as consultants on JRB Contract No. 68–01–6947); Aepco, Rockville, MD and SRI, Menlo Park, CA (as subcontractors on JRB Contract No. 68–01–6912); Meta Systems, Inc., Cambridge, MA (Contract No. 68–01–6426); Industrial Economics, Inc., Cambridge, MA (Contract No. 68–01–6892, and as a subcontractor to Putnam, Hayes, and Bartlett, Cambridge, MA on Contract No. 68–01–6543 and to Sobotka and Company, Washington, D.C. on Contract No. 68–01–6558); and Development Planning and Research Associates, Manhattan, KS (as a subcontractor to ICF, Inc., Washington, D.C. on Contract No. 68–01–6621 and to Industrial Economics, Inc. on Contract No. 68–01–6892).

c. SIC Codes and descriptions:

SIC 2821 Plastic materials, synthetic resins and nonvulcanizable elastomers
SIC 2823 Cellulosic man-made fibers
SIC 2824 Synthetic organic fibers, except cellulosic
SIC 2865 Cyclic (coal tar) crudes and cyclic intermediates, dyes, and organic pigments (lakes and tones)
SIC 2869 Industrial organic chemicals, NEC

d. Remarks: The confidential files are currently located at JRB Associates, McLean, VA under Contract No. 68–01–6701 and shall remain at JRB Associates under Contract No. 68–01–6947. Environ, ESE, Dr. G. Liberson as an employee of JRB, and Dr. W. Lowenbach as an employee of Environ had access to the confidential files as a consultant to JRB Contract Nos. 68–01–6947 and 68–01–6912; Dr. Lowenbach will have access as a consultant to JRB under Contract No. 68–01–6947. Access to the confidential files under JRB Associates Contract No. 68–01–6514 shall continue to be limited to Work Assignment No. 6 "Technical Assistance for Issuance of Permits for Industrial Dischargers," but now includes the additional information and data collected since the January 31, 1983, **Federal Register** notice of intent to transfer confidential information to a contractor (48 FR 4295).

2. Pesticide Chemicals Manufacturing Point Source Category.

a. For further information contact George Jett, EAP (WH–552), Washington, D.C. 20460, FTS: 8–382–7180, COMM: 202–382–7180.

b. Contractor: JRB, Associates, McLean, VA and ESE, Gainesville, FL (Contract No. 68–01–6947); Infotech, Gainesville, FL (as consultants on ESE Contract No. 68–01–6974); JRB Associates, McLean, VA (Contract No. 68–01–6912); and Meta Systems, Inc., Cambridge, MA (Contract No. 68–01–6426).

c. SIC Code and description:

SIC 2879 Pesticides and Agricultural Chemicals, NEC
SIC 2869 Industrial Organic Chemicals, NEC

d. Remarks: The confidential files are currently located at ESE's Miami, FL office under Contract No. 68–01–6701 and shall remain there under Contract No. 68–01–6947.

EPA has determined that it is necessary to transfer this information or grant access to the designated contractors in order that they may carry out work required by their contracts. The contracts and subcontracts contain all confidentiality provisions required by EPA's confidentiality regulations (40 CFR 2.302(h)(2–3).

In accordance with those regulations, sample facilities and questionnaire respondents who have submitted confidential information have ten days from the date of this notice to comment on EPA's proposed transfer of this information to these contractors for the purposes outlined above (40 CFR 2.302(h)(2–3).

Dated: August 21, 1984.

Henry L. Longest II,

Assistant Administrator for Water.

[FR Doc. 84–22903 Filed 8–28–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATION COMMISSION

[MM Docket No. 84-816; File No. BPCT-840402KW, et al.]

Ruth Payne Carmen, et al.; Hearing Designation Order

In re Applications of Ruth Payne Carmen, MM Docket No. 84-816, File No. BPCT-840402KW; Jeanetta M. Pollard d/b/a, Dove Broadcasting Co. MM Docket No. 84-817, File No. BPCT-840530KE; and Nashville TV "58" Inc., MM Docket No. 84-818, File No. BPCT-840530KH; For Construction Permit for New Television Station, Nashville, Tennessee.

Adopted: August 15, 1984.
Released: August 22, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Ruth Payne Carmen, Jeanetta M. Pollard d/b/a Dove Broadcasting Company and Nashville TV "58" Incorporated, for authority to construct a new commercial television station on Channel 58, Nashville, Tennessee.

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Section II, item 5(a), Form 301 requires that Table I be completed with respect to all parties to the application. Congress Street Properties (CSP) owns 45% of Nashville TV "58" Incorporated. However, Table I has not been completed with respect to CSP's principals. Further, Section 73.3514(a) requires applicants to provide all information called for by FCC Forms, unless the information is inapplicable. Accordingly, appropriate issues will be specified to determine the identities and qualifications of the principals of CSP and to examine Nashville TV's compliance with § 73.3514(a).

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative * * *.

5. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. A negative response to this question must be accompanied by an explanation. Nashville TV answered negatively to Item 10; however, it did not submit the required explanation. Nashville TV will be required to submit its exhibits in the form of an amendment to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communication Act of 1934, as amended, the applicationa are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To detemine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Nashville TV "58" Incorporated:

(a) The number, identity and legal qualifications of the principals of Congress Street Properties;

(b) Whether the applicant complied with § 73.3514(a) of the Commission's Rules; and

(c) In light of the evidence adduced pursuant to the foregoing issues, the effect of any omissions on the applicant's basic or comparative qualifications.

3. To detemine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That Nashville TV "58", Incorporated, shall submit its explanation for its negative answer to Section II, Item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is futher ordered, That the applicants herein shall, pursuant to secion 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-22868 Filed 8-28-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-805, File No. BPCT-830902KH; and MM Docket No. 84-806, File No. BPCT-831110KF]

Locus Poenitentiae Television Center and Charlottesville 64, Ltd., For Construction Permit; Hearing Designation Order

Adopted: August 9, 1984.
Released: August 23, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (a) The above-captioned mutually exclusive applications of Locus Poenitentiae Television Center (Locus) Charlottesville, Virginia, and Charlottesville 64, Ltd. (Charlottesville

64) for authority to construct a new television station on Channel 64, Charlottesville, Virginia; (2) petitions to deny the applications of Locus and Charlottesville 64, Ltd., filed by Shenandoah Valley Television Systems, Inc., (Shenandoah), licensee of Station WHSV–TV, Harrisonburg, Virginia, and a petition to deny against Locus filed by National Radio Astronomy Observatory (NRAO) and Naval Research Laboratory (NRL); (3) opposition filed by Charlottesville 64, Ltd., and (4) reply to opposition filed by Shenandoah.

2. Shenandoah claims standing as a party in interest pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, on the grounds that operation of either of the proposed television stations would preclude the continued use of channel 64 by Shenandoah's translator W64A0 in Charlottesville, Virginia. We find that Shenandoah has standing. *International Broadcasting Co.*, 3 FCC 2d 449 (1966).

3. On January 6, 1984, Shenandoah filed petitions to deny both applications, alleging that neither applicant had reasonable assurance that the proposed site specified in the applications (both applicants propose the same site) will be available for purchase or lease. Shenandoah included an affidavit from Martha L. Houchens, the site owner, dated December 16, 1983, stating that she had not been contacted by either applicant with respect to the use of the site for a broadcast facility. Charlottesville 64 did not dispute the allegation that it did in fact specify a site without obtaining reasonable assurance from the landowner. Instead, Charlottesville 64 responded to the petition by stating that the petition was premature and that it had time to file an amendment to change site if it could not get "reasonable assurance" from the landowner. Charlottesville 64 did subsequently file the affidavit of Martha L. Houchens, the site owner, indicating that the site would be available to Charlottesville 64. It still appears, however, that on November 10, 1983, when its application was filed, Charlottesville 64 had never contacted Martha L. Houchens with regard to the site that it specified in it application. Locus has neither its application with respect to site availability nor responded to Shenandoah's petition. Accordingly, a site availability issue will be specified against Locus.

4. It is a well established Commission policy that "neither absolute assurance nor legal control of a site is necessary, but only that when an applicant proposes a site, he must have done so in good faith that the site will be available to him." *Alabama Citizens for Responsive Television, Inc.*, 59 FCC 2d 1, 2–3 (1976). Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary. A mere possibility that the site will be available will not suffice. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). Since the specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available, a failure to inquire as to the availability of the site specified in the application is inconsistent with such a representation and warrants a character qualifications issue. See *William F. Wallace, supra.* Accordingly, a misrepresentation issue will be specified against both applicants.[1]

5. Section 73.1030(a) of the Commission's Rules requires an applicant proposing to operate a broadcast station at a site within an area bounded by certain coordinates to notify the National Radio Astronomy Observatory (NRAO), Green Bank, West Virginia, to determine if harmful electromagnetic interference would occur from the proposed station to the NRAO facilities.[2] A petition to deny was filed against Locus [3] by NRAO and the NRL. NRAO pointed out certain discrepancies in the technical portion of the application. By amendment dated November 16, 1983, Locus attempted to correct its application in response to the petition filed by NRAO. Subsequently, Locus filed a letter with NRAO specifying facilities different from those on file with the Commission, but the Commission never received a copy of the letter. On February 2, 1984, NRAO informed the Commission that it still objects to the Locus proposal. Apparently, Charlottesville 64, Ltd. has not been in contact with NRAO. Consequently, an appropriate issue will be specified.

6. Locus' November 16, 1983 amendment corrected the ground level elevation of the site to 1,120 feet, instead of 819 feet, but it did not amend other corresponding figures for terrain elevations. Both applicants append terrain data labelled as from "National Oceanic and Atmospheric Administration Thirty Second Interval Point Elevation Data Base." The use of that data does not comply with § 73.684(g) of the Commission's Rules. Each applicant must compute radial elevations and contours in accordance with § 73.684. Charlottesville 64, Ltd. and Locus will each be required to submit an appropriate amendment that demonstrates compliance with § 73.684 of the Commission's Rules to the presiding Administrative Law Judge within 20 days after this Order is released.

7. Section V–C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour. Neither applicant has specified the area and population within its predicted Grade B contour. Consequently, we are unable to determine whether there would be a significant difference in the size of the areas and populations that each applicant proposes to serve. Each applicant will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations under the standard comparative issue.

8. No determination has been made that the tower height and location proposed by Charlottesville 64 Ltd. would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in subsequent Order, upon the following issues:

(1) To determine with respect to Charlottesville 64, Ltd. and Locus Poenitentiae Television Center:

(a) Whether each applicant had reasonable assurance of the availability of its proposed transmitter site when the application was filed.

[1] The cases cited by the applicant involved applications specifying the facilities of renewal or deleted facilities. Different policies attach in those circumstances than are applicable to applicants for new facilities. Thus, cases such as *Wallace* govern here.

[2] The coordinates are 39°15'N. on the north, 78°30'W. on the east, 37°30'N. on the south, and 80°30'W. on the west.

[3] NRAO and NRL did not file a petition to deny the Charlottesville 64 application.

(b) Whether each applicant made a misrepresentation to the Commission by proposing a site without having made inquiries as to its availability, and, if so, the effect upon that applicant's comparative or basic qualifications.

(2) To determine with respect to Charlottesville 64 Ltd., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

(3) To determine with respect to Locus Poenitentiae Television Center, whether the applicant now has reasonable assurance that its proposed site will be available to it.

(4) To determine whether there is a reasonable possibility that operation by either applicant as proposed would result in objectionable interference to the conduct of radio astronomy activities by the Naval Research Laboratory or the National Radio Astronomy Observatory in the West Virginia "Quiet Zone."

(5) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(6) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

11. It is further ordered, That, Charlottesville 64, Ltd. and Locus Poenitentiae Television Center, shall each submit an appropriate amendment that demonstrates compliance with § 73.684 of the Commission's Rules, to the presiding Adminstrative Law Judge within 20 days after the date of the release of this order.

12. It is further ordered, That the petitions to deny filed by the National Radio Astronomy Observatory and the Naval Research Laboratory are granted to the extent indicated and otherwise are denied.

13. It is further ordered, That if it should be determined that there is a reasonable possibility that operation by either applicant as proposed would result in objectionable interference to radio astronomy activities in the West Virginia "Quiet Zone," the presiding Administrative Law Judge shall require that the applicants amend their applications to conform to the requirements of the Naval Research Laboratory and the National Radio Astronomy Observatory.

14. It is further ordered, That Charlottesville 64, Ltd. and Locus Poenitentiae Television Center, shall each submit the area and population figures required by Item 10, Section V–C, FCC Form 301, in amendment form, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

15. It is further ordered, That the Petition to Deny filed by Shenandoah Valley Television Systems, Inc. is granted to the extent indicated and otherwise is denied.

16. It is further ordered, That Shenandoah Valley Television Systems, Inc., Naval Research Laboratory and National Radio Astronomy Observatory are made parties respondent to this proceeding.

17. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

18. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

19. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84–22871 Filed 8–28–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84–812, File No. BPCT–840209KI, et al.]

Minority Television of Bellevue, Inc., et al.; Hearing Designation Order

In re Applications of Minority Television of Bellevue, Inc. MM Docket No. 84–812, File No. BPCT–840209KI; Gill Communications, Inc. and Robert Gill Communications Limited Partnership, MM Docket No. 84–813, File No. BPCT–840413LF; PUGET TV 33, MM Docket No. 84–814, File No. BPCT–840413LG; and Central Broadcasting Corporation, MM Docket No. 84–815, File No. BPCT–840413LO; For Construction Permit Bellevue, Washington.

Adopted: August 15, 1984.

Released: August 23, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 33, Bellevue, Washington.

2. No determination has been reached that the tower heights and locations proposed by Puget TV 33 (Puget) and Central Broadcasting Corporation (Central) would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Puget proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, the proposal contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreements Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of Puget's application, the construction permit shall be appropriately conditioned.

4. Canadian authorities state that the proposals by Minority Television of Bellevue, Inc. (Minority), Gill Communications, Inc. and Robert Gill Communications Limited Partnership (Gill) and Central would not be acceptable with the parameters as submitted, as adequate protection would not be provided ot the co-channel allotment at Powell River, B.C., based on the equivalent protection between two 1000 kW ERP, 300 meter EHAAT stations at 280 km separation in Zone 2, where the F(50,10) interfering signal would not exceed 41 dBu at the F(50,50) Grade B contour distance of 70 km. With the parameters submitted by Minority, a permissible ERP of 1820 kW at 325° azimuth would meet this criteria, whereas 3750 kW is proposed. With the parameters submitted by Gill, a permissible ERP of 2340 kW at 326° azimuth would meet the criteria, whereas 3690 kW is proposed. With the parameters submitted by Central, a permissible ERP of 2510 kW at 326° azimuth would meet the criteria, whereas 4325 kW is proposed. Accordingly, Minority, Gill and Central will each be required to submit an amendment which conforms its engineering proposal to the parameters acceptable to Canada, to the presiding Administrative Law Judge, within 20 days after this Order is released.

5. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and

tabulated at least every 10° plus any minima or maxima. Minority has not supplied this data. Accordingly, Minority will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

6. Section 73.682(a)(15) of the rules provides that the effective radiated power (ERP) of the aural transmitter shall not exceed 22 percent of the peak radiated power of the visual transmitter. In Section V-C, item 3, FCC Form 301, Central specifies maximum visual ERP of 8 kW and maximum aural ERP of 79.4kW, far in excess of the 22 percent permitted by the rule. Elsewhere in the application, however, Central specifies and uses 5000 kW as maximum visual ERP, which would be consistent with the rule. Therefore, Central must submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released. In preparing such an amendment, Central should take into account of the need to protect the Powell River, B.C. allocation. See paragraph 4, above.

7. Puget states it is a limited partnership. Section II, item 5(a), FCC Form 301, states that if the applicant is a partnership, the requested information must be given for each general or limited partner. The application, and a subsequent amendment, only identify general partners (Mussehl, Van Bergh and Berry). The limited partners have not been identified. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 55 R.R. 2d 1464 (1984), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA). *Id.* at 1485. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Puget can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Puget will be required either to state that its limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature or extent of the ownership interest.

8. Puget stated that it would file its financial certification, as required by Section III, FCC Form 301, within 30 days after its application was filed. To date, we have not received any such amendment. Accordingly, Puget will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

9. Puget proposes a transmitter site that is located 1.60 miles from Station KMPS(AM), Seattle, Washington, and 0.48 miles from KXA(AM), Seattle, Washington. Because of the proximity of the proposal to KMPS(AM) and KXA(AM), if Puget is the successful applicant for Channel 33, the construction permit will be conditioned to ensure that KMPS(AM)'s and KXA(AM)'s radiation patterns will not be adversely affected.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the applications of Puget TV 33 and Central Broadcasting Corporation, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

13. It is further ordered, That, in the event of a grant of Puget TV 33's application, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated power in excess of 1,000 kW after June 1, 1986 is subject to a further extension of consent by Canada.

14. It is further ordered, That Minority Television of Bellevue, Gill Communications, and Central Broadcasting shall, within 20 days after this Order is released, each submit an amendment to the presiding Administrative Law Judge which conforms its engineering proposal to the parameters acceptable to Canada.

15. It is further ordered, That Minority Television of Bellevue, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after this Order is released.

16. It is further ordered, That Central Broadcasting Corporation shall submit an amendment to correct the maximum visual effective radiated power shown in Section V–C, item 3, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, That Puget TV 33 shall submit the certification, statement and/or information required by paragraph 7, supra, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That Puget TV 33 shall submit a financial certification in the form required by Section III, FCC Form 301, within 20 days after this Order is released or advise the Administrative Law Judge that certification cannot be made, as may be appropriate.

19. It is further ordered, That, in the event of a grant of Puget TV 33's application, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM

station KMPS so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

Prior to construction of the tower authorized herein, permittee shall notify AM station KXA so that that station may commence determining operating power by the indirect method. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, antenna impedance measurements of the AM station shall be made and sufficient field strength measurements, taken at a minimum of 10 locations along each of eight equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior to or simultaneous with the filing of the application for license to cover this permit, the results shall be submitted to the Commission in an application for the AM station to return to the direct method of power determination.

20. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

21. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-22869 Filed 8-28-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-810, File No. BPCT-840118KE; and MM Docket No. 84-811, File No. BPCT-840119KI]

Sunbelt Television, Inc. and William R. Stinchcomb and Greg S. Carpenter, a General Partnership, for Construction Permit for a New TV Station, Barstow, CA; Hearing Designation Order

Adopted: August 15, 1984.

Released: August 22, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, Acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Sunbelt Television, Inc. (Sunbelt)[1] and William R. Stinchcomb and Greg S. Carpenter, a General Partnership (Stinchcomb-Carpenter), for authority to construct a new commercial television station on Channel 44, Barstow, California; a Motion to Dismiss Stinchcomb-Carpenter's application filed by Sunbelt;[2] and related pleadings.

2. Section V–C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Stinchcomb-Carpenter has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the population that each applicant proposes to serve. Stinchcomb-Carpenter will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

3. Section V–C, Item 11, FCC Form 301, asks the applicant to indicate whether the predicted City Grade contour will completely encompass the principal community without major terrain obstructions. A negative response requires justification. Although Stinchcomb-Carpenter responded in the negative, its explanation in Exhibit EE–1 indicates that its predicted City Grade contour would completely encompass Barstow. However, there is apparently a terrain feature which "grazes the line of sight path" to a portion of Barstow and the applicant fears that this would cause predicted diffraction loss of "less than 10 dB." Based on the data furnished, the described terrain feature would not be considered a major obstruction within the meaning of § 73.685(b) of the Commission's Rules and we find, therefore, that the applicant is in compliance with the rule.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Sunbelt has not supplied this data. Accordingly, Sunbelt will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

5. Stinchcomb-Carpenter has not shown that it is financially qualified nor certified that it is financially qualified. Its Exhibit C, however, states that when financial commitments are obtained, the applicant will make the appropriate certification. Accordingly, the applicant will be given 20 days from the date of the release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge

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[1] The deadline for filing amendments to Sunbelt's application was March 16, 1984 ("B" cut-off date). Sunbelt filed amendments to its application on April 2, and June 20, 1984. No motions for leave to amend accompanied the amendments. However, we have received the amendments and find that good cause exists for accepting them. Nevertheless, it is not our intention to allow any comparative advantage to Sunbelt as a result of our action herein. Accordingly, Sunbelt's amendments of April 2, and June 20, 1984, will be accepted for filing.

[2] On April 4, 1984, Sunbelt filed a motion to dismiss Stinchcomb-Carpenter's application on the grounds that, on March 8, 1984, after the "A" cut-off date, Stinchcomb-Carpenter filed an amendment which was a major amendment, and that Stinchcomb-Carpenter has failed to certify its financial qualifications. Stinchcomb-Carpenter's March 8 major amendment was returned to it as unacceptable for filing on August 7, 1984. To the extent that Sunbelt's petition raises a question concerning the amendment, it will be dismissed as moot. To the extent that the petition raises a financial question against a competing applicant, it is, in effect, a pre-designation petition to specify issues. Such petitions are no longer permitted and it will, therefore, be dismissed. *Revised Procedures for the Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979).

who shall then specify an appropriate issue.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

8. It is further ordered that, Sunbelt shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

9. It is further ordered, that Stinchcomb-Carpenter shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days of the date of the release of this Order.

10. It is further ordered, that Stinchcomb-Carpenter shall submit an amendment specifying the population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days of the release date of this Order.

11. It is further ordered, that Sunbelt Television, Inc.'s amendments of April 2, and June 20, 1984; are accepted for filing.

12. It is further ordered, that the Motion to Dismiss Stinchcomb-Carpenter's application, filed by Sunbelt, is dismissed.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 32.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-22870 Filed 8-28-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Centinel Bank Shares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The Companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Centinel Bank Shares, Inc.*, Taos, New Mexico; to engage in the sale of general insurance in a community of less than 5,000. This activity will be conducted in Taos, New Mexico.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Independent Bancshares, Inc.*, Hitchcock, Texas; to engage *de novo* through its subsidiary, Texas Independent Bancshares, Inc., Hitchcock, Texas, to provide data processing services. This activity will be conducted in Galveston County, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to engage *de novo* through its wholly-owned subsidiary, First Security Leasing Company, Salt Lake City, Utah, in the business of lease financing (including finance leases and leveraged leases for its own account and to be sold to others) and the appraisal, brokering and advising with respect to lease financing and leased equipment.

Board of Governors of the Federal Reserve System, August 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22898 Filed 8-28-84; 8:45 am]

BILLING CODE 6210-01-M

Jackson County Bancshares, 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 (12 CFR 225.14) 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 September 20, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jackson County Bancshares, Inc.*, Scottsboro, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The Jackson County Bank, Scottsboro, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Interstate Bancorporation, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Elkhorn, Elkhorn, Nebraska.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *GCS Bancorp*, Gilbert, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Canyon State Bank, Gilbert, Arizona.

Board of Governors of the Federal Reserve System, August 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22899 Filed 8-28-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction and Waiting Period Terminated Effective

(1) 84-0647—Unilever N.V. and Unilever plc's proposed acquisition of assets of NORDA Incorporated, July 30, 1984

(2) 84-0655—Printronix Incorporated's proposed acquisition of voting securities of Anadex, Incorporated, July 30, 1984

(3) 84-0656—Sonat, Incorporated's proposed acquisition of assets of Howell Corporation, July 30, 1984

(4) 84-0622—Texas Eastern Corporation's proposed acquisition of voting securities of Petrolane, Incorporated, August 1, 1984

(5) 84-0730—Orion Capital Corporation's proposed acquisition of voting securities of Design Professionals Financial Corporation, August 1, 1984

(6) 84-0727—Orion Capital Corporation's proposed acquisition of voting securities of Guaranty National Corporation, August 1, 1984

(7) 84-0689—Petersville Sleigh Limited's proposed acquisition of voting securities of David Jones California, Incorporated, (David Jones Ltd., UPE), August 2, 1984

(8) 84-0735—Kmart Corporation's proposed acquisition of voting securities of Walden Book Company, Incorporated (Carter Hawley Hale Store, Incorporated, UPE), August 2, 1984

(9) 84-0625—Alta Bates Corporation's proposed acquisition of voting securities of Herrick Foundation, August 3, 1984

(10) 84-0642 Mortimer B. Zuckerman's proposed acquisition of voting securities of U.S. News & World Report, Incorporated, August 3, 1984

(11) 84-0695—General Motors Corporation's proposed acquisition of voting securities of Electronics Data Systems Corporation, August 3, 1984

(12) 84-0696—H. Ross Perot's proposed acquisition of voting securities of General Motors Corporation, August 3, 1984

(13) 84-0719—Sundstrand Corporation's proposed acquisition of voting securities of Sullair Corporation, August 3, 1984

(14) 84-0723—Bayerische Motoren Werke Aktiengesellschaft's proposed acquisition of voting securities of BMW Credit Corporation, August 3, 1984

(15) 84-0738—Henry L. Hillman's proposed acquisition of voting securities of White & White, Incorporated (Richard P. Byington, UPE), August 3, 1984

(16) 84-0681—The 1964 Simmons Trust's proposed acquisition of voting securities of Baker, Fentress & Company, August 6, 1984

(17) 84-0707—Pennsylvania Engineering Corporation proposed acquisition of voting securities of Fischbach Corporation, August 6, 1984

(18) 84-0714—Eastern Gas and Fuel Associates proposed acquisition of assets of American Electric Power Company, Incorporated, August 6, 1984

(19) 84-0282—Union Carbide Corporation's proposed acquisition of voting securities of Katalistiks International, B. V., (Katalistiks International, UPE), August 7, 1984

(20) 84-0742—The China Trust's proposed acquisition of voting securities of Behring International, Incorporated, August 7, 1984

(21) 84-0724—Farm House Foods Corporation's proposed acquisition of voting securities of Seamark Corporation (Sidney H. Cohen, UPE), August 9, 1984

(22) 84-0728—Hospital Corporation of America's proposed acquisition of voting securities of Hill, Richards and Companies, Incorporated, Self-Insured Services, Incorporated, Hill, Richards of Louisiana, Incorporated, Hill, Richards of Alabama, Incorporated, and Hill, Richards of North Carolina, Incorporated (Mr. Eugene Hill and Mr. Buddy J. Richards, UPE's), August 9, 1984

(23) 84-0729—Hospital Corporation of America's proposed acquisition of voting securities of Hill, Richards and Companies, Incorporated, Self-Insured Services, Incorporated, Hill, Richards of Louisiana, Incorporated, Hill, Richards of Alabama, Incorporated, and Hill, Richards of North Carolina, Incorporated (Mr. Eugene Hill and Mr. Buddy J. Richards, UPE's), August 9, 1984

(24) 84-0733—Turner Furniture Companies (Webb, W. Turner and Jocelyn Kress Turner, UPE's) proposed

acquisition of assets of Burlington Industries, Incorporated, August 9, 1984

(25) 84–0740—Joy Manufacturing Company's proposed acquisition of assets of Foster Cathead Company, and Thornhill Craver Company (Galveston-Houston Company, UPE), August 9, 1984

(26) 84–0741—United Merchants and Manufacturers, Incorporated's proposed acquisition of voting securities of Jonathan Logan, Incorporated, August 9, 1984

(27) 84–0746—Sheller-Globe Corporation's proposed acquisition of voting securities of Northern Fibre Products Company (Jere B. Ambrose, UPE), August 9, 1984

(28) 84–0747—Standard Oil Company's (Indiana) proposed acquisition of assets of Damson Oil Corporation, August 9, 1984

(29) 84–0748—VICORP Restaurants, Incorporated's proposed acquisition of assets of Sambo's Restaurants, Incorporated, August 9, 1984

(30) 84–0749—Sambo's Restaurants, Incorporated's proposed acquisition of voting securities of VICORP Restuarants, Incorporated, August 9, 1984

(31) 84–0751—Sun Alliance and London Insurance plc's proposed acquisition of voting securities of Phoenix Assurance plc, August 9, 1984

(32) 84–0753—Damson Oil Corporation's proposed acquisition of assets of Diamond Shamrock Corporation, August 9, 1984

(33) 84–0763—Peck-Lynn Group, Ltd's (Howard P. Hoeper, UPE) proposed acquisition of assets of Universal Packaging Corporation (Dart & Kraft) Incorporated, UPE), August 9, 1984

(34) 84–0702—Republic Health Corporation's proposed acquisition of assets of Humana, Incorporated, August 10, 1984

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84–22916 Filed 8–28–84; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of September 1984.

Rape Prevention and Control Advisory Committee

September 10–11; 9:00 a.m.
Parklawn Building, Conference Room H, 5600 Fishers Lane, Rockville, Maryland 20857
Open
Contact: Mary Lystad, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1910

Purpose: The Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include discussions of research development in the NCPCR, child sexual assault service programs and prevention programs in sexual assault.

National Advisory Council on Alcohol Abuse and Alcoholism

September 13–14; 10:30 a.m.
National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland 20205
Open—September 13; 10:30 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Mr. James Vaughan, Parklawn Building, Room 16 C–20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: From 10:30 a.m.–5:00 p.m., September 13, (open session) the meeting will be devoted to general business of the Council and a discussion of current budget, legislative and program activities. From 9:00 a.m. to adjournment, September 14, (closed session) the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions set forth in section 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee

September 13–15; 1:30 p.m.
The Georgetown Hotel, 2121 P Street, N.W., Washington, D.C. 20037
Open—September 13; 1:30–2:30 p.m.
Closed—Otherwise
Contact: Ms. Virginia Harter, Parklawn Building, Room 9–95, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: From 1:20–2:30 p.m., September 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Mental Health Council

September 17–19; 9:00 a.m.
September 17—National Institutes of Health, Building 31 C, Conference

Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205
September 18–19—Parklawn Building, Conference Room M, 5600 Fishers Lane, Rockville, Maryland 20857
Open—September 17; 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Ms. Helen W. Garrett, Committee Management Officer, Parklawn Building, Room 17C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: On September 17, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, National Institute on Drug Abuse

September 17–18; 9:30 a.m.
Addiction Research Center, Conference Room, Baltimore, Maryland 21224
Open—September 17; 9:30–10:00 a.m.
Closed—Otherwise
Contact: Mr. Francis C. Johnson, c/o Francis Scott Key Medical Center, Baltimore, Maryland 21224, (301) 955–7502

Purpose: The Board provides expert advice to the Director, NIDA, on the drug abuse intramural research program through periodic visits to the laboratories for asessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:30–10:00 a.m., September 17, the meeting will open for administrative announcements and program developments. Otherwise, the Board will be performing a review of the intramural research projects of the Addiction Research Center, including an evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse

September 18–19; 9:00 a.m.
National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20205
Open—September 18; 9:00 a.m.–12 noon September 19; 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Ms. Sheila Gardner, Parklawn Building, Room 10A–53, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6720

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m.–12:00 noon, September 18, and from 9:00 a.m.–5:00 p.m., September 19, the meeting will be open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Pub. L. 92–463 (5 U.S.C. Appendix I).

From 3:30–5:00 p.m., September 19, as time permits, the Council will hear statements from interested organizations in the drug abuse field. Persons interested in appearing should contact the Executive Secretary to be scheduled. The oral presentation shall be no longer than 10 minues, although written statements may be submitted in supplement.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: August 23, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84–22875 Filed 8–28–84; 8:45 am]
BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 84G–0257]

Ad Hoc Enzyme Technical Committee; Amended Notice of Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ad Hoc Enzyme Technical Committee has submitted an amendment to its petition (GRASP 3G0016) proposing affirmation that the enzymes ficin and pancreatin are generally recognized as safe (GRAS) for use in food.

DATE: Comments by October 29, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Land, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leo F. Mansor, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1973 (38 FR 9256), FDA announced that the Ad Hoc Enzyme Technical Committee, Mr. R.B. Kocher, Chairman, c/o Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, IN 46514, had filed a petition (GRASP 3G0016) proposing affirmation that the following plant, animal, and microbially derived enzymes are generally recognized as safe (GRAS) for use in food:

1. Animal-derived enzyme preparations: Catalase (bovine liver); lipase; pepsin; rennet; rennet, bovine; and trypsin.

2. Plant-derived enzyme preparations: Bromelain; malt; and papain.

3. Microbially-derived enzyme preparations: *Aspergillus niger*, var.—lipase; *Aspergillus niger*, var.—catalase; *Aspergillus niger*, var.—carbohydrase; *Aspergillus niger*, var.—glucose oxidase; *Bacillus subtilis*, var.—carbohydrase and protease mixtures; *Rhizopus oryzae*—carbohydrase; and *Saccharomyces* species—carbohydrase.

Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that the Ad Hoc Enzyme Technical Committee has submitted an amendment to its petition (GRASP 3G0016) proposing affirmation that the enzymes ficin, obtained from Ficus species (fig tree), and pancreatin, obtained from bovine and porcine pancreas, are GRAS for use in food.

The amendment has been placed on display at the Dockets Management Branch (address above). Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

Interested persons may, on or before October 29, 1984, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the request to amend the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-22876 Filed 8-28-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0050]

Ciba-Geigy Corp.; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhdrocinnamate as an antioxidant/stabilizer.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, has withdrawn its petition (FAP 3B3697), notice of which published in the **Federal Register** of March 11, 1983 (48 FR 10476), proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydro-cinnamate as an antioxidant/stabilizer.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-22877 Filed 8-28-84; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Baltimore District Office

Chaired by Thomas L. Hooker, District Director. The topics to be discussed are Toxic Shock Syndrome (TSS) and Irradiated Foods. The theme of the conference is "Public Health and the Law."

Date: Friday, September 7, 1984, 9 a.m. to 11:30 a.m.

Address: West Virginia Public Health Association Annual Meeting, Oglebay, Wheeling, WV 26003.

For further information contact: Anne B. Lane, Consumer Affairs Officer, Food and Drug Administration, 900 Madison Ave., Baltimore, MD 21201, 301-962-3731.

New Orleans District Office

Chaired by Robert O. Bartz, District Director. The topics to be discussed are Irradiated Foods and Prescription to Over-the-Counter Drugs Switch.

Date: Thursday, September 13, 1984, 1:30 p.m.

Address: 4298 Elysian Fields Ave., New Orleans, LA 70122.

For further information contact: Frances G. Brysson, Consumers Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

Newark District Office

Chaired by Matthew H. Lewis, District Director. The topics to be discussed are Sulfiting Agents and Foods and Drugs.

Date: Monday, September 17, 1984, 1 p.m. to 3 p.m.

Address: Cooperative Extension Service, 1200 West Harding Highway, Mays Landing, NJ 08330.

For further information contact: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-3265.

Newark District Office

Chaired by Matthew H. Lewis, District Director. The topics to be discussed are Sulfiting Agents and Foods and Drugs.

Date: Tuesday, September 18, 1984, 1 p.m. to 3 p.m.

Address: Cooperative Extension Service, 152 Ohio Ave., Clementon, NJ 08021.

For further information contact: Joan A. Godal, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-3265.

Minneapolis District Office

Chaired by John Feldman, District Director. The topics to be discussed are Prescription to Over-the-Counter Drugs Switch, the Use of Caffeine as a Food Additive in FDA-regulated Products, and Health Fraud.

Date: Wednesday, September 19, 1984, 1:30 p.m.

Address: Senior Citizen Center, 121 North Broadway, Rochester, MN 55901.

For further information contact: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-349-3906.

New Orleans District Office

Chaired by Robert O. Bartz, District Director. The topics to be discussed are Irradiated Foods and Prescription to Over-the-Counter Drugs Switch.

Date: Thursday, September 20, 1984, 1:30 p.m.

Address: Ryan St., Lake Charles, LA 70609.

For further information contact: Frances G. Brysson, Consumers Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504–589–2420.

Orlando District Office

Chaired by Adam J. Trujillo, District Director. The topic to be discussed is Health Fraud.

Date: Friday, September 21, 1984, 9:30 a.m. to 12 p.m.

Address: Duval County Extension Office, 1010 North McDuff Ave., Jacksonville, FL 32205.

For further information contact: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809, 305–855–0900.

St. Louis Station

Chaired by R. M. Johnson, Chief. The topics to be discussed are Sulfiting Agents, E-Ferol, Cyclamate Review, and Prescription to Over-the-Counter Drugs Switch/Ibuprofen.

Date: Wednesday, September 26, 1984, 1:30 p.m. to 3:30 p.m.

Address: Food and Drug Administration, 808 North Collins, Laclede's Landing, St. Louis, MO 63102.

For further information contact: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 North Collins, Laclede's Landing, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 23, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–22880 Filed 8–28–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79N–0001; DESI 6403]

Drugs for Human Use; Tolazoline Hydrochloride Injection; Drug Efficacy Study Implementation; Final Evaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its conclusion that tolazoline hydrochloride injection is safe and effective for use in treating neonates with persistent pulmonary hypertension, and announces the conditions for the approval and marketing of the drug product for this use. FDA also finds that the drug product lacks substantial evidence of effectiveness for its other labeling indications and withdraws approval of those parts of the new drug application that provide for them.

DATES: Supplements due on or before October 29, 1984. Revised labeling shall be put into use by December 27, 1984.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 79N–0001 (DESI 6403) and directed to the attention of the appropriate office named below.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN–110), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN–230), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION:

Background

Under the Drug Efficacy Study Implementation project, the effectiveness of the following product has been evaluated: Priscoline Injection, containing 25 milligrams (mg) of tolazoline hydrochloride per milliliter (mL) (NDA 6–403); held by Ciba Pharmaceutical Co., Division of Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901). Initially, the National Academy of Sciences–National Research Council, Drug Efficacy Study Group (NAS–NRC) evaluated the drug product's labeling indications and reported its conclusions to FDA. Based upon these reports, FDA classified the labeling indications pertaining to the drug product's use in various peripheral vascular conditions as possibly effective, except for certain indications pertaining to spastic peripheral vascular disorders which were classifed as lacking substantial evidence of effectiveness. This action was announced in the **Federal Register** of July 11, 1972 (37 FR 13565).

The NAS–NRC also evaluated the use of Priscoline Injection in treating certain cases of pulmonary hypertension, a use not recommended in the labeling. The NAS–NRC commented that this use may be one of the most valid uses for the drug and recommended that it be added to the drug's labeling indications. However, since this indication was not part of the labeling at that time, FDA did not evaluate this use and it was not placed into the drug's labeling.

Later, by notice published in the **Federal Register** of July 11, 1973, (38 FR 18477), Priscoline Injection was exempted from the time schedule established for implementing the Drug Efficacy Study. The exemption permitted further study of the possibly effective indications. Under the exemption, substantial evidence was not provided for the possibly effective indications. Therefore, FDA revoked the exemption, reclassified Priscoline Injection to lacking substantial evidence of effectiveness, proposed to withdraw approval of its new drug application, and offered an opportunity for a hearing on the proposal. These actions were announced in the **Federal Register** of May 25, 1979 (44 FR 30443 and 30436).

In response, Ciba-Geigy requested a hearing but later withdrew its request. Around this time, both Ciba-Geigy and FDA became aware that there was a potential critical medical need for Priscoline Injection in treating neonates with pulmonary vasoconstriction and hypertension—a severe, life-threatening condition. Ciba-Geigy supplemented its new drug application with published studies in support of this use.

The agency's review of Priscoline Injection is now completed and the Director of the Center for Drugs and Biologics concludes that the drug product is safe and effective as set forth below. The Director also finds that Priscoline Injection lacks substantial evidence of effectiveness for any of its other labeling indications.

Drug products containing tolazoline hydrochloride are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required in order to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the product specifically named above, this notice applies to any drug product that is not the subject of an

approved new drug application and is identical to the product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

FDA has revised all available evidence and concludes that the drug product is safe and effective for the indication listed in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The preparation contains 25 mg/mL of tolazoline hydrochloride and is suitable for injection.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

Indications for usage

Tolazoline hydrochloride is indicated for the treatment of persistent pulmonary hypertension of the newborn ("persistent fetal circulation") when systemic arterial oxygenation cannot be satisfactorily maintained by usual supportive care (supplemental oxygen and/or mechanical ventilation).

Tolazoline hydrochloride should be used in a highly supervised setting, where vital signs, oxygenation, acid base status, and fluid electrolytes can be monitored and maintained.

c. The "DOSAGE AND ADMINISTRATION" section should read as follows:

An initial dose of 1 to 2 mg/kg, via scalp vein, followed by an infusion of 1 to 2 mg/kg/hr have usually resulted in significant increases in arterial oxygen. There is very little experience with infusions lasting beyond 36 to 48 hours. Response if it occurs can be expected within 30 minutes after the initial dose.

d. Complete labeling guidelines, including sections on description, action, contraindications, warnings, precautions, adverse reactions, overdosage, and clinical pharmacology are available from the Division of Cardio-Renal Drug Products, at the address given below.

3. *Marketing status.* A Marketing of the drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before October 29, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of the new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.2). Revised labeling in accord with the labeling conditions described above shall be put into use on or before December 27, 1984. In accord with 314.8 (d) and (e), this revised labeling may be put into use prior to approval of the supplemental new drug application.

b. Approval of an abbreviated new drug application (21 CFR 314.2) shall be obtained before marketing such product. Under 21 CFR 320.22(b)(1), the requirement to submit evidence demonstrating the in vivo bioavailability of the drug product is waived. Marketing before approval of a new drug application will subject such product, and those persons who caused the product to be marketed, to regulatory action.

Withdrawal of Approval of Pertinent Parts of the New Drug Application That Provide for Indications Lacking Substantial Evidence of Effectiveness

Ciba-Geigy has withdrawn its hearing request concerning the agency's proposal to withdraw approval of the indications for tolazoline hydrochloride injection that were classified as lacking substantial evidence of effectiveness in the May 25, 1979 notice. Therefore, the Director finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug product will have the effects it purports or is represented to have for any indication other than a recommendation for use in neonates with pulmonary vasoconstriction and hypertension. In accord with the foregoing finding, approval of those parts of NDA 6–403 and all of its amendments and supplements that provide for indications other than a recommendation for use of the drug product in neonates with pulmonary vasoconstriction and hypertension is withdrawn effective December 27, 1984.

Shipment in interstate commerce of the product above, or any identical, related, or similar product with indications for which approval is withdrawn, will be unlawful after December 27, 1984.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70, 5.82).

Dated: August 20, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–22878 Filed 8–28–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent to Prepare an Environmental Impact Statement; Proposed Amselco and California Gold Properties Colosseum Gold Mining and Milling Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management, together with the Environmental Public Works Agency of San Bernardino County, will prepare an Environmental Impact Statement and Environmental Impact Report (EIS–EIR) for the proposed Anselco and California Gold Properties Colosseum Gold Milling and Mining Project.

The Colosseum Project would be located about 10 miles north of Interstate Highway 15 in California, about 50 miles southwest of Las Vegas. It would be in the Clark Mountain range, to the east of Clark Mountain itself. The project would consist of a 70-acre open pit, a 90-acre leaching site, and up to 250 acres of tailings. Approximately four to six million tons of material would be removed from the pit each year over the eleven-year life of the project. The material would be processed at the leaching site. The project is expected to yield about 600,000 ounces of gold over the eleven-year period.

The EIS–EIR will be prepared under contract by Rockwell International's Environmental and Energy Systems Division. Rockwell's interdisciplinary team ill consider several issues, including the impacts of the project on the following:

(1) East Mojave National Scenic Area
(2) Adjacent Wilderness Study Area 227 (Clark Mountain)
(3) Cultural Resources
(4) Clark Mountain Area of Critical Environmental Concern
(5) Bighorn Sheep
(6) Visual Resources
(7) Socio-Economics

A public scoping meeting will be held in Baker, California, on Monday, September 17, 1984. Its location and time will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Roger Britton (619–326–3896), Bureau of Land Management, Needles Resource Area, 901 3rd Street, Needles, California 92363.

Hugh Riecken,

Acting District Manager.

[FR Doc. 84–22914 Filed 8–28–84; 8:45 am]

BILLING CODE 4310–40–M

[AA–8492–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 1427(e)(3)(A) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (Pub. L. 96–487, 94 Stat. 2371, 2525–26) (ANILCA) and Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613 (ANCSA), will be issued to Uganik Natives, Inc. for approximately 742.51 acres. The lands involved are:

U.S. Survey No. 4652, Alaska, situated on the southwest side of Uganik Bay on Kodiak Island.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage Alaska 99513.

Any party claiming a property interest in lands affected by the decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E, as revised.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thrity days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 28, 1984 to file an appeal.

Any party known or unkown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affect unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken the party to be served with a copy of the notice of appeal is:

Uganik Natives, Inc., Box 104683, Anchorage, Alaska 99510
Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615.

Ann Adams,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–22913 Filed 8–28–84; 8:45 am]

BILLING CODE 4310–JA–M

[U–52002]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–52002 for lands in Washington County, Utah, was timely filed and required rentals and royalties accruing from February 1, 1984, the date of termination, have been paid.

The lessee has agreed to new lease terms for increased rentals and royalties at rates of $5 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1984, the date of termination, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–22887 Filed 8–28–84; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Public Meeting

In accordance with section 10(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council starting at 8:00 a.m. on October 10, 1984, at the Americana Snow King Lodge, P.O. Box SKI, 400 East Snow King Avenue, Jackson, Wyoming, 83001.

Purpose of Meeting

Council members will be briefed on the status of salinity control activities and receive input for drafting the council's annual report.

Proposed Agenda

The Department of the Interior, Department of Agriculture, and Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

Public Participation

The meeting of the Advisory Council is open to the public.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that

time permits, the Council chairman may allow public presentation of oral statements at the meeting.

All communications regarding this meeting, including requests for time to make statements, should addressed to Mr. Al R. Jonez, Chief, Colorado River Water Quality Office, Bureau of Reclamation, D–1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

Dated: August 24, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84–22912 Filed 8–28–84; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–215 Through 217 (Preliminary) and 731–TA–191 Through 195 (Preliminary)]

Oil Country Tubular Goods From Argentina, Brazil, Korea, Mexico, and Spain; Determinations

Correction

In FR Doc. 84–21054 appearing on page 31782 in the issue of Wednesday, August 8, 1984, make the following correction in the second paragraph of the document:

In the eleventh line, insert "Mexico," after "Korea,".

BILLING CODE 1505–01–M

[Investigation No. 337–TA–170]

Certain Bag Closure Clips; Commission Decision Not to Review Initial Determination Terminating Respondent on the Basis of a Consent Order: Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (Order No. 20) terminating respondent Starplast Industries Ltd. as a respondent to the above-captioned investigation on the basis of a consent order.

SUPPLEMENTARY INFORMATION: On May 24, 1984, complainant Chip Clip Corporation, respondent Starplast Industries Ltd. (Starplast), and the Commission investigative attorney jointly moved (Motion No. 170–24) to terminate this investigation as to respondent Starplast on the basis of consent order.

The Commission has received neither a petition for review of the I.D. nor comments from Government agencies or the public.

Termination of the investigation as to respondent Starplast Industries Ltd. on the basis of the consent order furthers the public interest by conserving commission resources and those of the parties involved.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Brenda A Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

AUTHORITY: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51(c) and 210.53(h).

By order of the Commission.

Issued: August 20, 1984.

Kenneth R. Mason,

Secretary,

[FR Doc. 84–22941 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

Butter From Australia; Request for Public Comment on Proposed Revocation of Countervaling Duty Order Concerning Butter From Australia

AGENCY: U.S. International Trade Commission.

ACTION: The Commission requests public comments on the proposed noninstitution of a countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979. All comments must be received by the Commission no later than September 28, 1984.

SUPPLEMENTARY INFORMATION: Section 104(b) of the Trade Agreements Act of 1979 requires the Commission to conduct an investigation upon receipt of a proper request to determine whether an industry in the United States would be materially injured, threatened with material injury, or whether the establishment of an industry in the United States would be materially retarded if an outstanding, nonwaived countervailing duty order were to be revoked. On May 17, 1982, the Commission received a request from the Embassy of Australia for a review of T.D. 42937 (September 5, 1928), as amended, which imposes a countervailing duty on butter from Australia.

The Commission notes that butter imports are now pervasively regulated under section 22 of the Agricultural Adjustment Act. The section 22 quote for butter is 707,000 pounds annually, virtually all allocated to New Zealand and the European Community. U.S. production in 1983 was approximtely 1.3 billion pounds. There have been no imports from Australia for the past 10 years. Under these circumstances, it appears unlikely that the revocation of the countervailing duty order would have any impact whatsover on the domestic industry.

Therefore, if no interested party (within the meaning of section 771(9)(C), (D), or (E)) representing an industry (within the meaning of section 771(4)(A)) requests such an investigation and presents reasonable grounds on which the Commission could find material injury or threat of material injury, the Commission will not institute the investigation.

If the Commission does not institute the investigation, the Commission would make no finding regarding material injury. The countervailing duty order would therefore be revoked.

In light of the Commission's duty to consider the public interest, written comments concerning the proposed noninstitution of this investigation are requested.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Office of the General Counsel, telephone 202–523–0493.

By order of the Commission.

Issued: August 22, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22949 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. TA–201–53]

Certain Canned Tuna Fish, Report to the President

August 15, 1984.

Determination

On the basis of the information developed in the course of investigation No. TA–201–53, the Commission has determined [1] that tuna fish in airtight

[1] Chairwoman Paula Stern determined that imports of the subject canned tuna fish are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

containers, prepared or preserved in any manner, not in oil, provided for in items 112.30 and 112.34 of the Tariff Schedules of the United States (TSUS), and tuna fish in airtight containers, prepared or preserved in any manner, in oil, provided for in TSUS item 112.90, are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Background

The Commission instituted the present investigation, No. TA–201–53, following the receipt, on February 15, 1984, of a petition for import relief filed on behalf of the United States Tuna Foundation; C.H.B. Foods, Inc.; the American Tuna Boat Association; the United Industrial Workers, AFL–CIO; the Fishermen's Union of America, AFL–CIO; and the Fishermen's Union ILWU, No. 33. The investigation was instituted pursuant to section 201(b) of the Trade Act of 1974 (19 U.S.C. 2251(b)) is order to determined whether the above described tuna fish are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC., and by publishing the notice in the **Federal Register** of March 7, 1984 (49 FR 8501). The hearing was held in Washington, DC on June 5, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting held on July 25, 1984.

This report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act. The information in the report was obtained from fieldwork and interviews by members of the Commission's staff, and from information obtained from other Federal agencies, responses to Commission questionnairies, information presented at the public hearing, briefs submitted by interested parties, the Commission's files, and other sources.

The Commission transmitted its report on the investigation to the President on August 15, 1984. A public version of that report, *Certain Canned Tuna Fish* (investigation No. TA–201–53, USITC Publication 1558, 1984), will contain the views of the Commissioners and information developed during the investigation. Copies may be obtained after August 27, 1984, by calling 202–523–5178 or from the Office of the Secretary, 701 E Street, NW., Washington, DC. 20436.

Issued: August 15, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22952 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–166]

Certain Computerized Jacquard Pattern Cutting Systems; Commission Decision Not to Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the Presiding Officer's Initial Determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission has adopted the Presiding Officer's ID relating to the noninfringement of claims 11 and 14 of U.S. Letters Patent 4,004,135. The Commission has taken no position on the other issues discussed in the ID, since the findings and conclusions of the Presiding Officer regarding noninfringement are dispositive of the question of whether there is a violation of section 337.

SUPPLEMENTARY INFORMATION: On July 13, 1984, the Presiding Officer issued an ID that there is no violation of section 337 of the Tariff Act of 1930 in the unauthorized importation and sale of certain computerized jacquard pattern cutting systems. No petitions for review of the ID were filed by either complainant or respondents. Having examined the record in this investigation and the ID of the Presiding Officer, the Commission on August 20, 1984, determined not to review the ID.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Frank J. Schuchat, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–523–0421.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.53–56 of the Commission's Rules of Practice and Procedure (47 FR 25134 (June 10, 1982), as amended by 48 FR 20225 (May 5, 1983) and 48 FR 21115 (May 11, 1983)); to be codified at 19 CFR 210.53–56

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,

Secretary

[FR Doc. 84–22946 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 337–TA–182/188]

Certain Fluidized Supporting Apparatus and Components Thereof; Commission Denial of Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to deny requests for temporary relief in the above-captioned consolidated investigations.

SUPPLEMENTARY INFORMATION: On June 18, 1984, the presiding officer filed an initial determination that there is no reason to believe a violation of section 337 exists in the above-captioned investigations.

On July 18, 1984, the Commission ordered review of the initial determination. On review, the Commission determined (1) to deny temporary relief in Inv. No. 337–TA–182 because consideration of the discretionary factors governing the grant of temporary relief, as well as the public interest factors which are by statute required to be considered, indicates that such relief should not be granted and (2) to deny temporary relief in Inv. No. 337–TA–188 on the basis that there is no reason to believe a violation of section 337 exists and that, in any event, consideration of the discretionary factors governing the grant of temporary relief, as well as the public interest factors which are by statute required to be considered, indicates that such relief should not be granted.

Notice of Inv. No. 337–TA–182 was published in the **Federal Register** of February 15, 1984 (49 FR 5840); notice of Inv. No. 337–TA–188 was published in the **Federal Register** of March 28, 1984 (49 FR 11894).

Copies of the Commission's Action and Order, the nonconfidential version of the Commission's Memorandum Opinion, and all other nonconfidential documents filed in connection with this investigation will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, tele. 202–523–0480.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–.56 of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982 and 48 FR 9242, March 4, 1983; codified at 19 CFR §§ 210.53–.56).

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22942 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 751–TA–10]

Frozen Concentrate Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. 701–TA–184. (Final), Frozen Concentrated Orange Juice from Brazil.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review its determination in ivestigation No. 701–TA–184 (Final). The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of frozen concentrated orange juice from Brazil if the countervailing duty order regarding such merchandise were to be modified or revoked. Frozen concentrated orange juice is provided from in item 165.35 of the Tariff Schedules of the United States.

EFFECTIVE DATE: August 29, 1984.

FOR FURTHER INFORMATION CONTACT: David Coombs, Office of Investigations, U.S International Trade Commission (202–523–1376).

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1983, the Commission determined, pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)), that an industry in the United States was threatened with material injury by reason of subsidized imports of frozen concentrated orange juice from Brazil. The effect of that determination was to leave in effect a suspension agreement between the United States and Brazil whereby the Brazilian Government assesses a tax on exports of frozen concentrated orange juice to the United States equal to the amount of the subsidy found by Commerce. The suspension agreement was published in the **Federal Register** on March 2, 1983 (48 FR 8839) and Commerce's final subsidy determination was published on June 6, 1983 (48 FR 25245).

On May 31, 1984, the Commission received a request to review its affirmative determination in investigation No. 701–TA–184 (Final) pursuant to section 751(b) of the Tariff Act of 1930. The request was filed by Wald, Harkrader & Ross on behalf of the following Brazilian producers and exporters of frozen concentrated orange juice: Sucocitrico Cutrale, SA; Citrosuco Paulista, SA; and Cargill Industrial, Ltda. On June 20, 1984, the Commission requested written comments in the **Federal Register** (49 FR 25319) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. On August 21, 1984, after reviewing comments received in response to that request, the Commission determined that the alleged changed circumstances were sufficient to warrant a review investigation.

The review investigation will be conducted in accordance with § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)). The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of frozen concentrated orange juice from Brazil if the countervailing duty order regarding such merchandise were to be revoked. Pursuant to § 207.45(b) of the Commission's Rules of Practice and Procedure, the 120-day period for completion of this investigation begins on the date of publication of this notice in the **Federal Register.**

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service just accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on October 19, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a public hearing in connection with this investigation beginning at 10:00 a.m., on November 5, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 23, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 11:00 a.m., on October 30, 1984, in room 114 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 30, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis

of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 13, 1984.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before October 30, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 20.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A, C and E (19 CFR Part 207), and Part 201, Subpart A through E (19 CFR Part 201).

Authority: This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45)

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,

Secretary

[FR Doc. 84-22944 Filed 8-28-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Comission Decision Not to Review Initial Determination Terminating Respondents St. Gobain Vitrage and Cristaleria Espanola and Adding Respondent Vereinigte Glaswerke

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) terminating respondents St. Gobain Vitrage and Cristaleria Espanola and adding as a respondent Vereinigte Glaswerke GmbH in this investigation.

SUPPLEMENTARY INFORMATION: The Commission has received neither a petition for review of the I.D. nor comments from Government agencies.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

AUTHORITY: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Pracitice and Procedure (19 CFR 210.53(c) and (h)).

By order of the Commission.

Issued: August 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-22940 Filed 8-28-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-153 (Final)]

Hot-Rolled Carbon Steel Sheet From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports from Brazil of hot-rolled carbon steel sheet provided for in items 607.67 and 607.83 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be sold in the United States at less that fair value (LTFV).[2] In addition, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), the Commission determines that there is no material injury by reason of massive imports of the subject product described in section 735(a)(3) (19 U.S.C. 1673(a)(3)), to an extent that, in order to prevent such material injury from recurring, it is necessary to impose antidumping duties retroactively on those imports.[3] [4]

Background

The Commission instituted this investigation effective April 26, 1984, following a preliminary determination by the Department of Commerce that there was a reasonable basis to believe or suspect that imports of hot-rolled carbon steel sheet from Brazil were being sold in the United States at less than fair value.

Notice of the Commission's investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of May 23, 1984 (49 FR 21812). The public hearing was held in Washington, D.C. on July 26, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on August 23, 1984. A public version of the Commission's report, *Hot-Rolled Carbon Steel Sheet from Brazil* (investigation No. 701-TA-153 (Final), USITC Publication 1568, August 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: August 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-22953 Filed 8-28-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-152 (Final)]

Pads for Woodwind Instrument Keys From Italy

Determination

On the basis of the record [1] developed in investigation No. 731-TA-152 (Final),

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] The effect of this determination is that antidumping duties will be imposed on imports entered on or after April 26, 1984 for Cosipa and Usiminas and on or after July 11, 1984 for CSN. Had the determination been affirmative, antidumping duties would have been imposed on imports entered 90 days prior to those dates (see 19 U.S.C. 1673d(c)).

[4] Commissioners Eckes and Lodwick dissenting.

[1] The "record" is defined in section 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)). That an industry in the United States is materially injured [2] by reason of imports of pads for woodwind instrument keys from Italy, provided for in item 726.70 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this final investigation, effective April 25, 1984, following a preliminary determination by the Department of Commerce that imports of pads for woodwind instrument keys from Italy are being, or are likely to be, sold in the United States at LTFV. Commerce's preliminary determination was published in the **Federal Registger** of April 25, 1984.

Notice of the institution of the Commission's investigation and of the the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of May 16, 1984 (49 FR 20766). The hearing was held in Washington, D.C. on July 12, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting, held on August 13, 1984.

On November 7, 1983, petitions were filed with the Commission and the U.S. Department of Commerce on behalf of Prestini Musical Instruments Corp. Nogales, AZ. The petitions alleged that pads for woodwind instrument keys imported from Italy were being sold in the United States at LTFV, and were causing material injury or the threat thereof to the U.S. industry producing such articles. Accrodingly, the Commission instituted investigation No. 731–TA–152 (Preliminary) to determine whether there was a reasonable indication that an industry in the United States was materially injured or was threatened with material injury, or whether the establishment of an industry was materially retarded, by reason of imports of pads for woodwind instrument keys provided for in TSUS item 726.70.

[2] Chairwoman Stern and Vice Chairman Liebeler dissenting

On December 21, 1983, the Commission notified the Commerce Department of its affirmative determination with respect to the preliminary investigation of imports from Italy. Notice of the Commission's preliminary determination was published in the **Federal Register** of December 29, 1983 (48 FR 57381). As a result, Commerce continued its investigation into alleged LTFV sales of pads for woodwind instrument keys from Italy. Commerce's final determination with respect to LTFV imports from Italy was published in the **Federal Register** of July 11, 1984 (49 FR 28195).

The Commission transmitted its report on this investigation to the Secretary of Commerce on August 23, 1984. A public version of the Commission's report, Pads for Woodwind Instrument Keys from Italy (investigation No. 731–TA–152 (Final)), USITC Publication 1566, contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: August 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22950 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–193]

Certain Rowing Machines; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Robert D. Litowitz, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Victoria L. Partner, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 17, 1984.

Respectfully submitted.

Arthur Wineburg,

Acting Chief, Unfair Import Investigations Division.

[FR Doc. 84–22947 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–167]

Certain Single Handle Faucets; Commission Decision Not to Review Initial Determination; Deadline for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the initial determination (ID) of its presiding officer (ALJ) that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation. The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

SUPPLEMENTARY INFORMATION: On July 24, 1984, the ALJ issued an ID that there is a violation of section 337 in the unauthorized importation and sale of certain single handle faucets. No petition for review was filed. The Commission on August 20, 1984, determined not to review the ID. Consequently the ID has become the Commission's determination on violation of section 337 in this investigation.

Written Submission

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore

interested in receiving written submissions concerning the amount of the bond, if any, which should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day which is fourteen (14) days after publication of this notice in the **Federal Register.**

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of October 14, 1983, 48 FR 49106.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Office of the General Counsel, telephone 202–523–0493.

AUTHORITY: 19 U.S.C. 1337; sections 210.35 through 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.53–.56), as amended by 48 F.R. 20225 (May 5, 1983) and 48 FR 21115 (May 11, 1983).

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22943 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–190]

Certain Softballs and Polyurethane Cores Therefore; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Robert D. Litowitz, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Harold Brandt, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 17, 1984.

Respectfully submitted.

Arthur Wineburg,

Acting Chief, Unfair Import Investigations Division.

[FR Doc. 84–22948 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–186]

Certain Tennis Rackets; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Rossignol Ski Co., Inc. and Skis Rossignol, S.A., (the Rossignol responsents).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 14, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments:

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: August 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22991 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–186]

Certain Tennis Rackets; the Commission Decision Denying Interlocutory Appeal by Spalding Corp.

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has denied an interlocutory appeal filed by Spalding Corp. of Orders Nos. 14 and 16 that denied Spalding's motion to intervene as a party.

SUPPLEMENTARY INFORMATION: On July 20, 1984, Spalding Corp. filed an interlocutory appeal of Orders Nos. 14 and 16 that denied Spalding's motion to intervene as a party in the investigation, but granted Spalding certain rights as a nonparty intervenor. Complainant Prince Manufacturing Co. and the investigative attorney opposed the motion. Respondents Trak, Inc., Snauwaert & Depla NV, and Snauwaert & Depla, Inc., supported the motion.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the

General Counsel, telephone 202–523–0499.

Authority: 19 U.S.C. 1337; 19 CFR 210.60(a).

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22945 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

[332–186]

Conditions of Competition Between the U.S. and Canadian Live Swine and Pork

AGENCY: U.S. International Trade Commission.

ACTION: Time and place of public hearing.

SUMMARY: Notice is hereby given that the public hearing in this matter will be held beginning on Friday, September 21, 1984, in Cedar Rapids, Iowa, at the Sheraton Inn, 525 33rd Avenue SW., at 10:00 a.m.

Notice of the investigation and hearing was published in the **Federal Register** of July 5, 1984 (49 FR 27640).

By order of the Commission.

Issued: August 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–22951 Filed 8–28–84; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Eradication of Cannabis on Federal Lands in the Continental United States; Extension of Comment Period of Draft Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the U.S. Department of Justice, Drug Enforcement Administration (DEA), has prepared a draft programmatic environmental impact statement (DEIS) on the possible environmental and health implications in the United States associated with the eradication of cannabis on Federal lands and intermingled forests and rangelands in the lower-48 States.

The period for receiving written comments concerning the DEIS has been extended until Monday, September 10, 1984. Written comments should be addressed to Mr. Thomas G. Byrne, Chief, Cannabis Investigations Section, Room 629, 1405 I Street, NW., Washington, D.C. 20537.

Dated: August 20, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84–22874 Filed 8–28–84; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

August 24, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Wednesday, Thursday, and Friday, September 12–14, 1984. The meeting will be held in Page Building #1, Rooms 416 and B–100, 2001 Wisconsin Avenue, NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. September 12 and September 13. On September 14 the meeting will commence at 8:30 a.m. and end at 3:30 p.m. The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government, was established by Congress by Pub. L. 95–63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Wednesday, September 12, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room B–100, Washington, DC

Panel Meeting

9:00 a.m.–12:00 p.m.

- North Pacific Fur Seal Treaty,
  Chairman: Charles Black
  Room B–100
  Topic: Panel Work Session
  Speakers: TBA

Lunch

12:00 Noon–1:00 p.m.

1:00 p.m.–5:00 p.m.

- North Pacific Fur Seal Treaty
  Chairman: Charles Black
  Room B–100
  Topic: Panel Work Session
  Speakers: TBA

Recess

5:00 p.m.

Thursday, September 13, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

Plenary

9:00 a.m.–12:00 Noon

9:00 a.m.–9:30 a.m.

- Introductory Remarks
- Swearing-In Ceremony for Mary Ellen McCaffree

9:30 a.m.–12:00 Noon

- To Be Announced

Lunch

12:00 Noon–1:00 p.m.

Panel Meetings

1:00 p.m.–5:00 p.m.

- OCS and Coastal Zone Issues
  Chairman: John Norton Moore
  Room 416
  Topic: Panel Work Session
  Speakers: TBA

3:00 p.m.–5:00 p.m.

- Underwater Vehicles
  Chairman: Don Walsh
  Room B–100
  Topic: Panel Work Session
  Speakers: None

Recess

5:00 p.m.

Friday, September 14, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

Panel Meeting

8:30 a.m.–10:30 a.m.

- Shipbuilding
  Chairman: Don Walsh
  Room 416
  Topic: Panel Work Session
  Speakers: TBA

Plenary

10:30 a.m.–12:00 Noon

- North Pacific Fur Seal Treaty
  Discussion of Panel Activities by Panel Chairman
  Speakers: None

Lunch

12:00 Noon– 1:00 p.m.

Plenary

1:00 p.m.–4:00 p.m.

- Panel Reports
- Discussion of Future Agenda Items
- Other Business

Adjourn

4:00 p.m.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration or oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW., Washington, DC 20235.

Dated: August 24, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84–22986 Filed 8–28–84; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL SCIENCE FOUNDATION

Agency Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, NSF is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421.

OMB Desk Officer: Carlos Tellez, (202) 395–7340.

Title: Interagency Study of Academic Research Facilities and Facilities Needs.

Affected Public: Universities and Colleges.

Number of Responses: 1,200; total of 2,400 burden hours.

Abstract: This special study of academic research facilities was initiated by the Ad Hoc Interagency Steering Committee on Academic Research Facilities and has been endorsed by the National Science Board. The major research universities will be queried concerning the extent and condition of their current R&D facility inventories, their past activities and future plans for construction and refurbishment of facilities.

Dated: August 20, 1984.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 84–22961 Filed 8–28–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export and Import Nuclear Facilities or Materials; Mitsubishi International Corp., et al.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 23rd day of August 1984.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs

NRC IMPORT/EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsubishi Internatl Corp., Aug. 3, 1984, Aug. 10, 1984, XSNM02166.	3.55	16,467	585	Reload fuel for Mihama 2	Japan.
Westinghouse Electric Corp., Aug. 15, 1984, Aug. 16, 1984, XSNM02167.	3.50	38,377	1,344	For fabrication into fuel rod assemblies and return to U.S. for use in Indian Point Reactor.	Belgium.
Westinghouse Electric Corp., Aug. 13, 1984, Aug. 16, 1984, ISNM84008.	3.50	88,377	1,344	For fabrication of fuel assemblies for Indian Point Reactor. Exported under XSNM02167.	From Belgium.
U.S. Department of Energy, Aug. 6, 1984, Aug. 16, 1984, XSNM02168.	19.95	203.0	40.0	Uranium-silicide fuel elements for testing in the R-2, HFR-Petten, BR-2 and Siloe reactors. RERTR Program.	Sweden, Netherlands, Belgium, France.
Transnuclear, Inc., Aug. 16, 1984, Aug. 17, 1984, XSNM02169	4.05	623,939.073	22,141.170	Reload fuel for 10 Swedish reactors	Sweden.
Poco Graphite, Inc., Aug. 7, 1984, Aug. 14, 1984, XMAT0306	(1)	(1)	(1)	For general commercial applications	Various countries.

[1] 680,400 kilograms of commercial grade graphite.

[FR Doc. 84–22985 Filed 8–28–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-445-2 and 50-446-2]

Texas Utilities Electric Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Application for Operating License

August 22, 1984.

Before Administrative Judges: Peter B. Bloch, Chairman, Herbert Grossman, Esq., Dr. Walter H. Jordan.

On September 10–14, 1984 the Atomic Safety and Licensing Board (Board) will hold public evidentiary hearings concerning allegations that quality control and quality assurance workers have been intimidated and harassed and that applicants consequently have not complied with regulations governing quality assurance for nuclear plants. The hearing will be held in the Crystal Ballroomn D of the Hyatt Regency Hotel at 815 Main Street, Fort Worth, Texas.

Hearing hours are from 8:30 am to 6 pm, Monday to Thursday and 8:30 am to 3 pm Friday, subject to recesses and to extensions permitting the completion of scheduled matters. Additional sessions for this hearing, which is a continuation of evidentiary hearings on quality assurance already held in the companion cases regarding this matter, may be held on September 15 at the same location and on September 18–21 at a location to be announced.

Because of the heavy hearing schedule, oral limited appearance statements are not scheduled; however, people may submit statements to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention, Chief, Docketing and Service Section if they have specific knowledge of quality assurance conditions at Comanche Peak and may include an address or telephone number that we may use to arrange an oral presentation.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 84-22967 Filed 8-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Order Confirming Further Licensee Commitments on Emergency Response Capability

I

Yankee Atomic Electric Company (YAEC or the licensee) is the holder of Facility Operating License No. DPR-3 which authorizes the operation of the Yankee Nuclear Power Station (the facility) at steady-state power levels not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Franklin County, Massachusetts.

II

Following the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission's staff developed a number of proposed requirements to be implemented at operating reactors and at plants under construction. These proposed requirements are set forth in NUREG–0737, "Clarification of TMI Action Plant Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of operability of emergency response facilities, emergency procedure implementation, addition to instrumentation, possible control room design modifications and specific information to be submitted by the licensee. On December 17, 1982, Generic Letter 82–33 was sent to all licensees of operating reactors, applicants for operating licenses and holders of construction permits enclosing Supplement 1 to NUREG–0737. The generic letter requested licensees and holders of construction permits to furnish information by April 15, 1983, concerning a proposed schedule for completing the items identified in Supplement 1 to NUREG–0737 and a description of plans for phased implementation and integration of emergency response activities including training.

As a result of commitments made by the Yankee Atomic Electric Company in its letters responding to Generic Letter 82–33, the Commission issued an Order on June 12, 1984, confirming a number of the licensee's commitments on emergency response capability as provided in the licensee's letters dated April 19, August 1, September 1, October 21, December 16, 1983, and March 28 and April 3, 1984. *See* 49 FR 26663 (June 28, 1984). While the table to that Order indicated that the licensee's Emergency Operations Facility (EOF) was complete, the table also indicated that the habitability provisions for the EOF were under review and that the EOF did not meet the criteria of Table 1 of Supplement 1 of NUREG–0737. In response to a further NRC request for information under 10 CFR 50.54(f), dated April 23, 1984, the licensee committed in its letter dated May 23, 1984, to establish a new EOF which met the criteria of Supplement 1 to NUREG–0737. The licensee indicated that it would complete the new EOF by September 1, 1985.

The schedule proposed by the licensee for completion of the improved EOF will provide timely upgrading the licensee's emergency response capability. In view of the importance of the implementation of the licensee's commitments, I have determined that the public health, safety and interest require that the licensee's commitments be confirmed by an immediately effective Order.

III

Accordingly, pursuant to sections 103 and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall complete implementation of the upgraded EOF which meets the criteria of Table 1 of Supplement 1 of NUREG–0737 by September 1, 1985, as described in the licensee's submittal dated May 23, 1984. An extension of time for completing this item may be granted by the Director, Division of Licensing, for good cause shown.

IV

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing shall be addressed to be Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee shall comply with the requirements set forth in section III of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland, this 23d day of August 1984.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-22968 Filed 8-28-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Study of Alternatives in Procurement of Professional Services

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy is requesting comments and suggestions with regard to the "study of alternatives for the procurement of professional services" required by section 2753, Competition in Contracting Act of 1984 (Public Law 98–369).

Notice of the required study is given in advance of developing the proposed alternatives. Any comments on the study, including issues or options it should address, should be submitted to the Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503.

Public Meeting:

A public meeting will be held in Room 2008, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C., at 10:00 a.m., September 13, 1984. Persons or organizations wishing to present views, ideas and suggestions about the study are encouraged to attend the meeting. Written statements will be accepted by the Office of Federal Procurement Policy at the public meeting and persons or organizations wishing to make oral statements will be given 10 minutes each to present their views. Persons and organizations with similar views are encouraged to select a common spokesman for the presentation of their views. Persons wishing to attend and/or present statements at the public meeting should contact Mrs. Teresa Hrabe, telephone number (202) 395–3501, prior to 3:30 p.m., September 12, 1984, in order to be cleared for admittance to the New Executive Office Building. Entrance to the building is on 17th Street, N.W.

Background

A. Section 2753, Competition in Contracting Act of 1984, requires that:

(a) Not later than January 31, 1985, the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration, shall complete a study of alternatives and recommend to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a plan to increase the opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services.

(b) Such plan shall provide for testing the recommended alternative and be developed in accordance with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413), and be consistent with the policies set forth in section 2 of such Act (41 U.S.C. 401).

B. The Conference Report pertaining to section 2753 provides additional information about the study requirement. This information is as follows:

The conference substitute requires the Office of Federal Procurement Policy to recommend to Congress a plan for increasing the use of full and open competition in the procurement of professional, technical and managerial services. This category of procurements often involves the use of evaluation criteria, other than price, in the selection of the winning vendor.

The Office of Federal Procurement Policy is directed to recommend competitive selection procedures for procurements where price is not a significant factor and the agency has determined a legitimate need for the best or highest quality proposal. Such a plan should include requirements for the agencies to follow to ensure that all responsible vendors are allowed to compete for the above procurements and that fair and reasonable prices are paid for the service. OFPP should consider, as a possible alternative prior to designing a plan, a system in which all qualified persons capable of providing specified services are placed on a list maintained by the government, in which each of those persons is encouraged to submit a competitive proposal in response to each solicitation for such services, and in which the award is made to the bidder on the list who can perform the service for the lowest overall cost.

The Office of Federal Procurement Policy should also, in conducting the study, consult with experts in such fields as soil engineering, real estate appraising, surveying and mapping, and other professional services which do not fit within the traditional concept of Federal procurement procedures.

C. Professional services, with exception of architect-engineer services, are now procured in accordance with Part 37 of the Federal Acquisition Regulation. Section 37.105 of the FAR, "Competition in Service Contracting," provides:

(a) Unless otherwise provided by statute, contracts for services shall be awarded through formal advertising whenever feasible and practicable (see Parts 14 or 15).

(b) The provisions of statute and of this regulation requiring competition apply fully to service contracts. Therefore, when formal advertising is not feasible and practicable and negotiation is authorized, competition still must be obtained to the maximum practicable extend, except for acquisitions not in excess of $1,000. The method of obtaining competition will vary with the type of service being acquired and will not necessarily be limited to price comparison.

D. FAR 37.105 will be revised to comply with the Competition in Contracting Act. The Competition in Contracting Act places "competitive proposals" on par with "sealed bids." It states (section 2711) "* * * each solicitation for sealed bids or competitive proposals (other than for small purchases) shall, at a minimum, include:

(1) A statement of:

(a) All significant factors (including price) which the executive agency reasonably expects to consider in evaluating sealed bids or competitive proposals, and

(b) The relative importance assigned to each of those factors; . . . .

E. OFPP has convened an interagency task group to develop the alternatives required by section 2753. The task group will consider the requirements and new procedures provided by the Competition in Contracting Act. The objective will be to develop and identify alternatives that will ensure the proper consideration of price, technical and management competence in selecting contractors to perform professional services.

F. As a beginning position, the task group considers the terms "professional," "technical" and "managerial" services, as used in section 2753, to be synonomous. The following definition, taken from Title 29, CFR, 541.3, may be changed or modified (depending upon task group findings and comments and suggestions received), before being adopted for inclusion in the report to be submitted to Congress. However, for purposes of commencing the study, the term "professional service" will be used to mean "professional, technical and managerial services" and is defined as:

(1) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, or from training in the performance of routine mental, manual, or physical processes; or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(3) Work requiring the consistent exercise of discretion and judgment in its performance; and which is predominantly intellectual and varied in character (as opposed to routine mental,

manual, mechanical, or physical work) and of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

Examples of professional services covered by this definition are:

Medical Services

Anesthesiology Services
Cardio-Vascular Services
Dentistry Services
Dermatology Services
Gastroentorology Services
Geriatric Services
Gynecology Services
Hematology Services
Internal Medicine Services
Neurology Services
Ophthalmology Services
Optometry Services
Orthopedric Services
Otolaryngology Services
Pathology Services
Pediatric Services
Pharamacology Services
Physical Medicine and Rehabilitation Services
Psychiatry Services
Podiatry Services
Pulmonary Services
Radiology Services
Surgery Services
Thoracic Services
Urology Services
Medical/Psychiatric Consultation Services
Other Medical Services

Architects and Engineers Services

Architect-Engineer Services
Engineering Drafting Services
A&E Inspection Services
A&E Management Engineering Services
A&E Production Engineering Services
Marine Architect-Engineer Services
Other Architect and Engineering Services

Automatic Data Processing Services

ADP Systems Services
ADP Systems Analysis

General Services

Advertising Services
Financial/Auditing Services
Land Surveys, Cadastral Services
Operations Research Services
Policy Review/Development Services
Program Evaluation Services
Program Management/Support Services
Program Review/Development Services
Public Relations Services
Real Property Appraisal Services
Simulation Services
Specifications Development Services
Systems Engineering Services
Legal Services
Educational Services

Special Studies and Analyses

Air Quality Analyses
Archeological/Paleontological Studies
Chemical/Biological Studies and Analyses
Cost Benefit Analyses
Data Analyses
Economic/Socio-Economic and Labor Studies
Endangered Species Studies— Plant and Animal
Environmental Assessments
Environmental Baseline Studies
Environmental Impact Studies
Feasibility Studies
Animal and Fisheries Studies
Geological Studies
Geophysical Studies
Geotechnical Studies
Grazing/Range Studies
Historical Studies
Legal/Litigation Studies
Mathematical/Statistical Analyses
Natural Resource Studies
Oceanological Studies
Recreation Studies
Regulatory Studies
Scientific Data Studies
Seismological Studies
Soils Studies
Water Quality Studies
Wildlife Studies
Medical and Health Studies
Intelligence Studies
Aeronautic/Space Studies
Building Technology Studies
Defense Studies
Educational Studies and Analyses
Energy Studies
Technology Studies
Housing and Community Development Studies
Security Studies (Physical and Personal)
Accounting/Financial Management Studies
Trade Issue Studies
Foreign Policy/National Security Policy Studies
Organization/Administrative/Personnel Studies
Mobilization/Preparedness Studies
Manpower Studies
Communications Studies
Acquisition Policy/Procedures Studies
Other Special Studies and Analyses

DATE: Comments and suggestions in response to this **Federal Register** notice must be received in OFPP by close of business, September 17, 1984. Statements to be presented at the public meeting should be received by September 12, 1984.

ADDRESS: Comments and statements should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9013, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development, (202) 395–6803.

William E. Mathis,

Acting Administrator.

[FR Doc. 84–23085 Filed 8–27–84; 3:30 pm]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Advisory Committee on Scientific Communication; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I have determined that the establishment of an OSTP Advisory Committee on Scientific Communication is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy by the National Science and Technology Policy, Organization, and Priorities Act, 1976, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. *Name of Committee:* OSTP Advisory Committee on Scientific Communication.

2. *Purpose:* To provide advice to OSTP and other Federal agencies on issues involving scientific communications as they may relate to the revision of the Department of Commerce Regulations governing the export of technical data (15 CFR Part 379).

3. *Effective Date of Establishment and Duration:* The establishment of this committee is effective upon filing the charter with the Director, OSTP and the standing committees of Congress having legislative jurisdiction of OSTP. Committee will continue for 6 months from the date of establishment and may be renewed for an additional 3 to 6 months.

4. *Membership:* Membership of the Committee shall be fairly balanced in terms of the point of view represented in the committee's function. Membership will consist of approximately eighteen (18) persons chosen to ensure an appropriately balanced representation of the scientific and engineering communities in those areas of science and engineering most directly impacted by the technical data regulations (15 CFR Part 379) and related laws and regulations. There will be no discrimination on the basis of sex, minorities, handicapped or geographical distribution.

5. *Operation:* The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463); OSTP Policy and Procedures; GSA Interim Regulations on Advisory Committee Management; and other directives and instructions issued in implementation of the Act. The National Science Foundation will provide administrative support for the Committee.

Dated: August 23, 1984.

G. A. Keyworth,

Director.

[FR Doc. 84-22915 Filed 8-28-84; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21262; File No. SR-NASD-84-20]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.

August 22, 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 June 11, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 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 amendment to the proposed rule change from interested persons.

The proposed rule change would amend the NASD's Uniform Practice Code ("Code") in two sections regarding non-delivery of securities. First, the rule change would add a sentence to section 1(c) of the Code to make clear that, in the case of nondelivery of securities, the defaulting party shall be liable for any damages which may accrue thereby. The NASD believes that this provision is implied in the current langauage of the Code, but wants to add an explicit provision in the Code. The New York Stock Exchange's Rule 180 currently contains this provision. [1]

Second, the NASD proposes to amend section 59(j) of the Code by adding to existing close-out procedures a new procedure which may be used by members for contracts calling for the delivery of securities upon which a call or expiration date is imminent. Under the procedure a member may send a liability notice to the delivering member no later than one business day prior to the latest time and date of the call or expiration date. If the member fails to deliver the securities on the expiration date, the delivering member shall be liable for any accrued damages, with the liability notice serving as notification of the claim for damages. The rule change would define expiration date as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of any protect period. If a liability notice is not used, the existing option of a buy-in on the expiration date is still available. The proposed rule change would restrict such buy-ins to times after normal delivery hours to prevent a receiving member from effecting a buy-in and receiving delivery later in the day.

The additional procedure also would be similar to liability notice provisions adopted by the National Securities Clearing Corporation ("NSCC"). [2] The NASD desires to adopt a similar provision so that NASD members that are also participants in NSCC can use the same procedure for both ex-clearing and NSCC cleared transactions. The NASD believes that this uniformity would simplify members' back office operations.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-84-20.

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. 84-22890 Filed 8-28-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 180 of the Board of Directors of the New York Stock Exchange, NYSE Guide ¶ 2180 (CCH 1962).

[2] NSCC Procedures at Section IX.B.

[Release No. 212164; File No. SR-PSDTC-84-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Pacific Securities Depository Trust Co.

August 23, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 13, 1984, the Pacific Securities Depository Trust Company ("PSDTC") 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.

Recent changes in Municipal Securities Rulemaking Board ("MSRB") rules require certain municipal securities brokers and dealers to use an automated comparison system for certain inter-dealer trades. [1] PSDTC's proposal modified PSDTC's National Institutional Delivery System, ("NIDS") [2] which provides for the confirmation, affirmation and settlement of certain municipal securities transactions. Specifically, the proposed rule change will expand both trade submission and security description parameters to allow the entry of additional trade information that is necessary under MSRB rules to identify municipal securities transactions. [3]

[1] *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983) which approved proposed changes to MSRB Rules G-12 and G-15 to establish a two-phased timetable for integrating municipal securities brokers and dealers into the National Clearance and Settlement System. As of August 1, 1984, municipal securities brokers and dealers that participate in registered clearing agencies, or clear transactions through an agent that is a member of a registered clearing agency, must use the automated comparison facilities of a registered clearing agency to compare certain transactions in municipal securities issues that are assigned CUSIP numbers. As of February 1, 1985, municipal securities brokers and dealers that are members of a registered depository, or that clear transactions through an agent that is a member of a registered depository, must book-entry settle through a registered depository certain transactions in depository-eligible securities that have been compared through a registered clearing agency.

[2] *See* Securities Exchange Act Release No. 19437 (January 18, 1983), 48 FR 3441 (January 25, 1983), which approved the implementation of PSDTC's NID System. NIDS allows PSDTC members to confirm, affirm and settle institutional trades in PSDTC-eligible securities electronically. In addition, NIDS provides PSDTC members access to the Depository Trust Company's ("DTC") Institutional Delivery System ("ID System") for the automated confirmation, affirmation and settlement of trades with DTC participants and other registered securities depositories.

[3] *See* MSRB Rule G-15, MSRB Manual (CCH) ¶3571. Trade data may be submitted to PSDTC via

Continued

PSDTC believes that the proposal is consistent with section 17A(b)(3)(F) of the Act in that it will promote the prompt and accurate clearance and settlement of securities transactions and will foster cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days afte 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–PSDTC–84–10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5. U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to deligated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–22888 Filed 8–28–84; 8:45 am]

BILLING Code 8010–01–M

either hardcopy, magnetic tape, or facsimile transmission. PSDTC's pre-existing NIDS hardcopy trade submission form includes space for security descriptions with a maximum of 55 characters. The new submission form includes space for a free-form security description of 390 characters. This expanded security description allows for the inclusion of additional trade details such as data regarding bond yields and discount and interest rates. The security descriptions on the NIDS hardcopy confirmations will read exactly as submitted on the original trade input. Machine-readable NIDS trade submissions also will include space for a security description of 390 characters. In addition, these submissions will include a fixed-field space of 70 characters for itemizing trade information such as interest payment status and security status. The data included in the security description will be printed on the NIDS confirmation but data placed in the fixed fields will only be provided to those customers receiving machine-readable output.

[File No. 1–0877]

Self-Regulatory Organizations; Application To Withdraw From Listing and Registation; Metropolitan Industries Inc.

August 22, 1984.

The Midwest Stock Exchange, Inc. has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder, to withdraw the specified security from listing and registration thereon.

The reasons alleged for withdrawing this security from listing and registration include the following:

(1) The exchange has received information from the issuer that the volume of trading is insufficient to support a market in Metropolitan Industries, Inc. There are currently fewer than 300 shareholders in this issue. As provided in Article XXVIII of Rule 3 of the Exchange rules, the Exchange is submitting this application upon recommendation of the issuer.

Any interested person may, on or before September 13, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–22889 Filed 8–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21263, File No. SR–DTC–84–7]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Co. Relating to Fee Schedule for Ancillary Services

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 August 2, 1984, The Depository Trust Company 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.

Comments requested within 21 days after the date of this publication.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith the following changes in the Fee Schedule for Ancillary Services:

Service

Automated Municipal Processing Service (AMPS)

1. *Physical tape or tape transmission*

a. *User input fee—$100.00 per month per physical tape submitted or tape transmitted. For service organizations, up to 5 users may be included at this rate on one reel/transmission with an additional $1.00 fee per month per user beyond 5 users. (E.g., A service organization submits transactions on behalf of 25 users. Its monthly fee would be $120.00: $100.00 for the first five users and $1.00 for each of the remaining 20 users, excluding transaction fees at $.03 as described below)*

b. *Trade input/fee (e.g., a trading blotter)—$.03 per transaction.*

c. *User output/fee—$100.00 per month per physical tape/tape transmission for up to 5 users included on the reel/transmission, with an additional $1.00 per month per user beyond 5 users.*

d. *Report fee (advisories and contract sheets)—$.03 per transaction.*

2. *Dial-In (direct access to DTC; user bears phone costs)*

a. *Port access fee—$10.00 per month.*

b. *Trade input fee (e.g., a trading blotter)—$.23 per transaction.*

c. *Control input fee (e.g., acknowledgement of an advisory)—$.13 per transaction.*

d. *Comparison output fee (e.g., contract sheets, advisories)—$.13 per transaction.*

3. *Dial-In (via Value Added Network-VAN; user normally makes a local phone call)*

a. *VAN access fee—$20.00 per month.*

b. *Trade input fee (e.g., a trading blotter)—$.23 per transaction.*

c. *Control input fee (e.g., acknowledgement of an advisory)—$.13 per transaction.*

d. *Comparison output fee (e.g., contract sheets, advisories)—$.13 per transaction.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under provisions of Rules G–12(f) and G–15(d) of the Municipal Securities Rulemaking Board ("MSRB") which will become effective on August 1, 1984, certain inter-dealer and customer transactions in municipal securities must be confirmed or compared through the facilities of a registered clearing agency. DTC has initiated a new service, the Automated Municipal Processing Service (AMPS), which will provide a communications conduit between municipal securities brokers and dealers and the National Municipal Comparison System being operated by the National Securities Clearing Corporation ("NSCC"). This new service is available to both DTC Participants and municipal securities brokers and dealers that are NSCC Municipal Comparison Only Members but not DTC Participants.[1] The proposed fees, which are in addition to fees to be charged by NSCC for providing comparison services, are intended to cover DTC's projected costs.

Based upon its experience with market-place needs and transaction volumes during the next several months DTC may decide to revise its fees. The subject fee schedule will be effective for services provided after July 31, 1984.

DTC has adopted the proposed rule change pursuant to section 17A(b)(3)(D) which authorizes DTC to adopt reasonable fees for the services which it provides.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will equitably allocate fees among DTC Participants and others using AMPS.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all wirtten communications relating to the proposed rule change between the Commissionand any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

Dated: August 23, 1984.

George A. Fitzsimmons,

Secretary

[FR Doc. 84–22966 Filed 8–28–84; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission has authorized DTC's implementation of this service on a pilot basis pending final Commission approval. (*See* Securities Exchange Act Release No. 34–21164/July 23, 1984).

[Release No. 21266; SR–PSE–84–12]

Pacific Stock Exchange, Inc; Self-Regulatory Organizations; Order Approving Proposed Rule Change

August 23, 1984.

The Pacific Stock Exchange, Inc. ("PSE") 618 South Spring Street, Los Angeles, CA 90014, submitted on June 11 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to modify section 3(d) of PSE Rule IX as follows: (i) if an application for membership were withdrawn after being posted for notice to the membership but before being approved or disapproved, the application could be resubmitted without the need for a second posting if the new application were submitted within three months or the original posting date; and (ii) if an applicant is approved for membership but fails to acquire and pay for a membership within three months after notice, the applicant would be subject to the notice and posting requirement again, before such membership becomes effective. Additionally, the PSE would add Commentary .02 to Rule IX, Section 9(c) to provide that a natural person or a firm who furnishes funds for the purchase of an applicant's membership or provides the use of a membership under an XYZ agreement (*i.e.*, a backer) may on 30 days notice require that such membership be transferred to the backer. The PSE could extend this notice time to 60 days, and a PSE committee would be authorized to review and offer recommendations on such matters. The final decision on an extension of this time period would be made by the PSE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No.

21117, July 2, 1984) and by publication in the Federal Register (49 FR 28492, July 12, 1984).[1] No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-22971 Filed 8-28-84; 8:45 am]
BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Privacy Act for 1974; System of Records; Proposed Revision of Routine Uses

AGENCY: Selective Service System.

ACTION: Proposed revision of a System of Records.

SUMMARY: The Selective Service System proposes to revise a system of records by adding a routine use. The System is SSS-9 Master Pay Record.

DATES: Comments are due on or before October 1, 1984.

ADDRESS: Selective Service System, Attn: Management Services, Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: David A. Cox, Associate Director, Management Services, Selective Service System, Washington, D.C. 20435. Phone (202) 724-0872.

SUPPLEMENTARY INFORMATION: This System of Records (System Number SSS-9) appears at 41 FR 53965 (December 9, 1976) and was revised at 46 FR 41663 (August 17, 1981).

The proposed addition of a routine use of records maintained in the system, including category of user and the purpose of such use will read as follows:

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Dated: August 23, 1984.

Thomas K. Turnage,

Director of Selective Service.

[FR Doc. 84-22873 Filed 8-28-84; 8:45 am]
BILLING CODE 8015-01-M

[1] In its release, the Commission provided notice of immediate effectiveness of a portion of the proposed rule change that would modify section 9(b) of PSE Rule IX (Exchange Memberships) to provide that if a former PSE member submits a new membership application within six months after termination of his membership, the amount of the non-refundable application fee would be $100, instead of the regular application fee of $250.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 84-13]

Senior Executive Service (SES) Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act (CSRA).

FOR FURTHER INFORMATION CONTACT: Stephen G. Perin, Acting Director, Office of Personnel and Training, and Acting Executive Secretary, DOT Executive Resources Board, (202) 426-4088.

SUPPLEMENTARY INFORMATION: The CSRA of 1978, which created the Senior Executive Service, requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, CSRA requires each agency to establish one or more PRB's, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRB's.

Issued in Washington, D.C., on August 23, 1983.

Robert L. Fairman,
Assistant Secretary for Administration

Department of Transportation Senior Executive Service Peformance Review Boards

Office of the Secretary

Barclay W. Webber, Assistant General Counsel for Environmental, Civil Rights and General Law
Diane R. Liff, Assistant General Counsel for Litigation
John J. Collins, Jr., Assistant General Counsel for Legislation
Alden C. Johanson, Deputy Director, Office of Budget
Jamew W. Hanscom, Chief, Transportation Assistance Division
Bruce T. Barkley, Director, Office of Management Planning
C. Shannon Roberts, Deputy Director, Office of Management Planning
Robert E. Jones, Director, Transportation Computer Center
Martin Convisser, Director, Office of Industry Policy
Rosario J. Scibilia, Director, Office of International Policy and Programs
Richard F. Walsh, Director, Office of Economics
Lawrence A. Cresce, Assistant Inspector General for Investigations, Office of the Inspector General (Retired 8/3/84)
Joseph J. Genovese, Assistant Inspector General for Auditing, Office of the Inspector General
Glenn W. Weinhoff, Assistant Inspector General for Policy, Planning and Resources, Office of the Inspector General
Richard D. Morgan, Executive Director, Federal Highway Administration
Armando L. Mena, Director, Office of Small and Disadvantaged Business Utilization
Jeffrey R. Miller, Associate General Counsel
Thelma Duggin, Coordinator of Minority Affairs
Jennifer L. Dorn, Director, Office of Commercial Space Transportation
Alfred A. DelliBovi, Deputy Administrator, Urban Mass Transportation Administration

Office of the Inspector General

Joseph A. Sickon, Inspector General, General Services Administration
Jack Kroll, Deputy Assistant Inspector General for Policy, Planning and Resources, Veterans Administration
Raymond F. Randolph, Assistant Inspector General for Auditing, Small Business Administration

Jim Richards, Inspector General, Department of Energy
Donald R. Trilling, Manager, Industry Policy and Planning, Office of the Secretary
Richard D. Morgan, Executive Director, Federal Highway Administration
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary
Kathryn L. Newman, Deputy Assistant Secretary for Governmental Affairs, Office of the Secretary
Don H. Clausen, Special Assistant to the Administrator, Federal Aviation Administration

United States Coast Guard

RADM Henry J. Bell, Chief, Office of Personnel
RADM William P. Kozlovsky, Comptroller
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary
Leon C. Watkins, Director, Office of Civil Rights, Federal Aviation Administration
Rex C. Leathers, Associate Administrator for Engineering and Operations, Federal Highway Administration
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Armando L. Mena, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Aviation Administration

Albert P. Albrecht, Associate Administrator for Development and Logistics
Paul K. Bohr, Director, Great Lakes Region
Franklin L. Cunningham, Director, Alaskan Region
Joseph M. Del Balzo, Director, Eastern Region
Benjamin Demps, Jr., Director, Aeronautical Center
Charles R. Foster, Director, Northwest Mountain Region
Jonathan Howe, Director, Southern Region
Walter S. Luffsey, Associate Administrator for Aviation Standards
Homer C. McClure, Director, Western-Pacific Region
C.R. Melugin, Jr., Director, Southwest Region
J.E. Murdock, III, Chief Counsel
William F. Shea, Association Administrator for Airports
Murray E. Smith, Director, Central Region
Raymond J. Van Vuren, Associated Administrator for Air Traffic
Leon C. Watkins, Director, Office of Civil Rights
Charles E. Weithoner, Associated Administrator for Administration
Robert E. Whittington, Director, New England Region
Quentin S. Taylor, Deputy Associate Administrator for Airports
Jennifer L. Dorn, Director, Office of Commerical Space Transportation, Office of the Secretary
Thelma Duggin, Coordinator of Minority Affairs, Office of the Secretary
Shirley Ybarra, Special Assistant to the Secretary, Office of the Secretary
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Robert E. Jones, Director, Transportation Computer Center, Office of the Secretary
Marshall Jacks, Jr., Associate Administrator for Safety, Traffic Engineering and Motor Carriers, Federal Highway Administration

Federal Highway Administration

Daniel Markoff, Associate Administrator for Administration
Marshall Jacks, Jr., Associate Administrator for Safety, Traffic Engineering and Motor Carriers
Rex C. Leathers, Associate Administrator for Engineering and Operations
Morris C. Reinhardt, Regional Administrator, Region 8
Richard B. Robertson, Associate Administrator for Planning and Policy Development
John O. Hibbs, Regional Administrator, Region 5
Joseph M. O'Connor, Associate Administrator for Right-of-Way and Environment
Rosalie R. Wilson, Director, Office of Personnel and Training
Bruce T. Barkley, Director, Office of Management Plannning, Office of the Secretary
Linda L. Arey, Director, Executive Secretariat, Office of the Secretary
Thelma Duggin, Coordinator of Minority Affairs, Office of the Secretary

Federal Railroad Administrator

Louis S. Thompson, Associate Administrator for the Northeast Corridor Improvement Project
Joseph W. Walsh, Associate Administrator for Safety
John M. Mason, Chief Counsel
William E. Loftus, Executive Director
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary
Robert R. Collins, Special Assistant to the Administrator
Anthony Welters, Associate Deputy Secretary, Office of the Secretary

National Highway Traffic Safety Administration

Howard M. Smolkin, Deputy Administrator
Barry I. Felrice, Associate Administrator for Rulemaking
George Parker, Associate Administrator for Enforcement
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary
Rebecca C. Gernhardt, Counselor to the Secretary, Office of the Secretary
Donald L. Ivers, Chief Counsel, Federal Highway Administration
Marshall Jacks, Jr., Associate Administrator for Safety, Traffic Engineering and Motor Carriers, Federal Highway Administration
Barbara K. Reichart, Chief, Relocation Division, Federal Highway Administration

Urban Mass Transportation Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
Rosaria J. Scibilia, Director, Office of International Policy and Programs, Office of the Secretary
Robert E. Jones, Director, Transportation Computer Center, Office of the Secretary
Kevin E. Heanue, Director, Office of Highway Planning, Federal Highway Administration
George L. Reagle, Associate Administrator for Traffic Safety Programs National Highway Traffic Safety Administration
Harold B. Williams, Deputy Associate Administrator for Management and Demonstrations
Linda L. Arey, Director, Executive Secretariat, Office of the Secretary
Madeleine S. Bloom, Chief, Policy Planning and Coordination Division, Federal Highway Administration

Maritime Administration

Howard A. Watters, Deputy Administrator (Inland Waterways and Great Lakes)
Garrett E. Brown, Jr., Chief Counsel
Russell F. Stryker, Jr., Associate Administrator for Policy and Administration
Thomas W. Pross. Jr., Associate Administrator for Shipbuilding, Operations and Research

Gary S. Misch, Associate Administrator for Marketing and Domestic Enterprise
Thelma Duggin, Coordinator of Minority Affairs, Office of the Secretary
B. Kelly Andrews, Director, Office of Intergovernmental Affairs, Office of the Secretary
Jeffrey N. Shane, Deputy Assistant Secretary for Policy and Program Development, Office of the Secretary
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
Robert E. Jones, Director, Transportation Computer Center, Office of the Secretary

Research and Special Programs Administration

Howard Dugoff, Deputy Administrator
Leon D. Santman, Director, Materials Transportation Bureau
Robert J. Ravera, Deputy Director, Transportation System Center
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Lester P. Lamm, Jr., Deputy Administrator, Federal Highway Administration
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Louis W. Roberts, Associate Director, Office of Operations Engineering, Transportation Systems Center
G. Kent Woodman, Chief Counsel, Urban Mass Transportation Administration

[FR Doc. 84-22956 Filed 8-28-84; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Supplement to Dept. Cir. Public Debt Series No. 25-84]

Series X-1986; Interest Rates

August 23, 1984.

The Secretary announced on August 22, 1984, that the interest rate on the notes designated Series X-1986, described in Department Circular—Public Debt Series—No. 25-84 dated August 16, 1984, will be 12⅜ percent. Interest on the notes will be payable at the rate of 12⅜ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-22865 Filed 8-28-84; 8:45 am]
BILLING CODE 4810-40-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 540; Ref. ATF O 1100.123A]

Delegation Order to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 55, Explosives

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* AFT O 1100.123, Delegation Order-Delegation by the Director of Certain Authorities in the Regulations Relating to Explosives in 27 CFR Part 181, dated April 1, 1980, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to commerce in explosives. We have determined that certain authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Associate Director (Compliance Operations):

a. To prescribe forms required by Part 55, under 27 CFR 55.21.

b. To approve written applications for use of alternate methods or procedures in lieu of a method or procedure specifically prescribed in regulations, under 27 CFR 55.22(a).

c. To withdraw authorization of any alternate method or procedure, under 27 CFR 55.22(a).

d. To approve written applications for emergency variations from the specified requirements in regulations, including construction, equipment, and methods of operation, under 27 CFR 55.22(b).

e. To withdraw authorization for any variation, under 27 CFR 55.22(b).

f. To exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of 27 CFR Part 55 and to require samples, under 27 CFR 55.32.

g. To authorize, pursuant to letter application, other means of identifying explosive materials, under 27 CFR 55.109(b)(2).

h. To authorize the use of other means of identification on fireworks, under 27 CFR 55.109(b)(3).

i. To authorize, pursuant to written applications, alternate construction for explosive storage magazines, under 27 CFR 55.201(b).

j. To withdraw authorization for any alternate explosive magazine construction approved prior to August 9, 1982, under 27 CFR 55.201(b).

k. To approve other methods for immobilizing vehicular magazines, under 27 CFR 55.208(a), 55.210(a) and 55.211(a).

l. To approve the storage, in one magazine, of explosive materials in excess of 300,000 pounds or detonators in excess of 20 million, under 27 CFR 55.213(a).

5. Redelegation.

a. Except as provided in paragraphs 5b and 5c, the authorities in paragraphs 4a through 4e and 4f through 4l above may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraphs 4b, 4d, and 4f through 4l above may be redelegated to Bureau Headquarters personnel not lower than the position of ATF specialist to approve variances, exceptions or other methods of operation which are identical to ones previously approved.

c. The authority in paragraph 4f, to require samples, may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

d. The authorities in paragraphs 4b, 4i, and 4k above may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, subsequent applications for alternate methods or procedures, alternate magazine construction and other methods for immobilizing vehicular magazines which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of chief, technical services.

e. The authorities in paragraphs 4c and 4e above may be redelegated to regional directors (compliance), to withdraw approval for variations and alternate methods and procedures which were approved at the regional level. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of chief, technical services.

f. The authority in paragraph 4d above may be redelegated to regional directors (compliance). Regional directors (compliance) may redelegate this authority to regional personnel not lower than the position of chief, technical services or area supervisor.

6. *For information Contact.* Sharon K. Hendee, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC, 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on August 29, 1984.

Approved: August 21, 1984.

Robert J. Maxwell,

Acting Director.

[FR Doc. 84-22954 Filed 8-28-84; 8:45 am]

BILLING CODE 4810-13-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and a revision and lists of the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 23, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits
2. Placement Certificate for Mobile Home
3. VA Form 26-8644
4. On occasion
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations
6. 16,000 responses
7. 2,667 hours
8. Not applicable

1. Department of Veterans Benefits
2. Computation of Loan Amount for Manufactured Home Unit
3. VA Form 26-8641a
4. On occasion
5. Businesses or other for-profit
6. 16,000 responses
7. 2,667 hours
8. Not applicable

1. Department of Veterans Benefits
2. Statement of Purchaser or Owner Assuming Seller's Loan
3. VA Form 26-6382
4. On occasion
5. Individuals or households; Businesses or other for-profit
6. 18,000 responses
7. 4,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Details of Expenses
3. VA Form 21-8049
4. On occasion
5. Individuals or households
6. 22,800 responses
7. 5,700 hours
8. Not applicable

1. Department of Veterans Benefits
2. Status of Loan Account—Foreclosure or Other Liquidation
3. VA Form Letter 26-567
4. On occasion
5. Businesses or other for-profit; Small businesses or organizations
6. 22,500 responses
7. 11,250 hours
8. Not applicable

Revision

1. Department of Veterans Benefits
2. Annual Report of Earnings
3. VA Form 21-8941
4. Annually
5. Individuals or households
6. 300 responses
7. 50 hours
8. Not applicable

[FR Doc. 84-22918 Filed 8-28-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, Cheyenne, WY, 120-Bed Nursing Home Care Unit; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a Nursing Home Care Unit (NHCU) at the Veterans Administration Medical Center (VAMC) in Cheyenne, Wyoming, and has determined that the potential environmental impacts will be minimal from the development of this project.

The NHCU project will provide new construction for 120 long-term care beds and will aid in meeting the identified need for such care. The proposed action will consist of a two-story structure built with associated parking space for approximately 40 automobiles. Replacement parking, due to demolition and relocation of an existing service and garage area, will provdie an additional 20± parking spaces.

The agency's preferred alternative is one which provides a direct connecting corridor to the two-story NHCU. This alternative is the proposed action to be taken. Three various alternative plans have been developed, considering three different site locations within the VAMC. In addition, the "no action" alternative was evaluated. However, the projected need of additional long-term care would not be met by the existing NHCU beds. No offsite construction alternative was considered because available site area for development exists at the VAMC.

The proposed alternative for implementation accommodates the site. Only minimal impacts on the human and natural environment affecting air quality will occur.

Construction of the project will have moderate adverse impacts on a vegetation area which serves as an important bird habitat. Mitigation will be undertaken during project development. Minor air quality impacts during construction will be limited with temporary controls instituted. These efforts will include sprinklering and/or chemical treatment of particulates as well as minimizing exposure of soil areas to reduce dust generation. Mitigation actions to reduce the impacts to the vegetation area will include restricting construction activity to the immeidate site and providing a balanced habitat involving replacement vegetation. Particular emphasis will be placed on groupings of plant material to produce an understory edge effect to the site.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality. (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been

reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 23, 1984.

By direction of the Administrator.

Everett Alverez, Jr.,

Deputy Administrator.

[FR Doc. 84–22917 Filed 8–28–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 169
Wednesday, August 29, 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

AFRICAN DEVELOPMENT FOUNDATION

BOARD MEETING

TIME: 2:00 p.m.—5:00 p.m.

PLACE: 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036.

DATE: September 7, 1984.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report
2. President's Report
3. Personnel/Transition Committee Report
4. Program Committee Report, Dr. Blackshear
5. Discussion of Proposed African Trip
6. Pre-scheduling of Board Meetings.

CONTACT PERSON FOR MORE INFORMATION: Ms. Marge Cook, (202) 634–9853.

Leonard H. Robinson, Jr.,
Acting President.
August 17, 1984.
[FR Doc. 84-23086 Filed 8-27-84; 3:47 pm]
BILLING CODE 9539-01-M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: August 23, 1984, 49 FR 33527.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 29, 1984, 9:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Docket No. 83–39: Agreement No. 10464—Review of the record.

Francis C. Hurney,
Secretary.
[FR Doc. 84-22989 Filed 8-27-84; 9:28 am]
BILLING CODE 6730-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-29]

TIME AND DATE: 9 a.m., Wednesday, September 5, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, DC 20594.

STATUS: The first three items are open to the public; the remaining two items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Highway Accident Report*—G&D Auto Sales, Inc., Tow Truck Towing Automobile/Branch Motor Express Company Tractor-Semitrailer/Town of Rehoboth Schoolbus Collision, State Route 44, Rehoboth, Massachusetts, January 10, 1984.
2. *Highway Accident Report*—Church Bus/Tractor-Cargo Tank Semitrailer Collison on State Route 61, near Devers, Texas, December 23, 1983.
3. *Pipeline Accident Report*—Columbia Gas of West Virginia, Inc., Explosion and Fire, South Charleston, West Virginia, October 17, 1983.
4. *Opinion and Order:* Administrator v. Simonye, Docket SE–6042; disposition of respondent's appeal.
5. *Opinion and Order:* Administrator v. Johnson, Docket SE–5818; disposition of the respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Fleming, (202) 382–6525.

H. Ray Smith, Jr.,
Federal Register Liaison Office.
August 24, 1984.
[FR Doc. 84-23036 Filed 8-27-84; 11:16 am]
BILLING CODE 7533-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of August 27, 1984 and Weeks of September 3, 10, 17, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 27

No Commission Meetings scheduled.

Week of September 3

Tentative.

Tuesday, September 4

2:00 p.m.
Discussion and Vote on Environmental Qualification of Electrical Equipment (Public Meeting) (Title Change)

Wednesday, September 5

10:00 a.m.
Discussion of Indian Point Probabilistic Risk Assessment (Public Meeting)
2:00 p.m.
Discussion of Reexamination of Exemption Process (Public Meeting)

Thursday, September 6

10:00 a.m.
Discussion/Possible Vote on Proposed Rule on Backfitting (Public Meeting)
2:00 p.m.
Discussion of Commission Policy for Handling Last Minute Allegations (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 7

10:00 a.m.
Discussion of Options for TMI–1 Restart (Public Meeting) (Time Change)
(Callaway meeting postponed)

Week of September 10

Tentative.

Monday, September 10

2:00 p.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)

Tuesday, September 11

2:00 p.m.
Briefing on BWR Pipe Crack Report (Long Range Plan) (Public Meeting)

Thursday, September 13

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 17

Tentative.

Wednesday, September 19

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Quarterly Progress Report on Safety Goal Evaluation Report (Public Meeting)

Thursday, September 20

10:00 a.m.
Industry Views on Decommissioning (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 21

10:00 a.m.

NUMARC Briefing on Readiness to Operate (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

August 24, 1984.

[FR Doc. 84–23101 Filed 8–27–84; 3:59 pm]

BILLING CODE 7590–01–M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 3, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Wednesday, September 5, 1984, at 10:00 a.m. An open meeting will be held on Thursday, September 6, 1984, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 5, 1984, at 10:00., will be:

Settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Institution of administrative proceedings of an enforcement nature.

Opinion.

The subject matter of the open meeting scheduled for Thursday, September 6, 1984, at 2:30 p.m., will be:

Consideration of whether to adopt Rule 17f–5 under the Investment Company Act of 1940 which would permit registered U.S. and Canadian investment companies to keep their foreign securities, cash and cash equivalents with foreign custodians under certain conditions. Consideration will also be given to the status of existing exemptive orders relating to investment company foreign custody arrangements. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Molinari at (202) 272–2467.

Dated: August 23, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–22972 Filed 8–27–84; 9:27 am]

BILLING CODE 8010–01–M

Federal Register

Wednesday
August 29, 1984

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 8370

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

[Circ. No. 2551]

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites, by clearly stating the actions specifically prohibited under the regulations and the penalties that would apply upon conviction. It states the grounds for exemption from Special Recreation Permit requirements, authorizes the Director of the Bureau of Land Management to set recreation permit fee schedules to help reimburse the United States for administrative costs incurred in permitting recreational use of public lands, replaces the requirements that an applicant for a waiver of fees submit documentation of its official recognition as an educational or scientific institution with discretion on the part of the authorized officer to require such documentation, allows commercial educational users to obtain such waivers, and states the appeals procedures.

EFFECTIVE DATE: September 28, 1984.

ADDRESS: Inquiries or suggestions should be sent to: Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bruce Brown, (202) 343–9353.

SUPPLEMENTARY INFORMATION: The proposed rulemaking revising the special recreation permit regulations was published in the **Federal Register** on May 6, 1983 (48 FR 20630), and, because of a production error in the **Federal Register**, republished on May 18, 1983 (48 FR 22462). Comments were invited for a period of 60 days beginning May 18, 1983, during which period a total of 111 comments were received addressing the proposed regulations, with 25 coming from outfitters, 1 from an office of a Federal agency, 2 from attorneys, 9 from associations, 4 from States, 1 from local government, 66 from individuals, and 3 from educational institutions. In addition, 84 comments were received on the proposed recreation permit policy published in the **Federal Register** on April 8, 1983 (48 FR 15275), many of which discussed the proposed regulations as well. All of the comments have been given careful consideration during the decisionmaking process on this final rulemaking.

There were wide variations in the subject matter of, and the positions taken in, the comments on the proposed rulemaking. Some comments supported the proposed rulemaking in general, many opposed it for various general reasons. Numerous comments opposed the fee schedule published in the preamble of the proposed rulemaking. In addition, several comments addressed the proposed special recreation permit policy published in the **Federal Register** on April 8, 1983 (48 FR 15275), and several others referred to the proposed policy of the U.S. Forest Service. These comments were considered to the extent their applicability to this rulemaking could be determined.

Many of the comments contained discussions of specific sections of the proposed rulemaking and recommended changes, some of which have been adopted by the final rulemaking. This preamble will only discuss those sections that were the subject of specific comments.

Special Recreation Permit Fee Schedule

The schedule of permit fees published in the preamble of the proposed rulemaking generated numerous comments addressing several different aspects of the schedule.

Some comments addressed the authority to establish fees, the possibility of using the Consumer Price Index to guide annual fee increases, various specific fee rates, the amount of environmental degradation likely as a basis for setting fees, and the specific fee schedule each type of permittee is required to pay.

Some stated, in general terms, that the whole matter of permit fees should be further studied before fees are decided upon. However, the Bureau of Land Management is required by 43 CFR 8372.4 to charge use fees for special recreation permits. The fee schedule reflects the criteria for establishing such fees as described in section 4(d) of the Land and Water Conservation Fund Act, and is fair and equitable. Moreover, the Bureau is authorized to adjust the fees should it proves necessary or desirable to do so.

One comment suggested that fees be pegged to the Consumer Price Index. The Consumer Price Index does not reflect the true increase in value of recreation compared to that of the other elements used to calculate the Index. Inflation in the costs of other commodities and services has not been as rapid as that in the cost of recreation.

One comment preferred a flat fee, amount unspecified, for all recreational users of the public lands plus an additional fee for commercial outfitters of 3 percent of their adjusted gross receipts. The user day fee schedule for commercial permits is tied to the charges the operators assess their clients. This schedule includes both the cost of issuing and administering the permit and a charge for the opportunity to make a profit using Federal resources. Applicants for competitive permits are assessed a flat fee or percentage of gross, which also represents the cost of issuing and administering the permit plus a return for the use of Federal resources. Other special recreation permits are issued at a flat user day fee that represents the average cost of issuance and administration of these permits.

Some comments argued that certain users of public lands should be charged greater fees because of the greater impact of their preferred recreation on the environment. The criteria for establishing fees are set forth in section 4(d) of the Land and Water Conservation Fund Act (16 U.S.C. 460/-6(d)). This law requires consideration to be given to the benefits received by the recipient, the direct and indirect cost to the Government, the public policy or interest served, the comparable recreation fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors. There is no specific provision for basing fees on the degree of environmental impact. Such a criterion would be very difficult to establish since monetary value assigned to environmental degradation would be difficult to determine, be highly controversial, and create a wide range of fees that could not be adequately justified. However, environmental impact it considered in reviewing a permit application. The National Environmental Policy Act, through the environmental analysis-environmental impact statement process, enables the authorized officer to determine how the event or activity affects the environment. Also, as required in 43 CFR 8372.5(b), stipulations to mitigate adverse impacts are made part of the terms and conditions of the permit, if it is issued. In an environmental impact statement is required, the cost of that process will be assumed by the applicant.

(1) Commercial Use

Several comments stated that the proposed fee increases for commercial outfitters would be consumed by bookkeeping costs for the Bureau and greatly add to such costs of the outfitters. They felt the means of calculating and collecting fees would be too complex for all concerned.

Other comments said that 3 percent of the adjusted daily charge of commercial outfitters would be too high and would drive some out of business. They suggested no more than a 1 percent fee. Others stated that 3 percent of the adjusted daily charge would not be enough suggesting 5 percent to reflect the profit making opportunities afforded commercial outfitters.

Some comments urged that the commercial fee should be the same flat rate for all commercial permittees. This proposal has been rejected because it would impose unfair burdens and disproportionate costs on outfitters with low daily charges. Some outfitters provide very limited services, such as cross-country ski trail marking and grooming, for which they charge a small amount, while other outfitters may provide very costly services such as transporting skiers by helicopter. If the cross-country ski operator was to pay the same permit fee as the helicopter ski operator, it would represent a much greater percentage of the cross-country operator's income.

One comment suggested that commercial outfitters should pay no less than the oil and gas lease royalty rate, 12½ percent, for their use of the public lands, and that private recreationists should pay no more per day than do ranchers to graze livestock on the public lands, which currently is $0.046 per day per animal. Fees for grazing allotments and oil and gas production are established by separate enabling legislation and have no bearing on recreation use or fees.

Some comments said that the $100 minimum permit fee is excessive considering that they only outfit a limited number of commercial trips each year. This fee is not excessive because it is intended to attempt to recover the cost of issuance and it applies to a permit with a term of up to 5 years.

Others comments suggested that outfitters who charge high prices should pay a proportionally smaller fee because they relieve the Government of having to provide as many services to their clients. There is no justification for charging higher-cost commercial outfitters lower permit fees based on level of impact or service provided. Permit fees relate to administrative cost and value to the user, not environmental impact or services offered. It is not reasonable to expect that the United States would or should supply services for the public that are normally provided by outfitters.

After considering all these comments there did not appear to be enough justification to modify the commercial fee schedule contained in the proposed rulemaking. While the schedule requires some calculation to determine the fee paid the Bureau, the benefits of such a schedule outweigh the burdens, and it is more acceptable than the alternatives. The fees each commercial outfitter will pay provide a fair and equitable return for the privilege of using Federal resources for commercial purposes. The fee schedule proposed was carefully crafted after extensive consultation with a special committee from the outfitter and guide industry, and officials of the U.S. Forest Service, who have adopted the same schedule.

(2) Competitive Use

Several comments argued that $2.00 per user day or 3 percent of the gross receipts for competitive events would be inflationary and more than some individuals or recreation organizations could pay. The increases are designed to allow the Bureau to recover a greater portion of its costs. Fees have not been increased, except in certain localities, since 1972. The fee for competitive use remains at $2.00 or 3 percent of the gross receipts, whichever is greater, so that the fee can be related to the cost of issuing and monitoring the permit and the value of the resource to users.

(3) Other Uses.

Several comments said that the $2.00 per user day fee paid by private recreationists would in some cases be greater than the fees paid by some commercial outfitters. This is true. As explained earlier in this preamble, the fees charged for non-commercial uses are intended to recover the costs of issuing and administering the permits. It would be impossible to charge daily fees for non-commercial users equal to or less than the amount paid by all commercial outfitters and still cover the cost of administering the permit program. The proposed non-commercial fee was based on the Bureau-wide average of the costs of issuing permits and administering the program. A comparison of this average cost with the average fee paid by commercial permittees reflects a lower fee to non-commercial users.

Since the time the proposed rulemaking was published, some of our field offices have initiated a non-commercial fee as authorized by existing regulations. Based on this experience and after considering the comments on the proposed rulemaking it has been determined that the fee for non-commercial permits should be reduced to $1.50 per user day. This is a reasonable proportion of the average fee charged commercial permittees. In most cases this fee will be less than the commercial fee and still cover the cost of administering the permit program.

One comment said that recreation fees charged by all Federal agencies should be the same. While all the fees adopted are not identical with those of other land-managing agencies, they are comparable, and differ only because of differences in management requirements of the several agencies. Neither the Forest Service nor the National Park Service objected to the proposed fee schedule. The commercial fee schedule is identical to that proposed by the Forest Service.

In some particular cases the fee schedule may be adjusted to accommodate joint management agreements with other agencies. In these cases a required permit may be issued jointly or separately by the agencies involved. When issued jointly, one fee will be charged and revenues split accordingly between the agencies. When separate permits are issued by more than one agency, it is intended that the combined fees charged would be no more than the amount that would have been charged for the entire permitted activity by the agency having the higher fee.

One comment said it was confusing for the Bureau to use the term "user day" instead of the term "service day" employed by the Forest Service to mean the same thing. The term "user day" is more appropriate for use on the public lands than "service day" because it does not imply that permit fees are based on services provided by the Bureau of Land Management.

Several comments suggested that permit fees should be allocated to the benefit of the same area from which they were collected. The Department of the Interior Appropriation Act for fiscal year 1981 requires revenues from recreation fees to be deposited in the general fund of the Land and Water Conservation Fund instead of a special separate fund provided under section 4(f) of the Land and Water Conservation Fund Act. Prior to the FY 1981 Appropriation Act the revenues in the special account were available for appropriation, without prejudice to appropriations from other sources for the same purposes, for any authorized

outdoor recreation function of the Bureau of Land Management. Now revenues cannot be earmarked to support the activities that generated them, but are available only by general appropriation from the Land and Water Conservation Fund.

After considering all the comments on the proposed special recreation permit fees, the following revised schedule has been adopted. It states the fees that are required for special recreation uses of public lands administered by the Bureau of Land Management in accordance with 43 CFR 8372.4(a)(1). This fee schedule will be phased in over a 3-year period beginning in 1984. This schedule was also published in the Federal Register on February 10, 1984 (49 FR 5300), as part of the final special recreation permit policy. The fee schedule was effective February 10, 1984. Allowances for proportional fees may be made, based on use of other lands along with public lands. Exceptions to the fees listed below may be granted by written order from the Director.

(1) *Commercial use*—$100 for the term of the permit or the amount from the table below per participant, whichever is greater, is required. In determining the adjusted daily charge, the authorized officer will recognize that operators may, under certain circumstances, adjust their advertised customer rates, or that certain associated customer charges may be deducted from the daily amount charged participants. Deductions may be limited to off-site transportation and lodging expenses either before or after the associated permitted use, or fees paid to others for services off public lands. Documentation of the basis for adjusted customer rates may be required by the authorized officer.

Adjusted daily charge collected by permittee from each participant	Fee paid to the bureau per user day		
	Feb. 10, 1984	Jan. 1, 1985	Jan. 1, 1986
$8.00 or less	$0.25	$0.25	$0.25
$8.01 to $20.00	.30	.35	.40
$20.01 to $35.00	.45	.60	.80
$35.01 to $50.00	.60	.95	1.30
$50.01 to $75.00	.80	1.35	1.90
$75.01 to $100.00	1.05	1.80	2.60
$100.01 to $125.00	1.30	2.35	3.40
$125.01 to $150.00	1.50	2.80	4.10
$150.01 to $175.00	1.80	3.30	4.90
$175.01 to $200.00	2.00	3.80	5.60
$200.01 to $250.00	2.40	4.55	6.75
$250.01 to $300.00	2.90	5.55	8.25
Over $300.00	(1)	(2)	(3)

[1] 1 percent of adjusted daily charge per participant.
[2] 2 percent of adjusted daily charge per participant.
[3] 3 percent of adjusted daily charge per participant.

(2) *Competitive use*—$2.00 per user day or 3 percent of the gross receipts, whichever is greater, is required. When use is both commercial and competitive, the competitive fee shall be charged. Gross receipts include total income which has been generated from the permitted activity before deducting costs such as insurance, prizes, other permit or license fees, etc. Gross receipts would also include total supplemental moneys collected through sponsor contributions, other donations, the sale of clothing, specialized equipment, or food and beverages when sold on an incidental basis at the permitted activity.

(3) *Other uses*—$1.50 per user day for uses other than commercial or competitive events, uses involving more than 50 vehicles including those of participants and spectators, or uses taking place in special areas for which permits are required.

Section 8372.0–5 Definitions

The definition section of the proposed rulemaking was the subject of a number of comments. The definitions used in the proposed rulemaking have been carefully reviewed in an effort to simplify and clarify the defined terms. Comments requested that definitions be added in the final rulemaking for the following terms: "user day," "gross receipts," "actual cost" and "adjusted daily charge." The term "user day" is defined in the existing regulations at 43 CFR 8372.0–5(h). A definition for the term "actual costs" is not necessary. When actual costs are imposed under § 8372.4(a)(2), the user will have an opportunity to review an itemization of the costs. The other two terms, "gross receipts" and "adjusted daily charge", are not referred to in the regulations, but rather in the fee schedule included in the preamble of the proposed rulemaking. Explanations of these terms have been included in the discussion of the fee schedule in this preamble.

One comment recommended that the definition of "special area" in the existing regulations at § 8372.0–5(g) be amended so that special areas would include areas where control measures are necessary for the protection of public health, safety or the environment. This change does not need to be included in the final rulemaking because the existing definition includes areas deemed to require special management and control measures for their protection, and the regulations at 43 CFR 8364.1(a) permit the authorized officer to close or restrict access to areas for human health or safety reasons. There is no need to include that concept in the definition of "special area" and no justification for requiring a permit or charging a fee to enter such restricted or closed areas.

One comment suggested that "educational use" is too narrowly defined, that it should include more than just accredited institutions of learning. The suggestion is not adopted. It would be unnecessarily burdensome and expensive for the Bureau to review a multitude of exemption requests from a variety of entities without a readily applicable standard for educational use. The requirement that the applicant be an accredited institution of learning provides an administratively convenient standard. A broader definition would also be subject to varying interpretations in different offices of the Bureau.

Section 8372.0–7 Enforcement

One comment opposed any regulation of recreation on public lands. However, some regulation of recreation on public lands is necessary to protect persons and property, to maintain their comfort and well being, and to protect resources. Access to certain special areas is controlled to prevent overcrowding and degradation of the recreational and environmental resources present. Several other commenters supported the enforcement provisions of the proposed rulemaking, but suggested that the enforcement authority be extended to prevent off-road vehicle users from interfering with livestock grazing and to control the behavior of spectators as well as recreational event participants. These concerns are addressed in the grazing regulations (43 CFR Part 4100) and in the rules of conduct (43 CFR Part 8360).

Several comments objected to the provisions in § 8372.0–7(a) (3) and (4), which, respectively, prohibit knowing participation in an event or use for which a permit is required but has not been issued, and prohibit the permit holder from failing to place a copy of it where all participants may read it. These two provisions have been adopted as proposed. Individual participants will be held co-responsible with the sponsor-organizer of an unauthorized event only where the government can prove that individual's guilty intent. As for posting the permit, the rulemaking contemplates that it will be posted at the staging area of each activity or at some other reasonable place where participants can see it. This is necessary so that participants may be assured the event is legal, but it does not require the permit to be visible to participants at all times during the event, as one comment suggested.

One comment suggested that the permittee should carry a copy of the permit at all times during the

recreational use and present it to Bureau of Land Management officials upon request. This suggestion has been adopted in the final rulemaking.

Section 8372.0–7 Penalties

Several comments addressed the Penalties section, § 8372.0–7(b), urging that penalties be increased, and that penalties be levied for environmental degradation by permit holders. Penalties are set by section 303 of the Federal Land Policy and Management Act (43 U.S.C. 1733), and violation of environmental stipulations made under 43 CFR 6372.5(b) will be subject to penalty under section 303.

One comment questioned whether permit holders as well as unauthorized users will be subject to civil suit. A provision to this effect has been adopted in the final rulemaking, and permittees may be civilly liable for permit or regulations violations.

Section 8372.1–3 Exceptions

Several comments addressed § 8372.1–3(a), which exempts Bureau of Land Management sponsored or cosponsored events from permit requirements. One opposed this provision as too broad, allowing Bureau personnel to play favorites with outfitters. However, it would be counterproductive, burdensome and unnecessary for the Bureau to obtain a permit in order to use or sponsor use of the public lands. Any alleged abuse that might occur could be challenged by appeal, or even called to the attention of the Inspector General of the Department of the Interior. The subsection has been adopted as proposed.

Two comments suggested, respectively, that recreation permit fees should be waived for groups performing volunteer work on the public lands and for nonprofit groups conducting events to benefit charitable causes or institutions. Volunteer worktrips would normally be sponsored or cosponsored by the Bureau of Land Management, and would therefore be exempted from the permit requirement by § 8372.1–3(a). However, there is no authority in Departmental regulations or law for general exemptions for volunteers or nonprofit groups. The authorized officer will evaluate requests for such exemptions on a case-by-case basis.

One comment asked for a separate fee and permit category for recreational users that do not fit readily into the fee schedule in this rulemaking, such as local government entities that run outings. The suggestion has not been accepted in the final rulemaking because 4 permit categories can accommodate all uses requiring a special recreation permit. The fees are not excessive, and there is no authority for fee waivers for local government entities.

Several comments questioned the provision in § 8372.1–3(b) of the proposed rulemaking, which allows exemption from permit requirements for events affecting less than one mile of public lands and not threatening resource damage. The objection to the provision was that one mile may be an arbitrary figure. This exemption has been in effect since 1978 and has worked well. It gives the authorized officer discretion to require a permit and fee if significant damage will occur, regardless of the small acreage affected, and will continue to provide for a fair return for the use of public land resources. This provision applies also to all river use, so that permit and fee requirements may be effective for river segments adjacent to more than one shoreline mile of public lands. This clarification has been made in the final rulemaking.

One comment stated that, in some areas, it may be necessary to provide a special exception to the permit requirements when scattered small tracts of public lands are involved and recreational use affects land owned or administered by a variety of agencies or entities. The Bureau manual and other directives of the Bureau of Land Management are the appropriate vehicles for instructing field personnel in how to deal with "checkerboard" landownership areas in implementing these regulations. Allowance for proportional use may be made, based on use of other land along with public lands, and exceptions to the fee schedule may be granted by written order from the Director.

Numerous comments addressed § 8372.1–3(c) of the proposed rulemaking, which allows the authorized officer to waive permit and fee requirements for non-commercial, competitive, off-road vehicle events with no cash prizes, no public advertising and involving fewer than 50 vehicles. These comments were of three general categories: opposition to a permit requirement for competitive off-road vehicle events of any size, questions whether permits and fees apply to other sorts of events, and requests that the threshold number of vehicles be lowered, so that events featuring more than 10 vehicles (or some other similarly low number) would be subject to permit and fee requirements.

Competitive off-road vehicle events require a permit primarily to assure that environmental resources will not be adversely affected. There is no need to lower the threshold, because the authorized officer has discretion to require permits and fees for all competitive events with fewer than 50 vehicles if circumstances require. However, § 8372.1–3(c) has been amended to add a condition that there be no likelihood of significant damage to the resources or need for monitoring. This section of the rulemaking has also been amended to apply the 50 vehicle limitation to other kinds of competitive events, where vehicles are used to get to the event site on public lands, even if the vehicles are not used in the event itself, and to include spectators' vehicles in the limitation. The 50 vehicle limitation has been retained in the regulations. Although there are no standard criteria to quantify this or any number, it represents a reasonable figure, justifiable from past experience. Standard criteria, applicable to the wide variety of landscape types where events could occur on public lands, would be inappropriate.

One comment urged that fees be waived if an Environmental Assessment has determined that there is no significant environmental impact expected from the event. As stated above, the fee schedule is not designed to compensate for environmental impacts, but rather to pay administrative costs and, in the cases of commercial and competitive use, to recover fair value for the use of public land resources.

One comment urged that a filled quota of long term recreation permits for a given area should not alone bar approval of an application for a one-time-only use. The suggestion has not been included in the final rulemaking. Quotas or allocations in specific areas are determined through the land management planning process and are established as the maximum allowable use an area can sustain and meet the prescribed resource management objectives. Therefore, use above this level would not be consistent with the adopted management plan. The authorized officer retains discretion to allow such one-time-only uses if circumstances, such as underuse by a permit holder, or cancellation of scheduled use, allow such use.

Section 8372.4 Fees

Several comments questioned whether it was intended to remove from the regulations the provision in existing § 8372.4 for a $10.00 filing fee. This provision has been removed in this rulemaking. The filing fee requirement has been replaced by the $100 minimum

permit fee requirement for commercial permits contained in the fee schedule.

Many comments objected to the provision in § 8372.4(a)(2) of the proposed rulemaking, which would allow the authorized officer to charge fees higher than those in the fee schedule under certain circumstances. They feared the authorized officer could indiscriminately raise fees. This provision has been removed in the final rulemaking. While the fee schedule may not allow some Bureau offices to recover the entire administrative costs of issuing permits, these instances will be few and on a Bureau-wide average will even out. If circumstances require, exceptions to the fee schedule may be granted by the Director as provided in § 8372.4.

Other comments objected to the provision in § 8372.4(a)(3), which would allow the authorized officer to require a non-refundable advance payment of part or all of the fee. In the proposed rulemaking, this provision had two purposes: to recover the costs of processing the application, and to discourage users from failing to appear for their appointed reservation. Failure to appear without notice may make the allocated resource unavailable to other possible users. In response to the comments, and to clarify this intent, paragraph (3) has been revised and relocated as subparagraph (2) in redesignated § 8372.4(b), which describes the procedures for payment of use fees. Revised paragraph 8372.4(b)(2) requires use fees to be nonrefundable where the amount of intended use is precisely specified in the application, except when notification of whole or partial cancellation is made in sufficient time to allow reallocation of use to others. This paragraph also states that, in the discretion of the authorized officer, such refunds are subject to a minimum fee for processing the permits.

Several comments addressed § 8372.4(a)(4), which provides for the collection of actual costs to the United States instead of the fees, when the estimated costs of permit issuance and monitoring exceed $5,000. One comment suggested that the deadline for notification of the applicant that actual costs will be required be extended from 15 to 30 days after receipt of the application. This suggestion has been adopted in the final rulemaking. However, a suggestion that permittees be allowed to substitute the value of work done that is incidental to their recreation use (removal of litter, and repair of trail damage, left by others, for example) for the fees or actual costs paid to the United States has been rejected. Permittees are responsible for their own litter and trail damage as a permit stipulation or condition. This is necessary to mitigate adverse impacts to environmental resources. Any additional work that a permittee may perform is strictly on a volunteer basis and will not normally reduce the fees due the Government. Commercial permittees may perform such work to make the recreational experience more attractive to their customers. However, there may be specific instances where the authorized officer may waive permit and fee requirements under the criteria of § 8372.1–3. Requests for exemption will be evaluated on a case-by-case basis.

Several comments addressed § 8372.4(c) of the proposed rulemaking, which gives the authorized officer discretion to require applicants for waiver of fees to provide documentation of their official recognition as educational or scientific institutions. One comment supported the provision as proposed, but others suggested that the waiver provision be extended to non-profit organizations, or that temporary use permits be issued instead of recreation permits because the use is not primarily recreational. These suggestions have not been adopted because the rulemaking is intended to parallel the Departmental regulations at 36 CFR Part 71, which allows waivers only for scientific and educational uses and does not provide for temporary use permits for such uses.

Section 8372.6 Appeals

Two comments discussed the provision in § 8372.5(b) that decisions of the authorized officer shall remain effective pending appeal unless the Secretary of the Interior rules otherwise—one in support, one in opposition. The provision for permit decisions to remain effective pending appeal is necessary to prevent frivolous appeals from impairing authorized and legitimate use of the public lands. A provision has been added to allow an aggrieved party believing that he or she is adversely affected by the decision, or that harm to public lands or resources may occur, to petition the Secretary for a stay of the decision pending appeal. The suggestion in one of the comments that decisions granting or denying such stays be made by the Interior Board of Land Appeals instead of the Secretary is rejected. The Secretary is better able to make the prompt decisions that may be necessary to prevent harm to the parties.

One other comment, not addressing any specific section of the proposed rulemaking, requested clarification of the term "public lands" as used in this rulemaking. For purposes of this subpart, "public lands" means any land or interest in land administered by the Bureau of Land Management, and waters related thereto. Where appropriate, the rulemaking has been amended to reflect this meaning.

The principal author of this final rulemaking is Bruce R. Brown, Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this final rulemaking is not a major Federal action signficantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Several comments challenged these determinations in the proposed rulemaking, stating that there will be a major financial impact on recreation users who will be required to pay fees and on outfitters and guides who will be required to pay a portion of their adjusted daily charges. However, the criterion in Executive Order 12291 for determining whether a rule is major is whether its total annual impact will be $100,000,000 or not. In this case, the financial impact of the final rulemaking will be less than that amount. In addition, while the price of permit fees will be increased, the fees will be phased in over a 3-year period.

The final rulemaking will only affect individuals and groups using the public lands and related waters under the circumstances and for the recreation purposes discussed above, and educational institutions using the public lands and related waters for educational or scientific purposes. The increase in fees will compensate the United States for administering the program, with no significant impact on any entity.

Information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004–0119.

List of Subjects in 43 CFR Part 8370

Public land—recreation, Recreation areas, Surety bonds.

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g–n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*–6a), and the National Trails System Act (16 U.S.C. 1241 *et seq.*), Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: April 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 8730—[AMENDED]

1. Part 8370 is amended by adding immediately after the heading the note:

Note.—The information collection requirements of 43 CFR Part 8370 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004–0119. The information will be used to determine whether applicants for Special Recreation Permits on public lands should be granted such permits. The obligation to respond is required to obtain a benefit.

§ 8372.0–3 [Amended]

1. Section 8372.0–3 is amended by correcting the citation "16 U.S.C. 460(1–6a)" to read "16 U.S.C. 460*l*–6a."

§ 8372.0–5 [Amended]

2. Section 8372.0–5 is amended by:

a. Revising paragraph (b) to read as follows:

* * * * *

(b) "Actual expenses" are expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants."

* * * * *

b. Revising paragraph (e) to read as follows:

* * * * *

(e) "Educational use" is an academic activity sponsored by an accredited institution of learning.

* * * * *

3. Section 8372.0–7 is revised to read as follows:

§ 8372.0–7 Enforcement

(a) *Prohibited acts.* On all public lands and related waters, it is prohibited to: (1) Fail to obtain a permit and pay any fee required by this subpart; (2) violate stipulations or conditions of a permit issued under authority of this subpart; (3) participate knowingly in an event or use subject to the permit requirements of this subpart where no such permit has been issued; (4) fail to post a copy of any commercial or competitive permit where all participants have the opportunity to read it; and (5) fail to show a copy of the special recreation permit to a Bureau of Land Management employee or a participant upon request.

(b) *Penalties.* (1) Any person convicted of committing any prohibited act in this subpart, and violators of regulations or permit terms or stipulations, may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. (2) Authorized as well as unauthorized users may be subject to civil action for unauthorized use of the public lands or related waters and their resources, or violations of the permit terms or stipulations.

4. A new § 8372.1–3 is added to read as follows:

§ 8372.1–3 Exceptions.

(a) Special Recreation Permits are not required for uses that are sponsored or co-sponsored by the Bureau of Land Management.

(b) The authorized officer may determine that permits and fees are unnecessary where a use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of significant damage to public land or water resource values.

(c) The authorized officer may waive permit and fee requirements for competitive events that are not commercial when the events comply with off-road vehicle designations for the use area, no cash prizes are awarded, fewer than 50 vehicles including those of participants and spectators are involved, there is no public advertising for the event and there is no likelihood of significant damage to public land or water resource values or need for monitoring.

5. Section 8372.4 is amended by:

a. Revising paragraph (a) to read as follows:

§ 8372.4 [Amended]

(a) *Fees.* (1) Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the **Federal Register** and otherwise made generally available to the public.

(2) Actual costs to the United States shall be charged in lieu of the fees provided in the schedule when the estimated cost of issuing and monitoring the permit (estimated at the time of application) exceeds $5,000, except when the total estimated fees from the schedule over the term of the permit exceed the estimated actual cost. In that case, the fees from the schedule shall be charged. The authorized officer shall notify the applicant in writing of such charges within 30 days of receipt of the permit application and shall not process said application until payment has been made for such charges.

* * * * *

b. Removing paragraph (b) in its entirety.

c. Redesignating paragraphs (c) and (d), as (b) and (c), respectively, and amending paragraph (b), formerly paragraph (c), by redesignating subparagraphs (2) and (3) as (3) and (4), respectively, and inserting a new paragraph (2) to read as follows:

(2) Where the amount of intended use is precisely specified in the application, the fee shall be nonrefundable. However, on receipt by the authorized officer of notification from the applicant of the intention not to use the permit in whole or in part, in sufficient time to allow reallocation of use to others, the authorized officer may refund the fee, less a minimum amount for permit processing.

d. Amending paragraph (c), formerly paragraph (d), by removing paragraphs (c) (4) and (5) in their entirety and revising paragraph (c)(3) to read as follows:

(c) * * *

(3) Applicants for waiver of fees on this basis may be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State or local government bodies or any other documentation necessary to demonstrate educational use as defined in § 8372.0–5(e) of this title. The use of recreational resources for which a waiver on this basis is requested shall relate directly to scientific or educational purposes and shall not be primarily for recreational purposes.

6. New § 8372.6 is added to read as follows:

§ 8372.6 Appeals.

(a) Any person adversely affected by a decision of the authorized officer under this part may appeal under Part 4 of this title from any final decision of the authorized officer.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for stay of decisions may be made to the Secretary.

[FR Doc. 84-22879 Filed 8-28-84; 8:45 am]

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federal register

Wednesday
August 29, 1984

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 35a

Employment Tax; the Application of Information Reporting and Backup Withholding to Payments by Foreign Offices of U.S. and Foreign Brokers and by U.S. Offices of Banks and Brokers, and Other Related Matters; Temporary Regulation

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 7972]

Employment Tax; the Application of Information Reporting and Backup Withholding to Payments by Foreign Offices of U.S. and Foreign Brokers and by U.S. Offices of Banks and Brokers, and Other Related Matters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of temporary regulations.

SUMMARY: This document contains an amendment to Treasury decision 7966 and the **Federal Register** publication thereof beginning at 49 FR 33236 containing the temporary regulations relating to the application of information reporting and backup withholding to payments by foreign offices of U.S. and foreign brokers, to payments by U.S. offices of banks and brokers, and to the payment and collection of interest or original issue discount by custodians, nominees, or agents of payees and as well to other related matters.

These regulations affect the foregoing persons and provide the public with guidance necessary to comply with the Interest and Dividend Tax Compliance Act of 1983.

DATE: This amendment to the temporary regulations is effective for payments made after July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Charles C. Saverude of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (202–566–3323, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1984, the **Federal Register** published amendments to the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. These amendments were made to conform the regulations to various sections of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369).

Need for Amendment

As issued and published, Treasury Decision 7966 omitted a question and answer (Q&A) relating to information reporting under section 6049 and backup withholding by custodians, nominees and other agents of payees. This amendment adds this Q&A. The Q&A is not intended to address comprehensively issues raised by the Interest and Dividend Tax Compliance Act of 1983. Taxpayers may rely for guidance on this Q&A, which the Internal Revenue Service will follow in resolving issues expressly raised herein arising under the Interest and Dividend Tax Compliance Act of 1983. No inference, however, should be drawn regarding questions not expressly raised and answered.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this amendment to the temporary regulations is not subject to review under Executive Order 12291 or the Treasury and OBM implementation of the Order dated April 20, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for this regulation. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Charles C. Saverude of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Amendment of T.D. 7966

PART 35a—[AMENDED]

Accordingly, 26 CFR Part 35a, as amended by Treasury decision 7966 which was the subject of FR Doc. 84–22290 is amended as follows:

Section 35a.9999–4 is amended by revising the section heading and by adding immediately after Question and Answer 4 a new Question and Answer 5 to read as follows:

§ 35a.9999–4T Questions and answers relating to the application of information reporting and backup withholding to payments by foreign offices of United States and foreign brokers and by United States offices of banks and brokers, and other related matters (temporary).

* * * * *

Q–5. For purposes of the regulations under § 35a.9999–5, under what circumstances is a custodian, nominee or other agent of a payee subject to information reporting or backup withholding with respect to interest or original issue discount paid or collected outside the United States?

A–5. (i) The provisions of Q&A's 2, 3, 4, 5, 6, and 16 of § 35a.9999–5 indicate that the payment or collection outside the United States of interest or original issue discount on obligations described therein by a person acting as a custodian, nominee or other agent of the payee with respect to those obligations may be subject to information reporting under section 6049 unless the payee is an exempt recipient or a foreign person.

(ii) For purposes of the provisions described in subdivision (i), a payment or collection of interest or original issue discount outside the United States by a person acting in its capacity as a custodian, nominee or other agent of the payee with respect to such payment or collection is not subject to information reporting under section 6049 by that agent unless the agent is either (A) a United States person, (B) a controlled foreign corporation within the meaning of section 957(a), or (C) a foreign person 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the collection or payment was effectively connected with its conduct of a trade or business within the United States.

(iii) For purposes of section 6049 and the regulations under § 35a.9999–5, an agent (described in subdivision (ii)) of the payee paying or collecting interest or original issue discount outside the United States with respect to an obligation described in § 35a.9999–5 may treat the payee as a person who is not a United States citizen or resident if the agent has evidence in its records to such effect (provided it does not have actual knowledge that the evidence is false). Such evidence may include a written indication from the payee (*e.g.*, appearing on an account application form) that the payee is neither a citizen nor a resident of the United States. The mere fact, however, that the payee has provided an address outside the United States is insufficient evidence to establish for this purpose that the payee is neither a citizen nor a resident of the United States. For payments made on or before November 20, 1984, on accounts opened on or before August 22, 1984, an affidavit by an employee of the agent stating that the employee knows, or the payee has represented orally, that the payee is not a U.S. person will be sufficient to establish such foreign status. For all other payments, an

affidavit of an employee will be sufficient to establish the foreign status of the payee only if the affidavit states that the employee has a reasonable basis, founded on documentary evidence, for believing that the payee is neither a citizen nor a resident of the United States. (Notwithstanding the foregoing, the issue of the standard of evidence required to prove foreign status for information reporting purposes is still under consideration; any change in such standard would be made in future regulations and would apply on a prospective basis only.)

(iv) Payments described in this Q&A–5 are not subject to information reporting by a custodian, nominee or other agent of the payee under section 6041, if they are exempt from reporting under section 6049. In addition, although payments outside the United States of interest or original issue discount described in this Q&A–5 may be reportable payments as, for example, payments made by foreign offices of U.S. persons to U.S. persons, these payments are not subject currently to backup withholding by the custodian, nominee or other agent of the payee. (However, the issue of whether backup withholding should apply in this case is still under consideration; any change with respect to backup withholding in this regard would be made in future regulations and would apply on a prospective basis only.)

(v) For purposes of Q&A–7 and Q&A–17 of § 35a.9999–5, the question of whether a broker is otherwise subject to information reporting under section 6045 shall be determined in accordance with the provisions of Q&A–1 and Q&A–2 of this § 35a.9999–4.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. Publication of this Q&A is necessary to alleviate problems encountered by custodians, nominees, and agents of payees in obtaining certificates of foreign status (Forms W–8) with respect to foreign accounts. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 3406, section 6041, section 6045, section 6049, and section 7805 of the Internal Revenue Code of 1954 (97 Stat. 371, 26 U.S.C. 3406; 68A Stat. 745, 26 U.S.C. 6041; 96 Stat. 600, 26 U.S.C. 6045; 96 Stat. 592, 26 U.S.C. 6049; 68A Stat. 917, 26 U.S.C. 7805) and in sections 104, 105, and 108 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369, 371, 380 and 383).

Approved: August 27, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Charles E. McLure, Jr.,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–22757 Filed 8–28–84; 9:14 am]

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H.R. 4280 / Pub. L. 98–397

Retirement Equity Act of 1984 (August 23, 1984; 98 Stat. 1426) Price $3.25

S. 746 / Pub. L. 98–398

To establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois, and for other purposes. (August 24, 1984; 98 Stat. 1456) Price: $2.50