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federal register

Monday
May 20, 1985

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

Delegation of Subpoena Authority

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the Commission's decision to delegate authority to the Office of Investigations to issue subpoenas where necessary or appropriate for the conduct of investigations. This amendment will permit the Office of Investigations (OI) to issue independently a subpoena during the course of investigations.

EFFECTIVE DATE: June 19, 1985.

FOR FURTHER INFORMATION CONTACT: Polly Schofield, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492-7246.

SUPPLEMENTARY INFORMATION:

Background

By memorandum dated July 20, 1982, the Commission approved SECY 82-239 (June 9, 1982) and delegated the authority to issue subpoenas to the Executive Director for Operations. Under that authority, subpoenas have been issued in five matters. In two cases subpoenas have been issued to support staff action. In three cases, including TMI where 47 subpoenas were issued, subpoenas were issued under the EDO's authority to support OI's investigations. The EDO issued subpoenas at the request of OI because OI did not have the independent authority to issue subpoenas.

In those cases where the subpoena is being used to support an OI investigation, the staff function in reviewing a subpoena is essentially (1) assuring an adequate legal basis for issuing the subpoena, (2) questioning whether the agency has exhausted other mechanisms for obtaining the information, and (3) assuring on balance that a subpoena is the appropriate mechanism to obtain the information. This review process is considered to be proper for staff subpoenas. However, this review may not be always appropriate for OI requested subpoenas in view of the separation of functions between the OI and the EDO staff organizations. It may also not be the most efficient way for OI to obtain a subpoena.

The EDO and OI agreed that OI should be delegated authority to issue subpoenas. OI would consult with the staff before issuing a subpoena to determine whether the staff already has the information being sought.

Pursuant to EDO and OI recommendations, the Commission voted on January 11, 1985, to delegate to the Director, Office of Investigations, the authority to issue subpoenas under section 161c of the Atomic Energy Act of 1954, as amended, where necessary or appropriate for the conduct of investigations.

Since these are minor, procedural amendments relating to agency organization and management, notice and opportunity for comment are not required by the Administrative Procedure Act under 5 U.S.C. 553 or by 10 CFR 2.804(d).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 1

Organization and functions.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); secs. 201, 203, 204, 205, and 209, Pub. L. 93-438, 88 Stat. 1242, 1244, 1245, 1246, and 1248 (42 U.S.C. 5841, 5843, 5844, 5845, and 5849); Pub. L. 94-79, 89 Stat. 413; and 5 U.S.C. 552 and 553.

2. Section 1.36 is revised to read as follows:

§ 1.36 Office of investigations.

The Office of Investigations:

(a) Develops policy, procedures and quality control standards for the conduct of all NRC investigations of licensees, permittees, applicants, and their contractors and vendors;

(b) Conducts and supervises investigations within the scope of NRC authority, except those concerning NRC employees and NRC contractors;

(c) Assures the quality of investigations;

(d) Maintains current awareness of inquiries and inspections by other NRC offices to identify the need for formal investigations;

(e) Makes appropriate referrals to the Department of Justice;

(f) Keeps Commission and involved NRC Offices currently apprised of matters under investigation as they affect public health and safety, the common defense and security, environmental quality, or the antitrust laws;

(g) Issues subpoenas where necessary or appropriate for the conduct of investigations;

(h) Maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest.

Dated in Washington, DC, this 14th day of May 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-12095 Filed 5-17-85; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 110

Export of Reprocessing Plant Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to further clarify what components are especially designed or prepared for use in a nuclear fuel reprocessing plant and thus are subject to the Commission's export licensing authority. This action will implement the recent decision of the multilateral Non-Proliferation Treaty Exporters Committee (Zangger Committee) to adopt four new definitions to its international export control Trigger List covering specially designed or prepared reprocessing plant components.

EFFECTIVE DATE: May 21, 1985.

FOR FURTHER INFORMATION CONTACT: Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4599, or Joanna M. Becker, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7630).

SUPPLEMENTARY INFORMATION: During recent years, the U.S. and other nuclear supplier governments have engaged in discussions within the framework of the Non-Proliferation Treaty Exporters Committee (Zangger Committee) to further clarify the coverage of the international nuclear export control "Trigger List". In 1984, agreement was reached to specify coverage of certain additional components of uranium gas centrifuge enrichment plants (see 49 FR 2881, January 24, 1984). Agreement has now been reached on the adoption of new definitions of items specially designed or prepared for use in nuclear fuel reprocessing plants. Currently, all specially designed or prepared reprocessing components are subject in the U.S. to NRC's export licensing control under the provisions of 10 CFR 110.8(c) of NRC's export/import licensing regulations. As a result of the Zangger Committee's action, the Department of State, as the responsible U.S. Government agency for undertaking the Zangger Committee negotiations, has requested that the Commission take appropriate steps to implement the Zangger Committee's decision.

In support of the decision to adopt four new definitions of reprocessing plant components, the Zangger Committee also prepared an introductory note which further clarifies the basis for exercising export controls over the equipment specified. This note reads as follows:

Introductory Note: Spent Nuclear Fuel Reprocessing

Reprocessing irradiated nuclear fuel separates plutonium and uranium from intensely radioactive fission products and other transuranic elements. Different technical processes can accomplish this separation. However, over the years Purex has become the most commonly used and accepted process. Purex involves the dissolution of irradiated nuclear fuel in nitric acid, followed by separation of the uranium, plutonium, and fission products by solvent extraction using a mixture of tributyl phosphate in an organic diluent.

Purex facilities have process functions similar to each other, including: irradiated fuel element chopping, fuel dissolution, solvent extraction, and process liquor storage. There may also be equipment for thermal denitration of uranium nitrate, conversion of plutonium nitrate to oxide or metal, and treatment of fission product waste liquor to a form suitable for long term storage or disposal. However, the specific type and configuration of the equipment performing these functions may differ between Purex facilities for several reasons, including the type and quantity of irradiated nuclear fuel to be reprocessed and the intended disposition of the recovered materials, and the safety and maintenance philosophy incorporated into the design of the facility.

The equipment listed below performs key reprocessing functions. Each comes into direct contract with the irradiated fuel of process liquor and operates in an environment characterized by criticality, radiation, and toxicity hazards. These make remote control of the process essential.

(1) *Fuel element chopping.* The equipment breaches the cladding of the fuel to expose the irradiated nuclear material. Especially designed metal cutting shears are the most commonly employed. Although advanced equipment, such as lasers, may be used.

(2) *Dissolvers.* Dissolvers normally receive the chopped up spent fuel. In these critically safe vessels, the irradiated nuclear material is dissolved in nitric acid and the remaining hulls removed from the process stream.

(3) *Solvent extractors.* Solvent extractors both receive the solution of irradiated fuel from the dissolvers and the organic solution which separates the uranium, plutonium and fission products. Solvent extraction equipment is normally designed to meet strict operating parameters, such as long operating lifetimes with no maintenance requirements or adaptability to easy replacement, simplicity of operation and control, and flexibility for variations in process conditions.

(4) *Holding or storage vessels.* Three main process liquor streams result from the solvent extraction step. Holding or storage vessels are used in the further processing of all three streams, as follows:

(a) The pure uranium nitrate solution is concentrated by evaporation and passed to a denitration process where it is converted to uranium oxide. This oxide is reused in the nuclear fuel cycle.

(b) The intensely radioactive fission products solution is normally concentrated by evaporation and stored as a liquid concentrate. This concentrate may be subsequently evaporated and converted to a form suitable for storage or disposal.

(c) The pure plutonium nitrate solution is concentrated and stored pending its transfer to further process steps. In particular, holding or storage vessels for plutonium solutions are designed to avoid criticality problems resulting from changes in concentration and form of this stream.

(5) Plutonium nitrate to oxide conversion system. In most reprocessing facilities, this final process involves the conversion of the plutonium nitrate solution to plutonium dioxide. The main functions involved in this process are: process feed storage and adjustment, precipitation and solid/liquid separation, calcination, product handling, ventilation, waste management, and process control.

(6) Plutonium oxide to metal conversion system. This process, which could be related to a reprocessing facility, involves the fluorination of plutonium dioxide normally with highly corrosive hydrogen flouride, to produce plutonium fluoride which is subsequently reduced using high purity calcium metal to produce metallic platonium and a calcium fluoride slag. The main functions involved in this process are: fluorination (e.g., involving equipment fabricated or lined with a precious metal), metal reduction (e.g., employing ceramic crucibles), slag recovery, product handling, ventilation, waste management, and process control.

These processes, including the complete systems for plutonium conversion and plutonium metal production, may be identified by the measures taken to avoid criticality (e.g., by geometry), radiation exposure (e.g.,

by shielding), and toxic hazards (e.g., by containment).

Regulatory Action Required

Currently, Part 110 specifies reprocessing plant component export licensing requirements for only (1) fuel element chopping machines; (2) criticality safe tanks; (3) countercurrent solvent extractors; and (4) process control instrumentation. The Zangger Committee's recent action will require the amendment to the solvent extractor entry in § 110.8(c)(3) and the addition of three new items: (1) Chemical holding or storage vessels; (2) plutonium nitrate to plutonium oxide conversion systems; and (3) plutonium metal production systems.

Because this amendment involves a foreign affairs function of the United States, Commission notice of proposed rulemaking and public procedures thereon are not required by section 553 of Title 5 of the United States Code. Since the State Department has requested expeditious action on this amendment in order to meet international commitments, the Commission finds that good cause exists for making the amendment effective without the customary 30-day notice.

Environmental Impact: Categorical Exclusion

The NRC has determined that this amendment is a categorical exclusion under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this amendment.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

Adoption of this amendment is necessary in order to maintain U.S. consistency with U.S.-supported international nuclear export control guidelines. No other NRC regulatory actions or alternative actions by other agencies address this matter nor are any alternative courses of action feasible. While this amendment impacts all potential U.S. exporters of reprocessing plant components, it is not expected to result in any increased regulatory burden since it essentially clarifies the scope of existing NRC export licensing controls. In addition, to date, NRC has neither received an application to export any reprocessing plant components nor are any such applications expected in the foreseeable future.

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the following amendment to 10 CFR Part 110 is published as a document subject to codification.

PART 110—EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIALS

1. The authority citation for Part 110 is revised to read as follows:

Authority: Sec. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110(b)(2) also issued under Pub. L. 96–533, 94 Stat. 3138 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c. and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553.

For the purpose of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161b. and i., 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and (i); and § 110.53 also issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 110.8, paragraph (c) is revised to read as follows:

§ 110.8 List of nuclear equipment and material under NRC export licensing authority.

* * * * *

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements and components for those plants as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop, or shear irradiated nuclear reactor fuel assemblies, bundles, or rods.

(2) Criticality safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) *Solvent extraction equipment.* Especially designed or prepared solvent extractors such as packed or pulse columns, mixer settlers or centrifugal contractors for use in a plant for the reprocessing of irradiated fuel. Because solvent extractors must be resistant to the corrosive effect of nitric acid, they are normally fabricated to extremely high standards (including special welding and inspection and quality assurance and quality control techniques) out of low carbon stainless steels, titanium, zirconium or other high quality materials.

(4) *Chemical holding or storage vessels.* Especially designed or prepared holding or storage vessels for use in a plant for the reprocessing of irradiated fuel. Because holding or storage vessels must be resistant to the corrosive effect of nitric acid, they are normally fabricated or materials such as low carbon stainless steels, titanium or zirconium, or other high quality materials. Holding or storage vessels may be designed for remote operation and maintenance and may have the following features for control of nuclear criticality:

(i) Walls or internal structures with a boron equivalent of at least 2 percent, or

(ii) A maximum diameter of 7 inches (17.78 cm) for cylindrical vessels, or

(iii) A maximum width of 3 inches (7.62 cm) for either a slab or annular vessel.

(5) *Plutonium nitrate to plutonium oxide conversion systems.* Complete systems especially designed or prepared for the conversion of plutonium nitrate to plutonium oxide, in particular, adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

(6) *Plutonium metal production systems.* Complete systems especially designed or prepared for the production of plutonium metal, in particular adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

(7) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(8) Any other components specially designed or prepared for use in a reprocessing plant or in any of the components described in this paragraph.

* * * * *

Dated at Washington, DC, this 14th day of May 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-12096 Filed 5-17-85; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of Effective Date.

SUMMARY: The Farm Credit Administration published final regulations amending its regulations relating to standards of conduct for directors, officers, and employees of Farm Credit System ("System") institutions (50 FR 11655, March 25, 1985 and 50 FR 15865, April 23, 1985). The final regulations delete or modify several existing regulatory provisions to enable System institutions to exercise greater discretion in administering matters involving their business relationships with the agents consistent with good business practices. The regulations will provide adequate measures to aid in safeguarding the interests of System institutions and their member/borrowers, without unduly infringing upon the rights of System agents or placing undue administrative burdens on System institutions.

The final rule was published on March 25, 1985, and provided that notice of the actual effective date would be subsequently published. (50 FR 11655). In accordance with 12 U.S.C. 2252 the effective date of the final rule is thirty days from the date of publication during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress the effective date of this rule was May 3, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, as amended (12 U.S.C. 2243, 2245, 2252))

Larry H. Bacon,

Acting Governor.

[FR Doc. 85-12100 Filed 5-17-85; 8:45 am]

BILLING CODE 6705-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Fees Paid by Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Effective December 26, 1984, the NCUA Board approved a final rule amending the record date of total assets, from December 31 to June 30, used in determining a Federal credit union's operating fee for the following year. (*See* 49 FR 46541 (November 27, 1984)). The regulation inadvertently failed to describe the method of determining the total assets of a Federal credit union on the record date when (1) subsequent to June 30 but not later than December 31, a state chartered credit union converts to a Federal charter, or (2) subsequent to June 30 but not later than December 31, a state chartered or federally chartered credit union merges into a Federal credit union. This final rule clarifies the method by which the Board will determine the total assets against which the operating fee assessment for the following year is calculated in those cases.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Acting General Counsel, or Steven R. Bisker, Assistant General Counsel, at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: NCUA's rules concerning Federal credit unions' operating fees are codified at 12 CFR 701.6. Before the December, 1984, amendment to § 701.6, the record date of total assets was December 31. With that record date there was no need for special mention in the rule for mergers and charter conversions that might occur during the year. However, with the change in the record date from December 31 to June 30, the December amendment inadvertently failed to address the treatment, in determining the following year's operating fee, of mergers and charter conversions that occur after June 30 but before year end. The purpose of this amendment is to clarify that in these cases the operating fee will be based on total June 30 assets, i.e., in the case of a conversion to Federal charter which occurs after June 30, the following year's operating fee will be based on the June 30 assets of the then state chartered credit union, and in the case of a merger which occurs after June 30, the following year's operating fee will be based on the combined June 30 assets of the credit unions that existed prior to the merger. Also, for puposes of determining the operating fee, "merger" will be deemed to include a purchase and assumption transaction that involves a purchase of all or essentially all of the assets of another credit union.

As stated in the preamble to the December amendment, the change in the record date is beneficial to FCU's in that it enables the NCUA Board to establish a fee schedule based upon actual asset amounts instead of estimates. In so doing, FCU's are saved from making payments that in the past may have been higher than were actually needed to meet the expenses of NCUA in carrying out its responsibilities under the FCU Act. It was never the intent of the Board to remove from the total asset base, against which the operating fee is calculated, those additions to an FCU's assets that result from the transactions described above. This amendment provides the necessary clarification to the rule. For purposes of clarity and simplicity, the treatment of each of the transactions is described separately in the rule.

Administrative Procedure Act Requirements

Since the rule merely codifies the procedures currently in effect, the rule is being published without comment and is made effective upon publication.

Regulatory Flexibility Act

The NCUA Board hereby certifies that these final rules will not have a significant economic impact on a substantial number of small credit unions, because the rule does not alter the economic effect of assessment procedures that have been in place prior to this rule.

List of Subjects in 12 CFR Part 701

Credit unions, Operating fee.

By the NCUA Board on the 15th day of May, 1985.

Rosemary Brady,

Secretary of the Board.

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 12 U.S.C. 1766.

Accordingly, § 701.6 is amended as follows:

§ 701.6 [Amended]

2. Section 701.6(a) is amended by adding at the end of the paragraph, "* * * or as otherwise determined pursuant to paragraph (b) of this section."

3. Section 701.6(b) is revised as follows:

* * * * *

(b) *Coverage.* The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year, except as otherwise provided by this paragraph.

(1) *New charters.* A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.

(2) *Conversions.* A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. If the conversion is effective after June 30 but not later than December 31, the total assets for purposes of the following year's operating fee assessment shall be the total assets of the state chartered credit union as of June 30. Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.

(3) *Mergers.* A continuing Federal credit union that has merged with another credit union after June 30 but prior to December 31 will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of June 30. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger takes place.

(4) *Liquidations.* A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.

* * * * *

4. Section 701.6(c) remains unchanged.

[FR Doc. 85-12123 Filed 5-17-85; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 741

Insurance Premium and One Percent Deposit

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: In October of 1984, the NCUA Board adopted regulations implementing Title VIII of Pub. L. 98-369, which provides for capitalization of the National Credit Union Share Insurance Fund through the maintenance of a deposit by each insured credit union in an amount equalling one percent of its insured shares. This rule corrects an administrative oversight and clarifies the requirement for funding of the deposit when (1) a credit union converts to Federal charter or (2) a federally insured credit union acquires a nonfederally insured credit union.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Acting General Counsel, or Steven R. Bisker, Assistant General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: NCUA's regulations implementing the share insurance capitalization were adopted on October 9, 1984, and published at 40 FR 40561. Section 741.5(h) of those regulations specifies that a credit union that converts to Federal insurance shall be required to fund its one percent deposit immediately based on its insured shares as of the close of the month prior to conversion. This amendment revises § 741.5(h) to clarify that it applies both to credit unions converting only to Federal insurance and to credit unions converting to Federal charter (which by statutory requirement includes Federal insurance). Also, a new § 741.5(i) is being added to clarify that when a federally insured credit union takes on, through merger or similar acquisition, a nonfederally insured credit union, the one percent deposit corresponding to the newly insured shares will be funded immediately. (The previous § 741.5(i) has been redesignated as § 741.5(j)).

These amendments reflect NCUA's current procedures and result in consistent treatment of all circumstances where previously nonfederally insured shares obtain Federal insurance coverage.

Administrative Procedure Act

The Board is issuing these amendments to § 741.5 as a final rule without notice and comment because the Board has determined that comment is unnecessary. When § 741.5 was approved as a final rule in October, 1984, the rule was subject to notice and comment. At that time, comments were received addressing all aspects of the rule, including § 741.5(h) involving conversions to Federal insurance. As explained above, the amendments contained in this final rule simply clarify NCUA's practice of consistent treatment of all instances where changes in the makeup of a credit union result in provision of Federal insurance coverage to previously uninsured shares. Since the general issue has already been subject to the comment process, and in light of the need of the Agency to have a regulation in place immediately, the Board has approved this as a final rule.

Regulatory Flexibility Act

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions, because the rule and the legislation it implements will reduce the cost of insurance coverage to all federally insured credit unions.

List of Subjects in 12 CFR Part 741

Credit unions, Insurance.

By the NCUA Board on the 15th day of May, 1985.

Rosemary Brady,

Secretary of the Board.

The authority for Part 741 continues to read:

Authority: 12 U.S.C. 1781, 12 U.S.C. 1782, 12 U.S.C. 1789.

Accordingly, 12 CFR Part 741 is amended as follows:

§ 741.5 [Amended]

1. Section 741.5(h) is revised as follows:

* * * * *

(h) *Conversion to Federal Charter or Conversion to Federal Insurance.* An existing credit union that converts to a Federal charter or to insurance coverage with the Fund during an insurance year shall immediately fund its one percent deposit based on the total of its insured shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be

entitled to a prorated share of any distribution from Fund equity declared subsequent to the credit union's coversion.

* * * * *

2. Section 741.5 (i) is redesignated as § 741.5(j).

3. A new § 741.5(i) is added to read as follows:

* * * * *

(i) *Acquisitions by Federally Insured Credit Unions.* When a federally insured credit union takes on an existing nonfederally insured credit union through merger or similar acquisition during an insurance year, the continuing credit union shall immediately fund its one percent deposit for all newly acquired insured shares based on the total amount of the new insured shares as of the close of the month prior to the merger or acquisition, and shall pay a premium on the new shares (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from Fund equity declared subsequent to the merger or acquisition.

* * * * *

[FR Doc. 85-12122 Filed 5-17-85; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 306

[Docket No. 41160-4160]

Business Development Program; Subpart A—Financial Assistance for Industrial and Commercial Purposes

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's Project Financing regulation by increasing EDA's ordinary maximum participation for business loan projects from $10,000 to $20,000 per job created or saved. Findings from EDA and GAO studies indicate that the current average government cost per job saved or created far exceeds the $10,000 limit. An increased limit of $20,000 per job created or saved is consistent with these findings.

DATES: Effective Date: May 20, 1985.

Comments by: July 19, 1985.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Herbert C. Hoover Building, Room 7800-B, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Travis P. Dungan, Deputy Assistant Secretary for Finance, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, Room 7844, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, D.C. 20230, (202) 377-5067.

SUPPLEMENTARY INFORMATION: EDA is amending its Business Development Program regulation at 13 CFR Part 306, Subpart A—Financial Assistance for Industrial and Commercial Purposes at 13 CFR 306.20. The $10,000 per job created or saved ratio which is in the current regulation was established in 1973, (38 FR 2282, January 23, 1973). The purchasing power of the U.S. dollar in 1983 was 45% of the 1973 dollar (*Statistical Abstract of the U.S. 1984*, Bureau of the Census, section 16, *Prices*, Table 796). On this basis a 1973 job cost of $10,000 would be equal to a 1983 job cost of $22,000. Findings from EDA and GAO studies indicate that the current average government cost per job saved or created far exceeds the $10,000 limit. An increased limit of $20,000 per job created or saved is consistent with these findings.

Because this rule relates to loan guarantees, a Government benefit, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). No other law requires that notice and opportunity for comment be given for this rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under Section 553 of the (APA) (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of section 553 of the APA, it can be and is being made immediately effective upon publication.

However, because the Department is interested in receiving comments from those who will benefit from the amendment being issued in final, this rule is being issued in interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the "ADDRESS" section above.

Comments received by July 19, 1985 will be considered in promulgating a final rule.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 306

Business and Industry, Community development, Indians, Loan programs—business, Loan programs—community development, Rent subsidies.

1. The authority citation for Part 306 continues to read:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211) Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended.

2. 13 CFR Part 306 is amended by revising § 306.20 to read as follows:

PART 306—BUSINESS DEVELOPMENT PROGRAM

Subpart A—Financial Assistance for Industrial and Commercial Purposes

* * * * *

§ 306.20 Project financing.

Each project will be evaluated with the intent of obtaining a financing structure which demonstrates a minimum EDA participation in project financing to accomplish the project with maximum reliance on equity and junior lenders. Moreover, an EDA participation of $20,000 per job will ordinarily be the maximum acceptable for any particular project. In calculating the EDA participation per job, indirect jobs created in other parts of the local economy will not be considered.

Seasonal jobs will be converted into full time job equivalents.

Dated: May 13, 1985.

Paul **Bateman,**

Deputy Assistant Secretary for Economic Development.

[FR Doc. 85-12135 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-24-M

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13 CFR Part 309

[Docket No. 50215-5015]

General Requirements for Financial Assistance: Employment of Expediters or Administrative Employees; Compensation of Persons Engaged by or on Behalf of Applicants

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's general requirements regulation—employment of expediters or administrative employees—concerning EDA positions involving discretion, to conform to the reorganization of EDA pursuant to Department of Commerce organization Order 45-1. Old positions which are no longer in existence are deleted. New comparable positions are listed in the amended regulation.

DATES: Effective Date: May 20, 1985.

Comments by: July 19, 1985.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Travis P. Dungan, Deputy Assistant Secretary for Finance, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7824, Washington, D.C. 20230, (202) 377-5067.

SUPPLEMENTARY INFORMATION: EDA is amending its general requirements regulation—the employment of expediters or administrative employees—concerning EDA positions involving discretion (13 CFR 309.7) to conform to the reorganization of EDA, pursuant to Department of Commerce Organization Order 45-1, August 2, 1982.

Because this rule relates to agency management, personnel, grants, benefits and contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of section 553 of the APA, it can be and is being made immediately effective upon publication. However, because the Department is interested in receiving comments from those who will benefit from the amendment to the rule being issued in final, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the "Address" section above.

Comments received by July 19, 1985 will be considered in promulgating a final rule.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is 'major' within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million, or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

1. The authority citation for Part 309 continues to read as follows:

Authority: Section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211). Sec. 1-105, DOC Organization Order 10-4, as amended; 40 FR 56702, as amended.

2. 13 CFR Part 309 is amended by revising § 309.7(b) to read as follows:

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

* * * * *

§ 309.7 Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants.

* * * * *

(b) Definitions as used in this Section: The term "Positions involving discretion" means the Assistant Secretary; Deputy Assistant Secretary; Deputy Assistant Secretary for Operations; Deputy Assistant Secretary for Finance; Office Directors and Division Chiefs in the Offices of: Public Works; Special Servicing; Liquidation; Loan Management; Financial Assistance; Planning, Technical Assistance, Research, and Evaluation; and Economic Adjustment. They also include Regional Directors with respect to projects located in their regions. Clerical employees do not occupy positions involving discretion with respect to the granting of assistance under the Act. The discretionary nature of positions and activities of other employees shall be determined by the Assistant Secretary at such times as the employee terminates his/her employment.

* * * * *

Dated: May 13, 1985.

Paul W. Bateman,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 85-12134 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F-0286]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to remove limitations on use of poly(tetramethylene terephthalate) intended for use in contact with food.

This action responds to a petition filed on behalf of the General Electric Co.

DATES: Effective May 20, 1985; objections by June 19, 1985.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 26, 1984 (49 FR 37851), FDA announced that a petition (FAP 4B3788) had been filed on behalf of the General Electric Co., c/o 1150 17th St. NW., Suite 1000, Washington, DC 20036, proposing that some limitations in § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be removed. The petition would remove the restrictions that limit poly(tetramethylene terephthalate) to use in contact with nonalcoholic foods, and to exposure temperature and time of not more than 180 ° F and 24 hours if the food-contact article is over 0.010 inch thick.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1660 is amended by removing the word "nonalcoholic" from the introductory paragraph, by adding new paragraph (c)(2)(iv) as set forth below, and by removing paragraph (d):

§ 177.1660 Poly(tetramethylene terephthalate).

(c) * * *

(2) * * *

(iv) Not to exceed 0.02 milligram per square inch of food contact surface when extracted for 2 hours at 65.6 °C (150 °F) with 50 percent ethanol.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 19, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective May 20, 1985.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 13, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-12030 Filed 5-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8024]

Effective Dates of the Economic Performance Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the effective dates of the economic performance requirement. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that use an accrual method of accounting.

DATES: These regulations are effective May 20, 1985. The regulations generally apply to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) of the Internal Revenue Code. Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer who makes this election may elect to apply the new method of accounting as of either July 19, 1984, or the first day of the taxable year that includes July 19, 1984.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Table of OMB control numbers (26 CFR Part 602) to provide rules relating to the effective dates of section 461(h) of the Internal Revenue Code of 1954. Section 461(h) was added to the Code by section 91(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 598). The effective dates of section 461(h) are

contained in section 91(g) of the Tax Reform Act of 1984.

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by section 461(h) of the Code or section 91(g) of the Tax Reform Act of 1984. Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues under section 461(h) of the Code and section 91(g) of the Tax Reform Act of 1984. No inference, however, should be drawn regarding questions not expressly raised and answered.

It is expected that further temporary regulations will be published in the near future containing additional guidance with respect to the economic performance requirement of section 461(h). The temporary regulations contained in this document will remain in effect until superseded by temporary or final regulations published in the Federal Register.

Explanation of Provisions

Section 461(h) generally provides that the amount of an item is not incurred under an accrual method of accounting until economic performance occurs. Under an exception for recurring items, the amount of an item may be incurred in the taxable year before economic performance occurs if (1) the all events test, without regard to economic performance, is satisfied with respect to the item during the taxable year; (2) economic performance occurs within a reasonable period (but in no event more than 8½ months) after the close of the taxable year; (3) the item is recurring in nature and the taxpayer consistently treats items of that type as incurred in the taxable year in which the all events test is met; and (4) either (a) the item is not material or (b) the accrual of the item in the taxable year in which the all events test is met results in a better matching of the item with the income to which it relates than would result from accruing the item in the year in which economic performance occurs.

Section 91(g)(1) of the Tax Reform Act of 1984 provides that, except as otherwise provided, section 461(h) applies to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) ("cut-off method"). Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer who makes this election may elect to apply the new method of accounting as of either July 19, 1984 ("part-year change in method"), or the first day of the taxable year that includes July 19, 1984 ("full-year change in method").

The regulations contain guidance relating to the general effective date, the effect of electing alternative effective dates, the manner of making the elections, the scope of the elections, and the section 481(a) adjustment required by the elections. In general, the election to use a part-year change in method or a full-year change in method is made by attaching a statement to the taxpayer's Federal income tax return for the taxable year that includes July 19, 1984.

In the case of a part-year change in method, the regulations provide that a taxpayer may elect the change separately for each separate trade or business (as defined in § 1.446–1(d)), and for each trade or business may elect the change with respect to one or more types of items. In the case of a full-year change in method, the regulations provide that a taxpayer may elect the change separately for each separate trade or business (as defined in § 1.446–1(d)), but must elect the change for all items incurred in a trade or business.

The election to use part-year change in method or a full-year change in method is treated as a change in method of accounting initiated by the taxpayer and made with the consent of the Commissioner. In the case of a part-year change in method, the section 481(a) adjustment for each type of item subject to the election is calculated as of July 19, 1984, and is ordinarily taken into account ratably for the taxable year that includes July 19, 1984, and the two immediately succeeding taxable years. In the case of a full-year change in method, the section 481(a) adjustment is calculated as of the first day of the taxable year that includes July 19, 1984, and is ordinarily taken into account ratably for the taxable year that includes July 19, 1984, and the two immediately succeeding taxable years. In certain circumstances, however, the section 481(a) adjustment is taken into account over less than a three-year period or is taken into account non-ratably.

The regulations provide guidance relating to the adoption of the recurring item exception as a method of accounting and the application of the recurring item exception for the taxable year that includes July 19, 1984. In addition, the regulations provide rules and examples that explain how items incurred during the taxable year that includes July 19, 1984, are to be taken into account in computing taxable income under the cut-off method and the part-year change in method. Finally, the regulations provide a special effective date for the accrual of interest expense.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

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

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is C. Scott McLeod 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

26 CFR 1.441–1 through 1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements, OMB control numbers under the Paperwork Reduction Act.

Amendments to the Regulations

The amendments to 26 CFR Part 1 and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 461(h). The authority citation for Part 1 is amended by adding, "§ 1.461–3T also issued under 26 U.S.C. 461(h)."

Par. 2. The following new § 1.461–3T is added immediately after § 1.461–2 to read as follows:

§ 1.461–3T Questions and answers relating to the effective dates of section 461(h) (Temporary)

Q–1. What is the effective date of section 461(h)?

A–1. Except as otherwise provided in this section, section 461(h) applies to amounts that would be allowable as deductions after July 18, 1984, under the law in effect before the enactment of section 461(h) ("cut-off method"). See A–2 of this section for alternative effective dates that may be elected by a taxpayer and A–12 of this section for the effective date applicable to the accrual of interest expense. The following example

illustrates the effective date provided in the first sentence of this A–1.

Example—(1) *Facts.* X corporation, a calendar year, accrual method taxpayer, has been a self-insurer with respect to workers' compensation claims since 1977. Before July 19, 1984, X accrues workers' compensation liabilities for the taxable year in which the award is determined by the applicable state commission. In addition, workers' compensation liabilities are not inventoriable costs of X under § 1.471–3 or § 1.471–11(c)(2). For the taxable year ending December 31, 1983, X accrues a liability to employee A in the amount of $12,000 based on a determination by the state commission that occurred during 1983. X pays A $6,000 on both March 15, 1984, and November 15, 1984, in complete satisfaction of the workers' compensation liability. On May 15, 1984, the state commission determines that X is liable to pay B $8,000 as workers' compensation, and on December 15, 1984, the state commission determines that X is liable to pay C $4,000 as workers' compensation. The liabilities to B and C remain unpaid as of December 31, 1984. The exception provided in section 461(h)(3)(A) for certain recurring items does not apply to workers' compensation liabilities.

(2) *Cut-off method.* If X does not elect the alternative effective dates provided in A–2 of this section, the cut-off method applies to the workers' compensation liabilities. Under the cut-off method, the $12,000 liability to A is deductible under the law in effect before the enactment of section 461 (h) for the taxable year ending December 31, 1983. The $8,000 liability to B is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1984. The $4,000 liability to C is subject to section 461(h) and is not deductible until paid. Because the full amount of the liabilities to A and B is deductible under the law in effect before the enactment of section 461(h), no deduction is permitted when those liabilities are paid.

Q–2. What elections are available to a taxpayer with respect to the effective dates of section 461(h)?

A–2. A taxpayer may elect to treat the changes in the timing of deductions required by section 461(h) as a change in method of accounting initiated by the taxpayer and deemed made with the consent of the Commissioner. A taxpayer making this election must further elect for the change in method of accounting to be applicable either to—

(a) Taxable years ending after July 18, 1984, but, in the case of a taxable year that includes July 19, 1984 ("taxable year of change"), only to the portion of such taxable year that occurs after July 18, 1984 ("part-year change in method"); or

(b) Taxable years ending after July 18, 1984 ("full-year change in method").

If an election under this A–2 is not properly made in accordance with this section, the effective date provided in A–1 of this section (the cut-off method) shall apply.

Q–3. What items are subject to the elections described in A–2 of this section?

A–3. (a) With respect to any separate trade or business of a taxpayer, a part-year change in method may be elected for one or more types of items incurred in such separate trade or business. If the part-year change in method is elected with respect to a type of item in a separate trade or business, the election applies to the entire amount of each item of that type incurred in that trade or business. If the part-year change in method is elected with respect to one or more types of items in a separate trade or business, the other types of items in such trade or business with respect to which the part-year change in method is not elected are subject to the cut-off method. A taxpayer may elect a part-year change in method with respect to a type of item incurred in one trade or business and not with respect to the same type of item incurred in a separate trade or business.

(b) With respect to any separate trade or business of a taxpayer, a full-year change in method may be elected for all items incurred in such separate trade or business. If the full-year change in method is elected for a trade or business, the election applies to the entire amount of all items of all types incurred in the trade or business. Thus, an election to use a full-year change in method for a trade or business precludes the use of the part-year change in method or the cut-off method with respect to any item incurred in the trade or business. A taxpayer may, however, elect a full-year change in method for one trade or business and not for a separate trade or business.

(c) For purposes of this section, a taxpayer is engaged in separate trades or businesses (whether or not different methods of accounting are used for such trades or businesses) if, and only if, the trades or businesses are separate and distinct within the meaning of § 1.446–1(d).

(d) For purposes of this section, items are to be classified by type in a manner that results in classifications that are no less inclusive than the classifications of production costs provided in the full-absorption regulations of § 1.471–11 (b) and (c), whether or not the taxpayer is required to maintain inventories.

(e) The following example illustrates the provisions of this A–3:

Example—(1) *Facts.* Y corporation, a calendar year, accrual method taxpayer, is engaged in a personal service business and a manufacturing business that are separate and distinct trades or businesses within the meaning of § 1.446–1(d). During the taxable year ending December 31, 1984, the personal service business of Y incurs advertising expenses and insurance costs, and the manufacturing business of Y incurs advertising expenses, insurance costs and research and experimental expenses.

(2) *Part-year change in method.* (i) Y may elect the part-year change in method with respect to a type of item incurred in either trade or business without electing the part-year change in method with respect to other types of items incurred in the same trade or business. Thus, Y may elect the part-year change in method with respect to the advertising expenses incurred in the personal service business without electing the part-year change in method with respect to the insurance costs incurred in the personal service business.

(ii) Y may also elect the part-year change in method with respect to a type of item incurred in either trade or business without electing the part-year change in method with respect to items of the same type incurred in the other trade or business. Thus, Y may elect the part-year change in method with respect to the advertising expenses or the insurance costs incurred in the personal service business without electing the part-year change in method with respect to the advertising expenses or the insurance costs incurred in the manufacturing business.

(3) *Full-year change in method.* (i). If Y elects the full-year change in method for either trade or business, the election applies to all items incurred in that trade or business. Thus, if Y elects the full-year change in method for the manufacturing business, the election applies to the advertising expenses, insurance costs and research and experimental expenses.

(ii) Y may elect the full-year change in method for either trade or business without electing the full-year change in method for the other trade or business. Thus, Y may elect the full-year change in method for the manufacturing business without electing the full-year change in method for the personal service business.

Q–4. What is the effect of electing a part-year change in method or a full-year change in method?

A–4. (a) An election to use a part-year change in method or a full-year change in method shall be treated for purposes of section 446(e) as a change in method of accounting initiated by the taxpayer and deemed made with the consent of the Commissioner.

(b) In the case of a part-year change in method, the change in method of accounting occurs on July 19, 1984, and a section 481(a) adjustment for each type of item is determined as of that date (i.e., for purposes of computing the section 481(a) adjustment, the first day of the taxable year of change is July 19, 1984, and the last day of the preceding taxable year is July 18, 1984). Although July 18, 1984, is treated as the last day of a taxable year for purposes of computing the section 481(a) adjustment, an election to use a part-year change in method does not terminate the taxable year or change for any other purpose.

(c) In the case of a full-year change in method, the change in method of accounting occurs on the first day of the taxable year that includes July 19, 1984 ("taxable year of change"), and the section 481(a) adjustment is determined as of that date.

(d) The following example illustrates the provisions of this A–4:

Example—(1) *Facts.* Assume the same facts as provided in the example contained in A–1 of this section.

(2) *Part-year change in method.* (i) If X elects to use a part-year change in method with respect to employee benefits (a type of item that includes workers' compensation liabilities under § 1.471–11(c)(2)(iii)(c)), the $12,000 liability to A is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1983. In addition, the $8,000 liability to B is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1984. The $6,000 paid to A on November 15, 1984, and the $8,000 paid to B in a later taxable year are deductible under section 461(h) for the taxable year in which paid. The $4,000 liability to C is not deductible for the taxable year ending December 31, 1984, but, instead, is deductible under section 461(h) for the taxable year in which paid.

(ii) A section 481(a) adjustment of $14,000 (determined as of July 19, 1984) is required and ordinarily is to be taken into account ratably for X's 1984, 1985 and 1986 taxable years (see A–9 of this section).

(3) *Full-year change in method.* (i) If X elects to use a full-year change in method, the $12,000 liability to A is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1983. In addition, the $6,000 amounts paid to A on March 15, 1984, and November 15, 1984, are deductible under section 461(h) for the taxable year ending December 31, 1984. The liabilities to B and C are not deductible for the taxable year ending December 31, 1984, but, instead, are deductible under section 461(h) for the taxable year in which paid.

(ii) A section 481(a) adjustment of $12,000 (determined as of January 1, 1984, the first day of the taxable year of change) is required and ordinarily is to be taken into account ratably for X's 1984, 1985 and 1986 taxable years (see A–9 of this section).

Q–5. How does a taxpayer elect to use a part-year change in method or a full-year change in method?

A–5. (a) The election to use a part-year change in method or a full-year change in method is irrevocable and must be made by attaching a statement (hereafter "Election Statement") to the taxpayer's timely filed Federal income tax return for the taxable year that includes July 19, 1984 ("taxable year of change").

If the taxpayer has filed a return for the taxable year of change on or before June 19, 1985, the taxpayer may make the election by attaching the Election Statement to a return, as amended, or an amended return for such year provided that the return or amended return is filed on or before August 19, 1985.

(b) The Election Statement shall include the following information—

(1) The legend "Election under § 1.461–3T" typed or legibly printed at the top of the first page;

(2) The taxpayer's name, address and taxpayer identification number;

(3) An identification of the election as either a part-year or full-year change in method;

(4) The dates on which the taxable year of change begins and ends;

(5) Whether the electing taxpayer is subject to any of the conditions listed in section 4.01 of Rev. Proc. 84–74, 1984–44 I.R.B. 15, at the time the Election Statement is filed, and, if so, a description of each such condition;

(6) Whether the electing taxpayer has an application for change in accounting method pending with the Internal Revenue Service at the time the Election Statement is filed, and, if so, the type of change requested in each application;

(7) Whether the electing taxpayer has a request for a ruling or technical advice pertaining to any accounting method pending with the Internal Revenue Service at the time the Election Statement is filed, and, if so, a description of the issue involved in each request;

(8) If the electing taxpayer is a member of an affiliated group filing a consolidated return for the taxable year of change, the information required in paragraph (b) (5), (6), and (7) of this A–5 for each member of the group that is not an electing taxpayer (if more than one member of the group is an electing taxpayer, this information may be provided in a separate statement that is attached to the consolidated return and incorporated by reference in each Election Statement);

(9) For each type of item with respect to which an election of a part-year change in method is to apply—

(i) A description of the type of item;

(ii) Whether the method of accounting for the type of item has been used for two taxable years or less, and, if so, the number of years;

(iii) Whether the type of item includes inventoriable costs within the meaning of § 1.471–3 or § 1.471–11 or costs that must be capitalized;

(iv) The amount of the section 481(a) adjustment for the type of item; and

(v) The amount of the section 481(a) adjustment for the type of item that is attributable to the taxable year immediately preceding the taxable year of change (see paragraph (c) of A–9 of this section); and

(10) If the election is a full-year change in method—

(i) Whether the method of accounting being changed has been used for two taxable years or less, and, if so, the number of years;

(ii) Whether any of the types of items that are subject to the election include inventoriable costs within the meaning of § 1.471–3 or § 1.471–11 or costs that must be capitalized, and, if so, a description of each such type of item;

(iii) The amount of the section 481(a) adjustment required by the change in method of accounting; and

(iv) The amount of the section 481(a) adjustment that is attributable to the taxable year immediately preceding the taxable year of change (see paragraph (c) of A–9 of this section).

(c) If a taxpayer elects to use a part-year change in method or a full-year change in method with respect to a separate trade or business (as defined in paragraph (c) of A–3 of the section), but does not make the same election with respect to all trades or business, separate Election Statement containing the information specified in paragraph (b) of this A–5 is required for each separate trade or business will respect to which an election is made. In addition, the separate Election Statement shall describe the nature of the trade or business.

Q–6. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how does the recurring item exception apply?

A–6. If, with respect to a type of item, the taxpayer elects to use a part-year change in method or a full-year change in method and also adopts the recurring item exception of section 461(h)(3) as a method of accounting for the taxable year of change (see A–7 of the section), the following rules apply:

(a) An amount that was taken into account under the taxpayer's method of accounting for a taxable year preceding the taxable year of change and that would have been taken into account under the recurring item exception for the same taxable year preceding the taxable year of change shall not be taken into account in computing the taxable income of the taxpayer under the taxpayer's new method of accounting. An amount would have been taken into account under the recurring item exception for a taxable year preceding the taxable year of change if all elements of the recurring item exception were satisfied for any taxable year preceding the taxable year of change.

(b) If, under paragraph (a) of this A–6, an amount is not permitted to be taken into account under the taxpayer's new method of accounting, the amount shall not be taken into account in computing the amount of the section 481(a) adjustment.

(c) For purposes of the A–6, in the case of a part-year change in method, the recurring item exception and the rules of paragraph (a) and (b) of this A–6 shall be applied as if the portion of the taxable year of change that precedes July 19, 1984, were a separate taxable year preceding the taxable year of change, except as provided below with respect to the determination of whether

an item is material and whether a more proper match with income will result. Thus, in the case of a part-year change in method, an amount would have been taken into account under the recurring item exception for a taxable year preceding the taxable year of change if all elements of the recurring item exception were satisfied for any taxable year preceding the taxable year of change or for the portion of the taxable year of change that precedes July 19, 1984. In determining whether economic performance occurs within the shorter of (1) a reasonable period after the close of the portion of the taxable year of change that precedes July 19, 1984, or (2) 8½ months after the close of such portion of the taxable year of change, the last day of the taxable year is to be considered July 18, 1984, and the 8½ month period does not extend beyond March 31, 1985. In determining whether an item is a material item, and in determining whether the accrual of an item in the portion of the taxable year of change that precedes July 19, 1984, results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs, all items of income, gain, loss, deduction, or credit for the entire taxable year that includes July 18, 1984, shall be considered.

(d) The following examples illustrate the principles of this A–6:

Example (1)—(i) *Facts.* V corporation, a calendar year, accrual method taxpayer, properly elects to use a full-year change in method and adopts the recurring item exception as a method of accounting for items of type 1. For the taxable year ending December 31, 1983, V incurs A, an item of type 1, under the law in effect before the enactment of section 461(h). Economic performance with respect to item A occurs on August 1, 1984. In addition, all the elements of the recurring item exception are satisfied with respect to item A for the taxable year ending December 31, 1983.

(ii) *Full-year change in method.* Under the law in effect before the enactment of section 461(h), V takes item A into account for the taxable year ending December 31, 1983. Even though economic performance occurs with respect to item A in the taxable year ending December 31, 1984, the item is not taken into account a second time because, under the recurring item exception, the item would have been taken into account for the taxable year ending December 31, 1983. Since there is no duplication or omission with respect to item A by reason of the change in method of accounting, V will not take A into account in computing the section 481(a) adjustment.

Example (2)—(i) *Facts.* W corporation, a calendar year, accrual method taxpayer, properly elects to use a part-year change in method for items of type 2 and adopts the recurring item exception as a method of accounting for items of type 2. The books and records of W indicate that, under the law in effect before the enactment of section 461(h), B, an item of type 2, was incurred during the taxable year ending December 31, 1984, and before July 19, 1984. Economic performance with respect to item B occurs on August 1, 1984. Income with respect to item B is properly accounted for after July 18, 1984, but during the taxable year ending December 31, 1984. In addition, all the other elements of the recurring item exception are satisfied with respect to item B as of July 18, 1984.

(ii) *Part-year change in method.* Under the law in effect before the enactment of section 461(h), W takes item B into account for the taxable year ending December 31, 1984. Even though economic performance occurs with respect to item B after July 18, 1984, and even though income with respect to item B is accounted for after July 18, 1984, the item is not taken into account a second time because, under the recurring item exception, the item would have been taken into account for the portion of the taxable year that precedes July 19, 1984. Since there is no duplication or omission with respect to item B by reason of the change in method of accounting, W will not take item B into account in computing the section 481(a) adjustment. The result provided in this example would be the same even though economic performance with respect to item B occurred on February 1, 1985, provided that such date is within the reasonable period specified in section 461(h)(3)(A)(ii).

Q–7. How does a taxpayer adopt the recurring item exception of section 461(h)(3) as a method of accounting?

A–7. (a) The recurring item exception of section 461(h)(3) is a method of accounting that must be consistently applied with respect to a type of item from one taxable year to the next in order to clearly reflect income. Except as otherwise provided in paragraph (b) of this A–7 (relating to the adoption of the recurring item exception for the taxable year that includes July 19, 1984), the rules of section 446(e) and § 1.446–1(e) apply to changes to or from the recurring item exception as a method of accounting for a type of item.

(b) For the taxable year that includes July 19, 1984, a taxpayer need not obtain the Commissioner's consent to adopt the recurring item exception as a method of accounting for a type of item, but must instead—

(1) Account for the type of item on its return for such taxable year by using the recurring item exception as a method of accounting (see paragraph (a) of A–6 of this section for the manner in which the recurring item exception applies to those types of items with respect to which the taxpayer elects to use a part-year or full-year change in method); and

(2) Identify on a statement attached to the return for such taxable year each trade or business with respect to which the recurring item exception is adopted and, unless the recurring item exception is adopted with respect to all types of items (as defined in paragraph (d) of A–3 of this section) incurred in the trade or business (in which case the attached statement must so indicate), the types of items with respect to which the recurring item exception is adopted.

Q–8. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how is the section 481(a) adjustment calculated?

A–8. (a) If a taxpayer elects to use a part-year change in method, the section 481(a) adjustment is calculated as follows:

(1) If the taxpayer elects to use a part-year change in method for more than one trade or business, or with respect to more than one type of item, a separate section 481(a) adjustment is required for each type of item incurred in each separate trade or business.

(2) For each type of item, the section 481(a) adjustment is determined as of July 19, 1984, and may be computed in the following manner. First, a hypothetical section 481(a) adjustment is calculated as if section 461(h) became effective as of the first day of the taxable year that follows the taxable year of change (as defined in paragraph (a) of A–2 of this section). This amount is reduced by the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h). For an example of the computation of the section 481(a) adjustment, see the example contained in paragraph (b) of A–10 of this section.

(b) If a taxpayer elects to use a full-year change in method for more than one separate trade or business, a separate section 481(a) adjustment must be determined for each trade or business as of the first day of the taxable year of change (as defined in paragraph (c) of A–4 of this section).

(c) A taxpayer must maintain adequate books and records so that the Service may, upon examination, verify the calculation of the section 481(a) adjustment.

Q–9. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how are the separate section 481(a) adjustments taken into account?

A–9. (a) Except as otherwise provided in paragraph (b) of this A–9, a taxpayer who elects either a part-year change in method or a full-year change in method shall take into account one-third of any separate section 481(a)

adjustment (determined in accordance with A–8 of this section) in the taxable year of change and one-third of such adjustment in each of the two immediately succeeding taxable years.

(b) Any separate section 481(a) adjustment shall be taken into account in fewer than three taxable years in the following cases:

(1) If 75% or more of the section 481(a) adjustment is attributable to the taxable year immediately preceding the taxable year of change, the amount of the adjustment attributable to the taxable year immediately preceding the taxable year of change shall be taken into account in the taxable year of change and, except as otherwise provided in paragraph (b)(2) of this A–9, one-half of the remaining section 481(a) adjustment shall be taken into account in each of the two immediately succeeding taxable years.

(2) If the taxpayer has employed the same method of accounting with respect to the type of item or for the trade or business for only the two taxable years immediately preceding the taxable year of change, one-half of the section 481(a) adjustment, or, if greater, the amount determined under paragraph (b)(1) of this A–9, is to be taken into account in the taxable year of change and the remaining section 481(a) adjustment is to be taken into account in the immediately succeeding taxable year.

(3) The taxpayer shall take into account, in the taxable year in which the taxpayer dies or ceases to engage in the trade or business to which the section 481(a) adjustment relates, the balance of the adjustment not previously taken into account. For purposes of the preceding sentence, a taxpayer is not considered to have ceased to engage in a trade or business if the cessation is the result of a transaction to which section 381 of the Code applies, but in that case the acquiring corporation shall continue to be subject to the provisions of this A–9.

(4) If the taxpayer is a cooperative within the meaning of section 1381(a) of the Code, the total amount of the section 481(a) adjustment is to be taken into account in the taxable year of change.

(c) For purposes of this A–9, the taxable year immediately preceding the taxable year of change is the last taxable year of the taxpayer ending before July 19, 1984. The amount of the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change is the excess of (1) the amount of the section 481(a) adjustment (determined under A–8 of this section), over (2) the amount of the adjustment that would have been required under section 481(a) if the same change in method of accounting had been made in the taxable year immediately preceding the taxable year of change. If a taxpayer's books and records do not contain sufficient information to compute the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change, the taxpayer must reasonably estimate the amount of such adjustment and must include the following statement as part of the Election Statement:

(1) The books and records of (name of taxpayer) do not contain sufficient information to permit a computation of the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change.

(2) Based on the information contained in the books and records, (indicate "75% or more" or "less than 75%" as the case may be) of the section 481(a) adjustment is attributable to the taxable year immediately preceding the taxable year of change.

For the penalties of perjury applicable to this statement, see section 6065 and the declaration of the taxpayer included on the return.

Q–10. If a taxpayer elects to use a part-year change in method with respect to a type of item, how is the amount of an item of that type taken into account in computing taxable income for the taxable year of change?

A–10. (a) If a taxpayer elects to use a part-year change in method with respect to a type of item, the amount of an item of that type is taken into account in computing taxable income for the taxable year of change in accordance with the following rules:

(1) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year of change and before July 19, 1984, the amount is taken into account for the taxable year of change.

(2) If, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year of change, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984, a portion of the amount is taken into account under this paragraph (a)(2) for the taxable year of change. The portion taken into account under this paragraph (a)(2) is the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in the taxable year of change that precede July 19, 1984, and the denominator of which is the total number of days in such year (*e.g.*, in the case of a calendar taxable year, the fraction is $^{200}/_{366}$ or .55 if rounded).

(3) If the taxpayer can determine that, under the law in effect after the enactment of section 461(h), the amount was incurred during the taxable year of change and after July 18, 1984, the amount is taken into account for the taxable year of change.

(4) If, under the law in effect after the enactment of section 461(h), the amount was incurred during the taxable year of change, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984, a portion of the amount is taken into account under this paragraph (a)(4) for the taxable year of change. The portion taken into account under this paragraph (a)(4) is the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in the taxable year of change that follow July 18, 1984, and the denominator of which is the total number of days in such year (*e.g.*, in the case of a calendar taxable year, the fraction is $^{166}/_{366}$ or .45 if rounded).

(5) The amount taken into account with respect to the item for the taxable year of change equals the amount, if any, determined under paragraph (a)(1) or paragraph (a)(2) of this A–10, plus the amount, if any, determined under paragraph (a)(3) or paragraph (a)(4) of this A–10.

(6) If a taxpayer maintains books and records that permit a determination of amounts incurred as of the end of a calendar month or calendar quarter but do not permit a determination of whether amounts were incurred before July 19, 1984, or after July 18, 1984, the proration rules of paragraph (a)(2) and paragraph (a)(4) of this A–10 may be applied at the election of the taxpayer by treating the calendar month or calendar quarter as the taxable year.

(7) The rules of paragraphs (a)(1) through (a)(6) of this A–10 are to be applied in determining the amount of each separate section 481(a) adjustment under paragraph (a) of A–8 of this section.

(b) The following example illustrates the principles of paragraph (a) of this A–10.

Example—(1) *Facts.* Z corporation, a calendar year, accrual method taxpayer, properly elects to use a part-year change in method with respect to items of type 1 and type 2. Z can determine that, under the law in effect before the enactment of section 461(h), items of type 1 in the amount of $12,000 were incurred during the taxable year ending December 31, 1984, $10,000 of which were so incurred before July 19, 1984, and $2,000 of which were so incurred after July 18, 1984. Of the items of type 1 in the amount of $12,000, Z can determine that, under the law in effect after the enactment of section 461(h), items in the amount of $7,000 were incurred during the taxable year ending December 31, 1984, and

after July 18, 1984. The books and records of Z also indicate that as of December 31, 1984, the remaining items of type 1 in the amount of $5,000 had not been incurred under the law in effect after the enactment of section 461(h). The recurring item exception does not apply to items of type 1.

The books and records of Z also indicate that, under the law in effect before the enactment of section 461(h), items of type 2 in the amount of $15,000 were incurred during the taxable year ending December 31, 1984, but Z cannot determine whether the items were so incurred before July 19, 1984, or after July 18, 1984. Of the items of type 2 in the amount of $15,000, Z can determine that, under the law in effect after the enactment of section 461(h), items in the amount of $12,000 were incurred during the taxable year ending December 31, 1984, but Z cannot determine whether the items were so incurred before July 19, 1984, or after July 18, 1984. The books and records of Z also indicate that, as of December 31, 1984, the remaining items of type 2 in the amount of $3,000 had not been incurred under the law in effect after the enactment of section 461(h). The recurring item exception does not apply to items of type 2.

(2) *Part-year change in method.* In computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 1 in the amount of $17,000. Of this $17,000 amount, items in the amount of $10,000 are taken into account under paragraph (a)(1) of this A–10 and items in the amount of $7,000 are taken into account under paragraph (a)(3) of this A–10. Under paragraph (a)(2) of A–8 of this section, a section 481(a) adjustment of $10,000 is required with respect to items of type 1 ($5,000 end of year adjustment, decreased by $2,000 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by $7,000 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h)).

In addition, in computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 2 in the amount of $13,640. Of this $13,640 amount, items in the amount of $8,197 ($15,000×200/366) are taken into account under paragraph (a)(2) of this A–10 and items in the amount of $5,443 ($12,000×166/366) are taken into account under paragraph (a)(4) of this A–10. Under paragraph (a)(2) of A–8 of this section, a section 481(a) adjustment of $1,640 is required with respect to items of type 2 ($3,000 end of year adjustment reduced by $6,803 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by $5,443 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h)).

Q–11. If a taxpayer does not elect to use a full-year change in method or a part-year change in method with respect to a type of item, how is the amount of an item of such type taken into account in computing taxable income?

A–11. (a) If a taxpayer does not elect to use a full-year change in method or a part-time change in method with respect to a type of item (*i.e.*, the cut-off method applies to the type of item), the amount of an item of that type is taken into account in computing taxable income in accordance with the following rules:

(1) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred before July 19, 1984, the amount is taken into account for the taxable year in which so incurred.

(2) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred after July 18, 1984, the amount is taken into account for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

(3) If, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year that includes July 19, 1984, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984—

(i) The amount is taken into account for the taxable year in which incurred under the law in effect after the enactment of section 461(h); or

(ii) At the taxpayer's election, the amount is taken into account under paragraph (a)(4) of this A–11.

(4) An amount is taken into account under this paragraph (a)(4) as follows:

(i) A portion of the amount equal to the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in such taxable year that precede July 19, 1984, and the denominator of which is the total number of days in such year (*e.g.*, in the case of a calendar year, the fraction is $^{200}/_{366}$ or .55 if rounded) is taken into account for the taxable year that includes July 19, 1984.

(ii) The remainder of the amount is taken into account for the taxable year or years (which may include the taxable year that includes July 19, 1984) that include all or a part of the adjustment period (as defined in paragraph (a)(5) of this A–11). The amount taken into account for a taxable year that includes all or a part of the adjustment period is the amount not taken into account under paragraph (a)(4)(i) of this A–11 multiplied by a fraction, the numerator of which is the number of days in the adjustment period that occur during the taxable year and the denominator of which is the total number of days in the adjustment period.

(5) For purposes of paragraph (a)(4)(ii) of this A–11, the adjustment period is the period that begins on the day following the last day of the transition period and that is equal in duration to the period that begins on July 19, 1984, and ends on the last day of the taxable year that includes July 19, 1984. For this purpose, the transition period is the period that begins on August 1, 1984, and is equal in duration to the number of full months that typically elapse (determined on a reasonable and consistent basis) between the date an item of that type is incurred under the law in effect before the enactment of section 461(h) and the date such an item is incurred under the law in effect after the enactment of section 461(h).

(b) The following example illustrates the principles of paragraph (a) of this A–11.

Example—(1) *Facts.* Assume the same facts as provided in the example contained in paragraph (b) of A–10 of this section, except that Z does not elect a part-year change in method with respect to items of type 1 and type 2. In addition, assume that the items of type 1 in the amount of $7,000 that were incurred during the taxable year ending December 31, 1984, and after July 18, 1984, under the law in effect after the enactment of section 461(h) were among the items of type 1 in the amount of $10,000 that were incurred during the taxable year ending December 31, 1984, and before July 19, 1984, under the law in effect before the enactment of section 461(h). Finally, assume that the transition period for items of type 2 is one month, beginning on August 1, 1984, and ending on August 31, 1984. Thus, the adjustment period for items of type 2 begins on September 1, 1984, and ends on February 13, 1985.

(2) *Cut-off method.* In computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 1 in the amount of $10,000 under paragraph (a)(1) of this A–11. No additional amount is taken into account when the items taken into account under the preceding sentence are incurred under the law in effect after the enactment of section 461(h). Thus, neither the amount of items so incurred during the taxable year ending December 31, 1984 ($7,000), nor the amount of items to be incurred in a later taxable year ($3,000) are taken into account under the law in effect after the enactment of section 461(h). In addition, the items of type 1 in the amount of $2,000 that were incurred during the taxable year ending December 31, 1984, and after July 18, 1984, under the law in effect before the enactment of section 461(h), are not to be taken into account for the taxable year ending December 31, 1984, but, instead, are to be taken into account under paragraph (a)(2) of this A–11 for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

If Z does not elect the rules contained in paragraph (a)(4) of this A–11 for all items of type 2, in computing taxable income for the

taxable year ending December 31, 1984, Z takes into account items of type 2 in the amount of $12,000 under paragraph (a)(3)(i) of this A–11. The remaining items of type 2 in the amount of $3,000 are to be taken into account under paragraph (a)(3)(i) of this A–11 for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

If Z elects the rules contained in paragraph (a)(4) of this A–11 for all items of type 2, in computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 2 in the amount of $13,197. The remaining items of type 2 in the amount of $1,803 are taken into account for the taxable year ending December 31, 1985. These amounts are determined as follows:

(i) Under paragraph (a)(4)(i) of this A–11, items of type 2 in the amount of $8,197 [$15,000x200/366] are taken into account for the taxable year ending December 31, 1984.

(ii) Under paragraph (a)(5) of this A–11, the one month transition period begins on August 1, 1984, and ends on August 31, 1984, and the adjustment period begins on September 1, 1984, and ends on February 13, 1985. Thus, 122 days (the number of days from September 1, 1984, through December 31, 1984) of the 166 day adjustment period occur in the taxable year ending December 31, 1984. Under paragraph (a)(4)(ii) of this A–11, items of type 2 in the amount of $5,000 ($6,803x122/166) are taken into account for the taxable year ending December 31, 1984.

(iii) The remaining 44 days of the 166 day adjustment period occur in the taxable year ending December 31, 1985. Under paragraph (a)(4)(ii) of this A–11, items of type 2 in the amount of $1,803 ($6,803x44/166) are taken into account for the taxable year ending December 31, 1985.

Q–12. What is the effective date of section 461(h) with respect to the accrual of interest expense?

A–12. Section 461(h) applies to interest accruing under any obligation (whether or not evidenced by a debt instrument) if the obligation (a) is incurred in any transaction occurring after June 8, 1984, and (b) is not incurred under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred. Interest accruing under an obligation described in the preceding sentence is subject to section 461(h) even if the interest accrues before July 19, 1984. Similarly, interest accruing under any obligation incurred in a transaction occurring before June 9, 1984, (or under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred) is not subject to section 461(h) even to the extent the interest accrues after July 18, 1984.

Q–13. How do section 461(h) and this section affect taxpayers subject to any of the conditions listed in section 4.01 of Rev. Proc. 84–74, 1984–44 I.R.B. 15?

A–13. An accrual method taxpayer that is subject to any of the conditions listed in section 4.01 of Rev. Proc. 84–74, 1984–44 I.R.B. 15, on the date a return is filed for the taxable year that includes July 19, 1984, may be required to change its method of accounting for a taxable year preceding the taxable year that includes July 19, 1984. If a change is required, such change shall be taken into account in applying the rules of this section.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.461–3T..... 1545–0917."

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. 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.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 6, 1985.

Ronald A. Pearlman,

Assistant Secretary to the Treasury.

[FR Doc. 85–12148 Filed 5–17–85; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1, 53, 301, and 602

[T.D. 8026]

Simplification of Private Foundation Return and Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the simplification of private foundation and nonexempt charitable trust returns and reporting requirements. Changes to the applicable law were made by section 1 of the Act of December 28, 1980. The regulations provide private foundations and nonexempt charitable trusts with the guidance needed to comply with the Act, and primarily affect such organizations.

DATES: Effective May 20, 1985. The amendments are applicable after December 31, 1980, and apply to taxable years beginning after December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention: CC:LR:T:EE–35–81, (202–566–3422) (not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 21, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 33145). On August 29, 1984, a correction notice was published in the **Federal Register** (49 FR 34240) solely for the purpose of correcting typographical errors.

One comment was received concerning the general requirements of private foundation returns and reporting. That comment did not address the substance of the notice of proposed rulemaking.

No hearing was requested or held.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

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, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Monice Rosenbaum of the Employee Plans and Exempt Organizations 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, both on matters of substance and style.

List of Subjects

26 CFR 1.6001–1–1.6109–2

Income taxes, Administration and Procedure, Filing requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 301

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

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 53 and 301 are amended by adopting, without change, the regulations proposed as a notice of proposed rulemaking published in the **Federal Register** on August 21, 1984 (49 FR 33145) as corrected by the correction notice published in the **Federal Register** on August 29, 1984 (49 FR 34240).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 25, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 1 is unchanged.

Par. 2. Paragraph (a)(7) of § 1.6012–3 is revised to read as follows:

§ 1.6012–3 Returns by fiduciaries.

(a) *For estates and trusts.* * * *

(7) *Certain trusts described in section 4947(a)(1).* For taxable years beginning after December 31, 1980, in the case of a trust described in section 4947(a)(1) which has no taxable income for a taxable year, the filing requirements of section 6012 and this section shall be satisfied by the filing, pursuant to § 53.6011–1 of this chapter (Foundation Excise Tax Regulations) and § 1.6033–2(a), by the fiduciary of such trust of—

(i) Form 990–PF if such trust is treated as a private foundation, or

(ii) Form 990 if such trust is not treated as a private foundation.

When the provisions of this paragraph (7) are met, the fiduciary shall not be required to file Form 1041.

* * * * *

Par. 3. The heading of § 1.6033–2 is revised to read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

* * * * *

Par. 4. The following new paragraph (a)(4) is added to § 1.6033–2:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) *In general.* * * *

(4) For taxable years beginning after December 31, 1980, trusts described in section 4947(a)(1) and nonexempt private foundations shall comply with the requirements of section 6033 and this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a). This section shall be applied for taxable years beginning after December 31, 1980 as if trusts described in section 4947(a)(1) and nonexempt private foundations were described in section 501(c)(3). Therefore, for purposes of this section, all references to exempt organizations shall include section 4947(a)(1) trusts and nonexempt private foundations and all references to private foundations shall include section 4947(a)(1) trusts that would be private foundations if they were described in section 501(c)(3) and all nonexempt private foundations. Similarly, for purposes of paragraph (a)(2)(ii)(d), the purposes for which a section 4947(a)(1) trust or a nonexempt private foundation is organized shall be treated as the purposes for which it is exempt. For purposes of this section, the term "nonexempt private foundation" means a taxable organization (other than a section 4947(a)(1) trust) and that is a private foundation. See section 509(b) and § 1.509(b)–1. See also section 642(c)(6) and § 1.642(c)–4.

* * * * *

Par. 5. Paragraph (j) of § 1.6033–2 is removed, and paragraph (k) of § 1.6033–2 is redesignated as paragraph (j).

Par. 6. The following new § 1.6033–3 is added immediately after § 1.6033–2:

§ 1.6033–3 Additional provisions relating to private foundations.

(a) *In general.* The foundation managers (as defined in section 4946(b)) of every organization (including a trust described in section 4947(a)(1)) which is (or is treated as) a private foundation (as defined in section 509) the assets of which are at least $5,000 at any time during a taxable year shall include the following information on its annual return in addition to that information required under § 1.6033–2(a):

(1) An itemized statement of its securities and all other assets at the close of the year, showing both book and market value,

(2) An itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient (other than a recipient who is not a disqualified person and who receives, from the foundation, grants to indigent or needy persons that, in the aggregate, do not exceed $1,000 during the year), any relationship between any individual recipient and the foundation's managers or substantial contributors, and a concise statement of the purpose of each such grant or contribution,

(3) The address of the principal office of the foundation and (if different) of the place where its books and records are maintained,

(4) The names and addresses of its foundation managers (within the meaning of section 4946(b)), that are substantial contributors (within the meaning of section 507(d)(2)) or that own 10 percent or more of the stock of any corporation of which the foundation owns 10 percent or more of the stock, or corresponding interests in partnerships or other entities, in which the foundation has a 10 percent or greater interest.

For purposes of subparagraph (2) of this paragraph, the business address of an individual grant recipient or foundation manager may be used by the foundation in its annual return in lieu of the home address of such recipient or manager, and the term "relationship" shall include, but is not limited to, any case in which an individual recipient of a grant or contribution by a private foundation is (i) a member of the family (as defined in section 4946(d)) of a substantial contributor or foundation manager of such foundation, (ii) a partner of such substantial contributor or foundation manager, or (iii) an employee of such substantial contributor or foundation manager or of an organization which is effectively controlled (within the meaning of section 4946(a)(1)(H)(i) and the regulations thereunder), directly or indirectly, by one or more such substantial contributors or foundation managers.

(b) *Notice to public of availability of annual return.* A copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), and proof of publication thereof, shall be filed with the annual return required by § 1.6033–2(a). A copy of such notice as published, and a statement signed by a foundation manager stating that such notice was

published, setting forth the date of publication and the publication in which it appeared, shall be sufficient proof of publication for purposes of this paragraph.

(c) *Special rules*—(1) *Furnishing of copies to State officers.* The foundation managers of a private foundation shall furnish a copy of the annual return required by section 6033 and § 1.6033–2 to the Attorney General of:

(i) each State which the foundation is required to list on its return pursuant to § 1.6033–2(a)(2)(iv),

(ii) the State in which is located the principal office of the foundation, and

(iii) the State in which the foundation was incorporated or created.

The annual return shall be sent to each Attorney General described in paragraph (c)(1) (i), (ii), or (iii) of this section at the same time as it is sent to the Internal Revenue Service. Upon request the foundation managers shall also furnish a copy of the annual return to the Attorney General or other appropriate State officer (within the meaning of section 6104 (c)(2)) of any State. The foundation managers shall attach to each copy of the annual return sent to State officers under this subparagraph a copy of the Form 4720, if any, filed by the foundation for the year.

(2) *Cross-reference.* For additional rules with respect to private foundations' returns and the public inspection of such returns, see section 6104(d) and the regulations thereunder.

(d) *Special rules for certain foreign organizations.* The provisions of paragraphs (b) and (c) of this section shall not apply with respect to an organization described in section 4948(b). The foundation managers of such organizations are not required to publish notice of availability of the annual return for inspection, to make the annual return available at the principal office of the foundation for public inspection under section 6104(d), or to send copies of the annual return to State officers.

(e) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1980.

Par. 7. In § 1.6034–1, the heading of that section, the second sentence of paragraph (a), and the entire text of paragraph (b) are revised to read as follows:

§ 1.6034–1 Information returns required of trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c).

(a) *In general.* * * * In addition, for taxable years beginning after December 31, 1969, every trust (other than a trust described in paragraph (b) of this section) described in section 4947 (a) (2) (including trusts described in section 664) shall file such return for each taxable year, unless all transfers in trust occurred before May 27, 1969. * * *

* * * * *

(b) *Exceptions*—(1) *In general.* A trust is not required to file a Form 1041–A for any taxable year with respect to which the trustee is required by the terms of the governing instrument and applicable local law to distribute currently all of the income of the trust. For this purpose, the income of the trust shall be determined in accordance with section 643(b) and §§ 1.643(b)–1 and 1.643(b)–2.

(2) *Trusts described in section 4947(a)(1).* For taxable years beginning after December 31, 1980, a trust described in section 4947(a)(1) is not required to file a Form 1041–A.

* * * * *

§ 1.6056–1 [Removed]

Par. 8. Section 1.6056–1, relating to annual reports by private foundations, is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 53 is unchanged.

Par. 10. Paragraph (d) of section 53.6011–1 is revised to read as follows:

§ 53.6011–1 General requirement of return, statement, or list.

* * * * *

(d) For taxable years ending on or after December 31, 1975, every trust described in section 4947(a)(2) which is subject to any of the provisions of Chapter 42 as if it were a private foundation shall file an annual return on Form 5227. For taxable years beginning after December 31, 1980, every trust described in section 4947(a)(1) which is a private foundation shall file an annual return on Form 990–PF.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 11. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 301 is unchanged.

Par. 12. Section 301.6034–1 is revised to read as follows:

§ 301.6034–1. Returns by trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c).

For provisions relating to the requirement of returns by trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c), see § 1.6034–1 of this chapter (Income Tax Regulations).

Par. 13. Section 301.6104(d)–1 is amended by removing the word "report" wherever it appears and adding in its place the word "return"; by removing the word "reports" wherever it appears and adding in its place the word "returns"; and removing the language "6056" wherever it appears and adding in its place the language "6033".

Par. 14. Paragraph (b)(1) of section 301.6104(d)–1 is removed, paragraphs (b)(2) and (b)(3) are redesignated as (b)(3) and (b)(4), respectively and the following new paragraphs (b)(1) and (b)(2) are added:

§ 301.6104(d)–1 Public inspection of private foundations' annual returns.

* * * * *

(b) *Definitions and special rules*—(1) *Private foundation.* For purposes of this section, the term "private foundation" includes both exempt and nonexempt private foundations and also includes trusts described in section 4947(a)(1) that are treated as private foundations for purposes of section 6033.

(2) *Manner of making annual return available for public inspection.* The foundation managers of a private foundation which has no principal office, or whose principal office is in a personal residence, may satisfy the requirement that the annual return be made available for public inspection at the foundation's principal office by having the return available for public inspection at an appropriate substitute location or by furnishing a copy free of charge (including postage and copying) to persons who request inspection in the manner and at the time prescribed therefor in section 6104(d) and the regulations thereunder. In addition to its principal office, a private foundation may designate an additional location at which its annual return shall be made available in the manner and at the time prescribed therefor in section 6104(d).

* * * * *

Par. 15. Section 301.6652–2 is amended by revising the section heading, paragraph (a)(1) and paragraphs (c) (1), (2) and (3) to read as follows:

§ 301.6652–2 Failure by exempt organizations and certain nonexempt organizations to file certain returns or to comply with section 6104(d) for taxable years beginning after December 31, 1969.

(a) *Exempt organization or trust.* In the case of a failure to file a return required by—

(1) Section 6033, relating to returns by exempt organizations, trusts described

in section 4947(a)(1) and nonexempt private foundations.

* * * * *

(c) *Public inspection of private foundations' annual returns*—(1) *In general.* In the case of a failure to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, within the time and in the manner prescribed for complying with section 6104(d), unless it is shown that such failure is due to reasonable cause, there shall be paid by the person or persons responsible for failing to comply with section 6104(d) $10 for each day during which such failure continues. However, the total amount imposed under this subparagraph on all persons responsible for any such failure with regard to any one annual return shall not exceed $5,000.

(2) *Amount imposed.* The amount imposed under section 6652(d)(3) is $10 per day for a failure to comply with section 6104(d). For example, assume that an annual return must be filed by private foundation X on or before May 15, 1982, for the calendar year 1981. The foundation without reasonable cause does not comply with section 6104(d) by publishing notice of the availability of the annual return until July 30, 1982. In this case, the person failing to comply with section 6104(d) within the prescribed time is required to pay $760 for complying with section 6104(d) 76 days late.

(3) *Cross reference.* For the penalty for willful failure to comply with section 6104(d), see § 301.6685–1.

* * * * *

Par. 16. Section 301.6685–1 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 301.6685–1 Assessable penalties with respect to private foundations' failure to comply with section 6104 (d).

(a) *In general.* In addition to the penalty imposed by section 72.7, relating to fraudulent returns, statements, or other documents, any person (as defined in paragraph (b) of this section) who is required to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, and who fails so to comply, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return with respect to which there is a failure so to comply.

* * * * *

(d) *Cross reference.* For the amount imposed for failure to comply with section 6104(d), see paragraph (c) of § 301.6652–2.

§ 301.7207–1 [Amended]

Par. 17. Section 301.7207–1 is amended by removing the words ", after December 31, 1969, section 6056 or" from the second sentence and adding in their place the word "section".

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 18. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 19. Section 602.101(c) is amended by inserting in the appropriate places in the tables "1.6012–3(a)(7) . . . 1545–0092, 1.6033–2 . . . 1545–0092, 1.6033–3 . . . 1545.0012, 1.6034–1 . . . 1545–0092, 53.6011–1(d) . . . 1545–0092, 301.6034–1 . . . 1545–0092, 301.6104(d)–1(b) . . . 1545–0092, 301.6652–2 . . . 1545–0092, 301.6685–1(a) . . . 1545–0092 and 301.7207–1 . . . 1545–0092".

[FR Doc. 85–12150 Filed 5–17–895; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12–85–02]

Drawbridge Operation Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects miscellaneous amendments to a final rule which reorganized the Coast Guard regulations for drawbridges across the navigable waters of the United States published in the Federal Register on Tuesday, April 24, 1984 (49 FR 17450), and revokes the regulation for a drawbridge. This action is necessary to correct the mile locations on several bridges, and to revoke the regulation on a drawbridge that has been removed.

EFFECTIVE DATE: This rule becomes effective on May 9, 1985.

FOR FURTHER INFORMATION CONTACT: R.E. Guerra, (415) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are Mrs. Rose E. Guerra, project officer, and Lieutenant Wayne C. Raabe, project attorney.

This action has no economic consequences. It merely corrects mile locations and revokes a regulation that is now meaningless because it pertains to a drawbridge that no longer exists. Consequently, this action is considered to be a non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 533, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05–1(g).

§ 117.155 [Amended]

2. § 117.155 is amended by removing "mile 0.5 at Eureka" and inserting in its place "mile 0.3 at Eureka".

§ 117.169 [Amended]

3. In § 117.169 paragraph (b) is amended by removing "mile 7.8 at Brazos" and inserting in its place "mile 10.6 at Brazos".

4. In § 117.169 paragraph (c) is amended by removing "mile 14.8 near Imola" and inserting in its place "mile 17.6 near Imola".

§ 117.185 [Amended]

5. § 117.185 is amended by removing "Contra Costa County highway bridge, mile 0.5, and Southern Pacific railroad bridge, mile 0.5" and inserting in its place "Contra Costa County highway bridge, mile 1.0, and Southern Pacific Railroad bridge, mile 1.1".

§ 117.195 [Amended]

6. Section 117.195 is amended by removing paragraph (a).

7. Section 117.195 is further amended by removing the designation "(b)" preceding the regulation of the Sacramento County bridge at Walnut Grove.

Dated: May 9, 1985.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 85-12118 Filed 5-17-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7 85-01]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation and Martin County, the Coast Guard is changing regulations governing the Evans Crary and Roosevelt bridges by permitting the number of openings to be limited during certain periods. This change is being made because periods of peak traffic have changed. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on June 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350-4103.

SUPPLEMENTARY INFORMATION: On January 18, 1985, the Coast Guard published proposed rules 50 FR 4529 concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated February 12, 1985. In each notice interested persons were given until March 18, 1985 to submit comments.

Drafting Information: The drafters of these regulation are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments: In response to the proposal 13 letters were received. Five supported the proposal. Two opposed it. Three favored other opening times ranging from every 15 minutes to two hour morning and evening closed periods. Two requested the installation of radiotelephones and one of those also requested "on demand" bridge openings after dark. One requested that special rules be established to govern the operation of the Roosevelt Bridge when the adjacent Florida East Coast railroad bridge was in the closed position.

Since the proposed regulation provides for about as many openings as actually occurred under the existing operating rules in 1984, it should not significantly affect navigation but should facilitate the movement of land traffic. The installation of radiotelephones is under consideration by the Florida Department of Transportation. The proposed regulations would, at certain times, require vessels to await a scheduled opening during darkness. This is not inconsistent with rules for other drawbridges and can be addressed by future rulemaking if indicated. The regulation for the Roosevelt bridge addresses coordination with the adjacent Florida East Coast railroad bridge.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by amending § 117.317 as follows: by redesignating existing paragraphs (a) through (g) as paragraphs (b) through (h), respectively, by adding a new paragraph (a) and by revising newly redesignated paragraph (b) to read as follows:

§ 117.317 Okeechobee Waterway.

(a) The draw of the Evans Crary (SR A-1-A) bridge, mile 3.3, shall open on signal except that from November 1 to May 1 from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and federal holidays November 1 to May 1 from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the Roosevelt (US-1) bridge, mile 7.5, shall open on signal except from 7 a.m. to 9 a.m., 11 a.m. to 1 p.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent Florida East Coast Railway bridge is in the closed position at the time of a scheduled opening the draw need not open for eastbound vessels but must open on signal immediately upon the opening of the railroad bridge to pass all accumulated vessels. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(33 U.S.C. 499; 49 CFR 1.46(c)(5) 33 CFR 1.05-1(g)(3))

Dated: May 7, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85-12119 Filed 5-17-85; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1236 and 1253

Establishment of NARA Regulations; Correction

AGENCY: National Archives and Records Administration.

ACTION: Correction to final rule.

SUMMARY: This document corrects technical errors in the final rule published on April 19, 1985 at 50 FR 15722 which established National Archives and Records Administration regulations in Title 36, Chapter XII of the Code of Federal Regulations.

EFFECTIVE DATE: The final rule became effective on April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas, Program Policy and Evaluation Division, National Archives and Records Administration (NAA), Washington, DC 20408, (202) 523-3214.

The following corrections are made in FR document 85-9538:

1. On page 15725, in the third column, the authority citation for Part 1236 is corrected to read as follows:

Authority: 44 U.S.C. 2104(a).

§ 1253.2 [Corrected].

2. On page 15726, in § 1253.2 in the second column, the location of the Pickett Street facility is corrected to read 841–881 S. Pickett Street, Alexandria, VA.

Dated: May 13, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–12125 Filed 5–17–85; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2838]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to National Can Corporation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to National Can Corporation. The Order requires the company to bring air emissions from its can coating facility in Upper Macungie, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by National Can will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on May 20, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21) 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–6553.

SUPPLEMENTARY INFORMATION: On February 7, 1985 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 50 No. 26, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to National Can Corporation. The notice asked for public comments by March 11, 1985 on the EPA proposal.

No public comments were received by this office, therefore, the delayed compliance order issued to National Can is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places National Can on a schedule to bring its facility in Upper Macungie into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, § 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit National Can to delay compliance with SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place National Can on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: May 14, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65, § 65.431.

§ 65.431 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of Federal Register proposal	Final compliance date
National Can Corporation	Upper Macungie, Pennsylvania		§ 129.52 of title 25	2/7/85	4/9/85

[FR Doc. 85–12072 Filed 5–17–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 712 and 716

[OPTS-82020; FRL-2828-8]

Chemical Information Rules; Health and Safety Data Reporting Urea-Formaldehyde Resins

Correction

In FR Doc. 85–10656 begining on page 18861 in the issue of Friday, May 3, 1985, make the following correction: On page 18863, in the second column, in the first complete paragraph, in the ninth line, "June 30, 1985" should read "June 3, 1985".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 83-1096; FCC 85-117]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has affirmed its April 11, 1984 decision to adopt lottery procedures to select cellular radio

licensees from among mutually exclusive competing applicants in all cellular markets other than the top-30 Metropolitan Statistical Areas (MSAs). It rejected various alternative licensing mechanisms in affirming its conclusion that the public interest would be best served by using lotteries. In response to petitions for reconsideration, the Commission modified its cellular rules for markets beyond the top-120 MSAs to eliminate cumulative lottery chances for nonwireline applicants entering into partial settlements, modified the 1 percent ownership rule for interests in corporate applicants and revised its policies on financial showings to require applicants to obtain a firm financial commitment for the system applied for. These modifications were necessary to reduce the potential for abusive or sham applications, streamline the licensing process and ensure that applications are complete, easily read and ready for processing.

EFFECTIVE DATE: June 19, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Cellular Radio Service, Mobile Radio Service, Radio Common Carriers.

Memorandum Opinion and Order on Reconsideration

In the matter of amendment of the Commission's rules to allow the selection from among mutually exclusive competing cellular applications using random selection or lotteries instead of comparative hearings; CC Docket No. 83-1096.

Adopted: March 14, 1985.
Released: May 3, 1985.

By the Commission:

I. Introduction

1. On April 11, 1984, we adopted a Report and Order in this proceeding implementing a system of lotteries for selecting cellular licensees from among mutually exclusive applicants in markets other than the 30-largest and modifying the cellular application rules to take into account the lottery selection process for markets beyond the top-90.[1] Pending are twelve petitions for reconsideration. Two of the petitioners request reconsideration of the use of lotteries urging, respectively, (1) that we auction off cellular licenses and (2) that we reinstitute comparative proceedings for selecting licensees in certain 31-90 markets. A third petitioner urges that comparative proceedings be used in markets 91-120.[2] The remaining petitioners raise various issues relating to application filing and processing procedures for markets beyond the top 90 in a lottery selection regime including: (1) the rules governing "fill-in" applications for parts of Metropolitan Statistical Areas (MSAs) and New England County Metropolitan Areas (NECMAs) not included in the initial permittee or licensee's Cellular Geographic Service Area (CGSA); (2) the rule limiting to less than one percent the ownership of an applicant in a mutually exclusive application; and (3) the 2,000 square mile limit on an applicant's CGSA in non-MSA/non-NECMA areas. In addition, a few miscellaneous issues have been raised regarding various aspects of the *Cellular Lottery Decision* and will be dealt with herein.

2. We have carefully considered the petitions for reconsideration, comments and oppositions and reply comments. We affirm our decision to use lottery procedures to select cellular licensees from among competing applicants in all markets other than the top-30. We also affirm the basic regulatory structure established in the *Cellular Lottery Decision* for implementing the lottery process, particularly our policies regarding basic qualifying standards and pre-filing settlement agreements. However, we are modifying our policy regarding cumulative lottery chances for applicants entering into partial settlements to eliminate the cumulative chance for nonwireline applicants in markets beyond the top-120. We are also granting reconsideration of the 1% ownership rule for the beyond-120 markets and modifying it with regard to ownership interests in corporate applicants to adopt more practical attribution standards for corporate ownership interests. We also take this opportunity to clarify certain issues regarding the implementation of the basic qualifying standards for applications in markets beyond the top 90. Finally, we are adopting new guidelines for the form, organization and content of future applications, as discussed herein.

II. Discussion

A. Auctions

3. Henry Geller and Donna Lampert filed a petition suggesting that we adopt auctions rather than lottery selection procedures for all markets below the top-30. They state that auctioning off cellular authorizations would allow mutually exclusive applicants to compete for the markets they desire most with the license going to the user who will pay the most for it and for whom the license is most valuable. They urge that this marketplace approach would assure the most efficient use of scarce and valuable spectrum resources—a significant public interest benefit—and allow cellular applicants to make rational application choices, in response to business and marketplace judgments, in lieu of government fiat.[3] Geller and Lampert contend, contrary to our conclusion in the *Cellular Lottery Decision* order,[4] that the Commission has the legal authority to implement auctions in common carrier services and that the public interest favors this approach.

4. In the *Notice of Proposed Rulemaking* in this proceeding,[5] we rejected the licensing alternative of auctioning off cellular authorizations to the highest bidder. In the *Cellular Lottery Decision*, we considered comments filed by Geller and Lampert urging, notwithstanding our conclusion in the *Notice*, that the public interest would be served by using auctions in the cellular service, particularly in preference to lotteries. We concluded that unlike our statutory authority to adopt lotteries, our legal authority to employ auctions is not clear.[6] On reconsideration, the petitioners have offered no new facts or arguments on the basic issue of whether the Commission has the legal authority to use auctions in the cellular service; to the contrary, they merely assert that we should so determine and proceed accordingly.

5. There is much to recommend the use of auctions as a licensing method in a new service such as cellular radio. That the right to operate a cellular system is a valuable privilege cannot be doubted. Thousands of applicants have filed in the hope of obtaining a construction permit through the comparative hearing or lottery processes. As the industry matures it will rapidly develop the ability to determine the market value of the right to operate a system of a given size. Yet,

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[1] Cellular Lottery Decision, 98 FCC 2d 175 (1984).

[2] On November 1, 1984, Bluegrass Broadcasting Co., Inc. filed a motion for leave to file supplementary comments by which it seeks to supplement the record in this proceeding with its analysis of actual fourth round applications. Based on this analysis, it requests reconsideration of the use of lotteries in markets 91-120 and urges comparative proceedings. We will grant Bluegrass' motion and accept its comments.

[3] We note also that an auction might enable us to delete the prescreening phase of application processing since it might be possible to have only the winning applicant for each frequency block in a market actually submit an application.

[4] Cellular Lottery Decision, *supra*, note 49 at paragraph 28.

[5] Cellular Lottery Notice, CC Docket No. 83-1096, 48 Fed. Reg. 51493, released October 28, 1983, at para. 30.

[6] See note 4, *supra*.

absent an auction, a construction permit is awarded without payment for the valuable privilege conferred. The winner of a permit reaps a windfall. An auction would discourage speculation by largely eliminating this windfall.

6. Moreover, the public at large would benefit from auctions of cellular authorizations because the permittee would compensate the people for the value of the privilege conferred, as with auctions of other public resources. An auction would also benefit the user public by making service available with less delay than the slow comparative hearing process or the lottery process, which is attended by massive application filings.

7. Notwithstanding these potential benefits, employing an auction at this stage could impose substantial costs on both the public and applicants for markets 91–120. [7] A decision to employ auctions would require a rulemaking as this licensing approach was not the subject of this proceeding and we have not had the benefit of full public comment. During the pendency of a rulemaking, the licensing of cellular service in markets 91–120 would be suspended and the acceptance and processing of applications for subsequent markets further delayed. The public as well as the applicant ultimately selected could suffer from the delay caused by this process. Furthermore, the ambiguity surrounding our legal authority to conduct auctions invites litigation which could further delay the licensing of cellular service in these markets. On balance, we conclude that changing the licensing mechanism for markets 91–120 at this time to auction off celluar licenses would not result in sufficient public benefit to offset the costs and delay necessary to implement that decision. With regard to markets beyond the top-120, the record before us is not sufficiently developed to conclusively decide the appropriateness of using auctions in these markets at this time. We reserve the right to revisit this question with regard to the licensing of cellular service in the beyond-120 markets at a future time if necessary.

B. Comparative Hearings

8. One petitioner requests reconsideration of our decision to use lotteries in lieu of comparative selection in certain 31–90 markets. [8] Harry J. Pappas and Fresno Mobile Radio, d/b/a California Portaphone, request reconsideration of lottery selection for the Fresno, California and Northeastern Pennsylvania markets. [9] Portaphone is an applicant for the Fresno market. It asserts that the factors that gave rise to the Commission's decision to use lotteries are no longer present because, as a result of partial settlements, there are now only two mutually exclusive nonwireline applicants for each market; Portaphone argues, in these circumstances, lotteries will not advance the provision of service faster than comparative selection, and comparative consideration is necessary to ensure selecting the best applicant.

9. The essence of Portaphone's petition is that it believed it had a good chance of prevailing in a comparative evaluation for its hometown market. Accordingly, it applied only for that market and has no other interests to trade for a substantial or controlling interest in the settlement partnerships. Therefore it seeks comparative consideration. In the *Cellular Lottery Decision* order, we concluded that any slight benefit that the public might realize through comparative consideration in identifying marginally better qualified candidates is significantly outweighed by the expense, burden and loss of time that the consumer and the government will suffer. [10] We also found no compelling reason to retain the use of comparative hearings in particular circumstances or certain "unique" markets. [11] Portaphone has failed to demonstrate how the public would benefit from instituting a comparative proceeding for the Fresno and Northeastern Pennsylvania markets; on the contrary, its rationale comtemplates only a purely private corporate benefit. [12] Portaphone's burden in this regard is particularly high given the fact that the prospect of lottery selection was the critical factor in causing the original applicants in Fresno and the original applicants in Northeastern Pennsylvania to achieve partial settlements leaving only two mutually exclusive applicants. To allow a "holdout" applicant to claim that lottery is no longer justified because a settlement fostered by the prospect of lottery selection has reduced the number of applicants, contravenes the public policy purpose of the Lottery Statute [13] and would result in the kind of hybrid lottery/comparative approach that we have already rejected. [14] Accordingly, we will deny portaphone's petition to the extent it requests the reconsideration of comparative selection for the Fresno and Northeastern Pennsylvania markets.

10. Similarly, Portaphone's request for reconsideration of our policy awarding cumulative choices in markets 31–90 to applicants entering into partial settlements is intended only to forestall the settlement process and improve its bargaining posture. The petitioner's assertion that this policy disadvantages single-market applicants again raises no legally cognizable issue and, in any case, is outweighed by the obvious and essential role of cumulative chances in promoting settlements and expediting the provision of service to the public in these markets. [15] Our long-standing

[7] Since we have virtually completed the licensing process for markets 31–90, we find it unnecessary to consider the effect of adopting auctions in those markets.

[8] By Order, released October 3, 1984, FCC 84–460, we denied the Request for a Stay of Effective Date of the Cellular Lottery Rules adopted in this proceeding filed by A. Bates Butler III and James A. Mather. Accordingly, we scheduled lotteries for markets 31–60 on October 3, and for markets 61–90 on October 23. However, due to the fact that full market settlements were achieved in all but two markets, we cancelled the October 3 lottery and held a lottery for the Fresno and Northeastern Pennsylvania markets on October 26. In these two markets, partial settlements including all but one applicant were achieved. (California Portaphone was the non-settling applicant in Fresno). In addition, on January 25, 1985, we held a lottery for the Salt Lake City market since the anticipated full-market settlement was not effectuated.

[9] California Portaphone initially filed its Petition for Reconsideration in this proceeding seeking the reinstitution of comparative selection in markets 31–90 urging that using lotteries is not proper for markets in which applications were filed in contemplation of comparative consideration. We discussed this issue in *Cellular Lottery Decision* and Portaphone has offered no new facts or legal arguments requiring us to reexamine our conclusions. *Cellular Lottery Decision*, at paras. 13–16. Portaphone subsequently requested leave to file a Supplement to its Petition for Reconsideration in order to limit its challenge to lotteries to only those 31–90 markets in which full-market settlements had not been reached, i.e. Fresno and Northeastern Pennsylvania. We will grant California Portaphone leave to file its Supplemental Comments and are addressing its contentions accordingly.

[10] Cellular Lottery Decision, at para. 29.

[11] *Id.*, at para. 28

[12] We note that comparative evaluation would not necessarily benefit the petitioner. Its claim to have filed a "comparatively superior" application for Fresno is purely speculative since direct cases have not been filed.

[13] The Communications Amendments Act of 1982, Pub. L. 97–259, Section 115, 96 Stat. 1087, 1094–95, enacted September 13, 1982, amending Section 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 309(i).

[14] Cellular Lottery Decision, supra, at para. 28. In addition, Portaphone's contention that a comparative proceeding would be faster than holding a lottery because of the likelihood of administrative and judicial review of the lottery selection, ignores the fact that Commission reconsideration and/or judicial review has been sought of nearly all selections made by comparative consideration in the top-30 cellular markets.

[15] A number of commenters have stated that the full-market settlements achieved in markets 31–90 would not have been possible without, and in fact are conditioned upon, the awarding of cumulative chances.

policy of favoring settlements among mutually exclusive cellular applicants has served the public well and we will also deny Portaphone's petition in this regard.[16]

C. Application Standards and Cumulative Chances

11. *Cumulative Chances and Settlements.* Maxcell Telecom Plus, Inc. requests that the Commission reexamine several issues concerning the filing procedures and standards for cellular applications in markets beyond the top-90. Maxcell contends that the Commission's approval of the use of pre-filing settlement agreements and mass-marketed, non-exclusive applications creates great incentives for a "lead" applicant to increase its chances in a lottery by orchestrating efforts to persuade as many other persons as possible to file minimally acceptable applications solely to "stuff the ballot box" and obtain a cumulative chance in the lottery. It points to the more than 5,000 applications filed for markets 91–120 as evidence and notes that many of the applications appear to be mass produced and to have been filed with no intention of ever operating a cellular system. Maxcell concludes that this "flood of petitions", in addition to straining our processing resources, makes it unlikely that a "serious" applicant with a *bona fide* desire to provide cellular service will ultimately obtain the license. Accordingly, Maxcell would prohibit the filing of applications by persons who have entered into pre-filing settlement agreements.[17] It would prohibit the filing of mass-produced, mass-marketed "cookie cutter" applications and would also prohibit any individual engineer or engineering firm from selling the same cellular design to more than one applicant for the same frequency block in a market. Finally, Maxcell would further strengthen the basic qualifying standards to require 39dBu coverage of either 85% of the population or land area of the MSA, coverage of 85% of all interstate highways within the MSA and a 0.02 design grade of service standard.[18]

12. In its comments, Bluegrass Broadcasting Co., Inc. raises the same general concerns as Maxcell. Bluegrass seeks reconsideration of the use of lotteries in markets 91–120 or, in the alternative, that a comparative proceeding be held for the Lexington-Fayette, Kentucky market in which it is an applicant. The essence of Bluegrass' contention is, that as a local communications enterprise, it could reasonably have anticipated success in a comparative proceeding involving a small number of applicants. It has reviewed the 129 applications filed for Lexington, however, and finds its chances of obtaining the license greatly diminished by the many mass-marketed applications filed—applications it assumes have been filed by speculative parties who have not proposed the best system for and are not committed to providing high-quality service in Lexington. In other words, Bluegrass asserts that pre-filing settlement agreements and non-exclusive applications has multiplied the number of speculative applications to the deteriment of the serious, locally-based radio common carrier.

13. The parties filing comments in response to Maxcell generally supported our existing policies on these matters. For example, Interstate Cellular Network criticizes Maxcell's position as providing no compelling reason why a different public interest analysis pertains when a settlement is reached prior to instead of after filing. It states that the Commission should encourage *bona fide* parties to enter into joint ventures at any stage of the licensing process and that any attempt to prohibit pre-filing settlements would encourage secret agreements among applicants and resultant potential abuse of our processes. Similarly, Pactel Mobile Access states that pre-filing settlements are in the public interest as they encourage settlement of mutually exclusive applications by reasonable persons, rather than by "mindless" chance.

14. In the *Cellular Lottery Decision*, we affirmed our tenative conclusion to allow settling parties a cumulative lottery chance to reflect partial settlements.[19] This decision was intended to foster settlements among applicants in markets 31–90, thereby reducing the number of parties in the lottery (and thereby the number of petitions filed against the tentative selectee) or possibly resulting in full-market settlements. Our decision to allow cumulative chances for partially settling applicants has been an essential factor in inducing applicants in markets 31–90 to enter into partial settlements—which have ultimately become full-market settlements in all but three markets. This has substantially shortened the time it would otherwise have taken—by lottery or comparative hearing—to license competitive cellular service in these markets. Even in the three non-settling markets, partial settlements have eliminated all but two mutually exclusive applications, thereby enabling us to complete the licensing process expeditiously. Thus, the benefits we anticipated in allowing cumulative chances in markets 31–90, i.e., fostering settlements to reduce the number of competing parties and simplify the licensing process, have been realized and our policies have expedited the licensing of competitive cellular systems.

15. On the other hand, however, the picture in the beyond-90 markets is not so clear. We decided to allow cumulative chances in these markets to accommodate the fact that some entities, particularly wireline carriers, claimed to have already tentatively entered into pre-filing joint ventures in accordance with our long-standing policies favoring settlements and in contemplation of comparative advantage in a hearing, and wanted cumulative chances in a lottery. In adopting this policy for markets beyond the top 90, we recognized that allowing pre-filing settlements, along with non-exclusive applications, could encourage large groups of filings intended solely to obtain a better chance of lottery selection. Accordingly, we cautioned applicants that mere "lottery tickets" would not be accepted for filing, i.e. that each applicant must demonstrate its independent technical and financial qualifications.[20] By Public Notice, the Common Carrier Bureau provided further guidance on this matter informing applicants that each party to a pre-filing settlement must itself be the real party in interest behind its application, i.e., must bear the costs of

[16] We reject Portaphone's contention that cumulative chances represent an impermissible lottery preference. On the contrary, the cumulative chances merely preserve the existing chances of individual applicants who would otherwise be penalized for entering into partial settlements. Thus, cumulative chances are not "preferences" similar to those awarded in mass media lotteries but rather are a means of maintaining each applicant's odds through the settlement process.

[17] Maxcell contends that pre-filing settlements violate § 22.21 of the Rules, which prohibits the filing of inconsistent or conflicting applications by the same applicant, as well as § 22.921 which precludes an applicant from having a one percent or greater interest in a mutually exclusive application. We agree that there have been some abuses of the Commission's limited approval of pre-filing settlements. Accordingly, we are offering applicants who have reached an agreement with a "lead" applicant prior to filing, whereby their applications will be dismissed in exchange for a miniscule portion of the lead applicant leaving the original lead applicant with a majority of the settled entity, an opportunity to withdraw from such filing arrangements. See note 22, infra.

[18] These are esentially the same standards that Maxcell advocated in its original and reply comments in this proceeding.

[19] Cellular Lottery Decision, *supra*, para. 48.

[20] Id., para. 71.

and be capable of prosecuting its individual application which must be independently complete and acceptable for filing under the Rules.[21] Notwithstanding these safeguards, however, in markets 91–120, the first markets for which applications were filed in contemplation of lottery selection, the prospect of obtaining cumulative chances has become an incentive for promoters to create abusive filing schemes involving large numbers of speculative, insincere and unacceptable applications. Accordingly, we must consider whether the prospective benefits of allowing cumulative chance in these beyond-90 markets, in terms of promoting settlements and simplifying the licensing process, are sufficient to overcome the application process abuses that are occurring.

16. Our experience with applications filed in a lottery selection regime indicates that making a cellular license available virtually for free engenders a variety of schemes intended to increase the chances of an applicant or group of applicants obtaining it. The more than 5,000 applications filed for markets 91–120—a staggering increase over the previous rounds even though the new markets are less populous—illustrates this fact. Many non-exclusive, virtually indistinguishable applications have been filed by investors and speculators under pre-filing agreements to enable a selected "lead" applicant to collect their cumulative lottery chances and thus enhance its selection odds. This has made it necessary for our staff to conduct an extremely thorough and in-depth pre-screening of these applications—at a considerable cost in staff time and resources—as well as delay in the conduct of lottery selection.[22] While we remain confident that the staff's review, coupled with a rigorous review of tentative selectees, will assure that each licensee in markets 91–120 is selected fairly and is fully qualified financially and technically to provide cellular service, we conclude that the public interest would be better served by modifying our cellular application filing standards for future rounds to prevent application speculation and abusive filings.

17. Maxcell would address the problems discussed above by prohibiting pre-filing settlement agreements. It argues that, in contrast to the demonstrated value of post-filing settlements, pre-filing settlements serve no purpose but to encourage inherently "sham" applications to create a cumulative chance. We conclude, however, that eliminating the cumulative chance policy for future filings would have a greater deterrent effect. Merely prohibiting pre-filing agreements of all kinds would leave speculative applicants the opportunity and incentive to file non-exclusive—but acceptable—applications and subsequently settle for a cumulative chance.[23] Thus, prohibiting applicants from entering into pre-filing settlement agreements would not significantly reduce the problem of abusive applications.

18. Prohibiting the filing of non-exclusive applications could significantly reduce the large number of low-cost applications filed. However, we have been presented with no objective evidence that such applications are inferior, or that an applicant using such an application would not provide high-quality service. Maxcell states that a non-exclusive application is necessarily of lesser quality than a "carefully scrutinized application, prepared under the watchful supervision of its principals."[24] There is no inherent reason why this must be so. A non-exclusive application simply spreads its cost over a greater number of applicants. If conscientiously prepared, it should contain engineering for a well-developed, market-specific cellular system. Indeed, by spreading the cost of preparing a high-quality application over a number of principals, a dedicated engineering and consulting team may well be able to prepare a better application than one applicant alone could pay for. In addition, by lowering the cost of obtaining an acceptable application, this policy has opened up the cellular service to new entrants and to increased competition. Moreover, the problem we face here is not that of non-exclusive applications *per se*, but rather, their use of speculators and other insincere parties in an attempt to "stack the odds" in their favor.

19. Given these considerations, we will not grant settling nonwireline applicants in markets beyond the top-120 a cumulative chance to reflect partial settlements. Our decision to allow partially settling parties a cumulative chance—even under lottery selection—was based in large part on the public benefits of inducing settlements in markets 31–90. While we also sought to preserve this settlement incentive for the beyond-90 filings, the number of applications filed in markets 91–120 indicates that this expectation is unrealistic. For example, while most 31-90 markets had no more than 20 mutually exclusive applicants for one frequency block, in markets 91–120 there are more than 100—and in some markets 200—mutually exclusive applications in each market for the non-wireline frequency block. Given the reduced cost of applying under lottery procedures, and the relative simplicity of the application process, it is likely that there would be comparable numbers of applications in future filing rounds if our policy were maintained. Even recognizing that some applications will be returned as unacceptable for filing (and that some applications in markets 91–120 are part of pre-filing settlements) it is likely that there will still be too many mutually exclusive nonwireline applications in each market for useful settlements to be practicable to achieve. Moreover, even if a significant number of large partial settlements could be concluded, the existence of a large number of applicants makes full settlements unlikely. Even as to major partial settlements, the time required to reach them, based on the time it took for settlements in markets 31–90 to be accomplished, would be better used in holding lotteries for these markets and processing the tentative selectee's application.[25]

20. In short, under a lottery selection regime, we anticipate that nonwireline applicants will not realistically be able to effectuate full settlements that will serve the public interest by simplifying and/or expediting the licensing process. Rather, the settlement process is likely to lead to lengthy delays, as the applicants attempt to negotiate terms for realistically workable partnerships. Under these circumstances, the value of

[21] Public Notice, "Cellular Application Filing Policies", Report No. CL-75, June 6, 1984.

[22] We have instructed the staff to return cellular applications for markets 91–120 which have been determined to be defective under Section 22.20 of the Rules. We have also instructed the staff to identify cellular applicants who appear to be part of an orchestrated effort to "skew" the odds of winning the lottery in a given market. Such applicants will be allowed to voluntarily dismiss their applications, amend them to withdraw from any pre-filing agreement or maintain their applications as originally filed. See Public Notice, "Common Carrier Bureau to Return Defective Cellular Applications and Permit Withdrawal from Pre-Filing Settlement Agreements in Markets 91–120", Report No. CL-291, April 10, 1985.

[23] We also anticipate that some speculative applicants would enter into undisclosed pre-filing agreements. Discovering the existence of these agreements and addressing them would be a potent source of delay.

[24] Maxcell's Petition for Reconsideration, Request for Clarification and Deferral, at page 7.

[25] Many months were required to achieve the initial "Grand Alliance" and "Cellular System One" settlements. The final full-market settlements, involving dozens of applicants, took nearly half a year to effectuate.

offering a cumulative chance to induce settlements is greatly reduced. We conclude that whatever value cumulative chances may retain for promoting useful settlements in future rounds is far outweighed by the cost, delay and inefficiency that results from the likely filing by speculators of multiple applications solely to create better selection odds. Our objective in adopting lottery selection procedures was to deliver competitive cellular service to the public more quickly than would have been otherwise possible. The application filing modifications we are announcing today will safeguard this important goal by helping to preclude abusive and speculative practices that delay and complicate the licensing process without providing an offsetting public benefit.[26]

21. We will continue to allow settling wireline applicants in markets beyond the top-120 a cumulative chance to reflect any partial settlement. The local service area presence required of any initial applicant for the wireline block limits the number of possible mutually exclusive wireline applicants in each market to a relatively small group that, in turn, limits the potential for speculation and means that partial and even full market settlements remain realistic.[27] For example, in markets 91–120, only one market has as many as ten applicants and approximately three quarters of the markets have fewer than five applicants. Moreover, the problem of abusive application schemes intended to create a cumulative chance for a lead applicant is precluded by these requirements. Therefore, we conclude that the public interest will be served by the continuation of cumulative lottery chances for wireline applicants in the beyond-120 markets.

22. Finally, we note that non-wireline applicants may still enter into settlement agreements, either before or after filing, although they will receive no cumulative chances.[28] Thus, an applicant could agree to sell a minority interest in its application to other applicants if it is in fact selected, or agree to buy a minority interest in another application if that one is selected.[29] In this way, applicants may still exercise their business judgment to effectuate sensible joint ventures or partnerships without the application abuses experienced in markets 91–120.

23. *Basic Qualifying Standards.* As noted above, Maxcell also requests that the Commission strengthen the basic qualifications for applications in markets below the top-90. It asserts that an 85% 39 dBu coverage requirement of either MSA population or geographic area and 85% coverage of all interstate highways within the MSA, as well as a grade of service standard, is necessary to insure licensing of a high quality proposal.[30] In essence, Maxcell repeats its comments made earlier in this proceeding that basic qualifying standards should be set high enough to require an applicant to propose service equivalent to that proposed by applicants in the top 30 markets.

24. In the *Cellular Lottery Decision*, we sought to strike a balance between the need to prevent inferior applications and the desirability of allowing cellular applicants maximum flexibility to design creative, market-based solutions for varying cellular market characteristics.[31] We placed high regard on allowing cellular applicants to design their systems in reponse to marketplace forces and on avoiding standards that would restrict that flexibility, be difficult to administer or unlikely to effectively deter frivolous applications. Maxcell characterizes this balancing of interests as an "abdication" of our responsibility to ensure adequate coverage and quality service proposals. We disagree. First, the standards we have adopted adequately achieve the goal of assuring that diverse applications propose generally comparable levels of system coverage and capacity. Second, raising area or population coverage levels as Maxcell suggests, will not guarantee a significantly superior system. Indeed, in some markets it may result in a system that is too high in quality to be supportable economically. Third, establishing a coverage standard for interstate highways appears unnecessary since cellular operators will obviously provide service to area highways with significant demand for cellular service. Such a standard could have the unintended effect of requiring coverage of sparsely traveled or peripheral roads while allowing an applicant to ignore more important highly travelled non-interstate traffic arteries. Standards such as these might result in uneconomic and unwarranted coverage, particularly in smaller markets. We continue to believe that the public will be better served by allowing applicants maximum flexibility to design systems in response to market-specific indicia of cellular demand and that our purpose should be to require only generally comparable minimum levels of area or population coverage. Maxcell has not demonstrated that stricter coverage or grade of service standards would ensure a higher quality of service or deter allegedly inferior applications; consequently, we will deny its request for reconsideration of this matter.

25. As we stated in the *Cellular Lottery Decision*, the basic qualifying requirements already in place for cellular applicants include a showing of financial ability to construct the system and to operate it for one year (Section 22.917) and a variety of technical qualifications (Section 22.913). With regard to financial ability, the prevailing standard, which we applied rigorously in top-30 markets, is one of "reasonable assurance" that the funds needed to construct the proposed system and operate it for one year would be available. *Advanced Mobile Phone Service, Inc.*, 91 FCC 2d 512, 516–17 (1982). However, in markets 31–90, where the cost of construction was considerably lower (in the $4–$5 million range) and the settlement partnerships have access to additional sources of financing, our staff has applied the requirement somewhat less rigorously. The staff has accepted letters from banks or other investment funding sources indicating a general willingness of that institution to provide the funding required by the applicant. Such statements often contain only very general terms and may technically fall short of the "reasonable assurance" required by our rules. Nevertheless, the bank statements appear consistent with banks' general commercial lending practices taking into consideration the amount of money and the risk involved.

26. In adopting lotteries for cellular licenses, we contemplated that § 22.917

[26] Not allowing cumulative chances for the beyond-120 nonwireline markets will help prevent the abusive practices discussed above, while still encouraging legitimate new entrants to apply given the reduced entry barriers inherent in a lottery selection system. In addition, we will subject to strict scrutiny any applications which appear to contain management agreements with other cellular applicants or otherwise appear to create multiple opportunities for an individual or organization to own, control or manage the cellular licensee in a particular market.

[27] This is evidenced by the fact that full-market wireline settlements have made it unnecessary to designate for hearing or hold a lottery for the selection of a wireline licensee in any of the top-90 markets.

[28] In view of this policy, any post-filing settlement must be disclosed to the Commission and the non-surviving applications must be dismissed prior to lottery.

[29] To avoid evasion of the no-cumulative chance policy, we will not permit an applicant to agree to transfer effective control of its application to another applicant who has not dismissed, or to enter an agreement to sell to a person not involved as an applicant.

[30] Presently we require that an applicant propose coverage of 75% of the population or 75% of the area of the MSA within its CGSA and that its 39 dBu contours include 75% of the CGSA. We did not adopt a highway coverage or grade of service standard.

[31] Cellular Lottery Decision, supra, paras. 67–69.

would be an effective barrier to frivolous applications and that a more stringent basic financial requirement would not be needed. However, our experience with applications filed for markets 91–120 in contemplation of lottery selection indicates that this is not the case and that a stricter interpretation of § 22.917 is warranted. In a lottery selection regime, the low cost and relative simplicity of the application process has encouraged many purely speculative applications by thinly or non-capitalized entities seeking to "win" the lottery having no interest in providing cellular service but seeking to profit from obtaining the license. While our policies are intended to encourage legitimate new entrants, these types of applications, in concert with abusive application schemes to create a cumulative chance, disserve the public interest. Thus, while under comparative procedures the "reasonable assurance" test was adequate—since any material question of fact could be designated for hearing—in a lottery context this standard is insufficient to deter speculative, insincere applicants from abusing the lottery process and causing excessive cost and delay in its administration. Therefore, we conclude that in a lottery selection regime, a stricter financial demonstration requirement for cellular applicants will more efficiently and effectively assure that lottery entrants are *bona fide* applicants possessing a demonstrated ability to construct and operate a high quality, competitive cellular system.

27. Accordingly, in future application rounds we will interpret § 22.917(e) to require applicants who intend to finance their systems through debt placement to submit a firm lending commitment from a recognized bank or other financial institution for the financing required. Such commitment must guarantee availability of the amount of financing necessary to construct and operate for one year the system at issue, and set forth the terms of the loan commitment, including any action required of the applicant to continue the commitment in force.[32] An applicant intending to rely on internal funding must submit the information required by Section 22.917(c), in conformance with generally accepted accounting principles, to demonstrate its financial ability. If an applicant obtains a funding commitment from other than a recognized lending institution or internal sources, it must submit proof that the financing entity has such funds available and uncommitted to other cellular applications, or, in the alternative, has obtained a bond to guarantee performance of its obligation. We conclude that requiring an applicant to demonstrate in this way its ability to construct and initially operate its proposed system will further deter frivolous and purely speculative applications, thereby helping to assure that only qualified applicants are ultimately granted a license. Notwithstanding the above, we conclude that it would be unfair to retroactively apply this more stringent policy in markets 91–120 since applicants did not have prior notice of it. Therefore, we will apply the "reasonable assurance" standard assiduously in these markets. Accordingly, we are carefully scrutinizing the applications filed for markets 91–120 at the prescreening stage to identify those with obviously deficient financial showings.[33] In addition, we will carefully review the tentative selectee's application to ensure compliance with this standard.

28. *Coverage Demonstration.* Although we have not found it necessary to modify the basic coverage requirements established in *Cellular Lottery Decision*, we will take this opportunity to emphasize that Section 22.903 of the Rules does not permit an applicant merely to certify in its application that its proposed Cellular Geographic Service Area (CGSA) includes at least 75 percent of either the land area or population of the MSA or NECMA the applicant is applying for. For the Commission to find that an applicant's CGSA meets this standard, the applicant must supply sufficient information regarding the extent of its CGSA. This must be done by indicating the total land area or total population of the MSA or NECMA, and the total land area or population included within the proposed CGSA, expressed both absolutely and as a percentage of the total MSA or NECMA. Including this detail will enable the staff to determine whether this basic coverage requirement is being satisfied.[34]

D. Application Filing Procedures

29. *Fill-in Applications.* A number of independent telephone companies, as well as Maxcell, seek reconsideration of our policy regarding the filing of applications for areas within an MSA or NECMA not included within a permittee's or licensee's CGSA.[35] In the *Cellular Lottery Decision*, we decided to accept applications in 30 market groups, with applications due on a date-certain, for MSAs and NECMAs beyond the top-90. Subsequently we will accept applications for non-MSA/non-NECMA areas on a date-certain and, finally, will accept applications for any remaining areas under regular notice and cut-off filing procedures.[36] We also addressed the question of whether applications may be filed for any part of an MSA or NECMA not included in the existing authorization of the cellular permittee or licensee. We stated that applications for a market or any part of a market are due on the specified date and that subsequent applications would be rejected.[37] However, we provided that a cellular permittee or licensee may apply at any time to increase its CGSA within the boundaries of the relevant MSA or NECMA and that competing applications would not be accepted during the initial nationwide cellular licensing period. This approach recognized that such modifications are natural extensions of an existing permittee or licensee's cellular authorization in response to growing or changing demand and should be subject to minimal regulatory oversight during the initial licensing period.

30. Three of the petitioners on this issue claim that existing Commission policies provided a delayed filing right for telephone companies serving rural

[32] We recognize that under this policy applicants may have to pay the lending institutions to provide a firm financing commitment for the specific system proposed for the market applied for. The applicant must submit an original, signed loan commitment document in its original application; i.e., no photocopy letters or "Dear Applicant" letters will be accepted.

[33] For example, in some markets financial institutions issued letters expressing a willingness to consider lending millions of dollars that were styled, "Dear applicant," with the label affixed indicating the name of the applicant. Other letters contained no terms of the proposed loan agreement.

[34] By Public Notice, Report No. CL-60, the Bureau set forth a calculation methodology by which the 75 percent CGSA coverage requirement would be deemed satisfied. Any alternative method which is more precise than that described, *e.g.*, census tracts, is also acceptable. What we are requiring here is that applicants provide sufficient information to demonstrate that this requirement has been met. A mere statement that the CGSA covers 75 percent of the MSA or NECMA total population or land area is inadequate and will in the future result in the application being unacceptable for filing under the Rules.

[35] Petiton for Partial Reconsideration of Baldwin Telecom, Inc. and St. Croix Telephone Company; Petition for Reconsidaration of Hamel-St. Jacobs Cellular Telephone Company, Lake Bridge Cellular Telephone Company and LaStar Cellular Telephone Company; Petition for Partial Reconsideration of Roggin Telephone Cooperative Co., Wiggins Telephone Association, Strasburg Telephone Co., and Eastern Slope Rural Telephone Association, Inc. In addition, on January 9, 1985, Northwestern Indiana Telephone Company filed a Motion for Leave to File a Supplement to Hamel-St. Jacobs Petition for Reconsideration. We will grant the Motion.

[36] Cellular Lottery Decision, supra, para. 55.

[37] Cellular Lottery Decision, supra, n. 82 at para. 54.

portions of MSAs to file fill-in applications for parts of the MSA not included in the permittee's or licensee's CGSA.[38] They propose that we modify the policy set forth in the *Cellular Lottery Decision* to permit such applications without restriction in the top-90 MSAs. The other two petitioners assert that prohibiting fill-in applications by prospective applicants in the top-30 markets, while permitting such applications by existing licensees, is not provided for in the Rules and is outside the scope of this proceeding, and that we should issue an NPRM properly raising the issue.[39] The opposition commenters [40] contend that the fill-in policy announced in footnote 82 is merely a continuation of existing policy; that notice and comment rulemaking is not required; and that the existing policy serves the public interest.[41]

31. Our intention in footnote 82 of the *Cellular Lottery Decision* was to clarify our existing fill-in policy for all markets.[42] We have taken the position that dates certain are established for filing initial cellular applications. In footnote 82 we indicated, however, that after all initial filing periods have passed, i.e., the completion of the initial nationwide cellular licensing process, applications for new systems may be filed by any applicant for unapplied-for areas. Thus, in footnote 82, we stated that applicants such as these petitioners would have an opportunity to file at some later date for unapplied-for portions of markets for which the filing deadline had passed that otherwise could not be applied for until renewal time. Accordingly, their petitions are denied.

32. We will take this opportunity to affirm our policy regarding fill-in applications.[43] Applicants have had ample notice that applications for any portion of an MSA must be filed on the specified filing date or be barred throughout the initial nationwide licensing period. This policy serves the public interest by allowing the initial licensee flexibility to expand within the subject MSA or NECMA in response to growing or changing demand in the marketplace. In addition, it promotes the expeditious, orderly processing of cellular applications and prevents the "regulatory paralysis" that could ensue if these areas were open to unrestricted applications at the same time we are attempting to complete the nationwide licensing of cellular service. We do not agree with those commenters who suggest that barring fill-in applications by non-permittees and non-licensees will deny service to persons in the uncovered area. First, the existing license will promptly expand its CGSA if there is sufficient demand to warrant service. Second, competing applicants can again apply for the areas at the end of the initial nationwide licensing period. Thus, we conclude that any delay in providing service to these areas will be temporary and is outweighed by the overriding public benefit of enabling us to continue the orderly filing and processing of applications for markets that do not have any service.

33. *Alternative Application Procedures.* New Vector has requested that we modify the cellular application filing procedures to accept applications on a state-by-state basis. This would have the advantage, New Vector asserts, of enabling the expeditious licensing of regional areas which might otherwise not be in line for complete licensing for a period of years.

34. In adopting an application acceptance schedule incorporating filing by MSA or NECMA in order of decreasing population, we recognized that there might be areas where carriers are anxious to implement service but for which applications would not be accepted immediately.[44] Here, New Vector would like to obtain authorization for most of the significant markets around major metropolitan areas within its service area in order to develop regional, integrated systems. We recognized this concern; however the application filing schedule already adopted is likely to provide service to more of the national population faster than a state-by-state approach. More importantly, we conclude that the disruptive effect of so major a change in the application process at this late stage would result in unwarranted confusion and delay without countervailing public benefit. We cannot make provision for every possible situtation and still maintain an orderly, expeditious processing system for the vast majority of the country.[45] Thus, we affirm our phased, market-based acceptance schedule.

E. NON-MSA/Non-NECMA Areas

35. Coastal Utilities, Inc. and New Vector Communications, Inc. request that we make an exception to the 2,000 square mile limit established on the size of an applicant's proposed CGSA in non-MSA/non-NECMA areas. They state that the 2,000 square mile rule will allow an insufficiently large CGSA to cover interstate or other major inter-MSA/NECMA highways in many parts of the nation.[46] The petitioners point out that an inter-MSA/NECMA system that cannot "connect" with the cellular system at either end would be uneconomic and would thus inhibit the development of cellular service along such highways. Pactel Mobile Access supports the petitioner's request suggesting that we review the need for the 2,000 mile rule when a proposed system would cover a four-lane interstate highway between two MSA/NECMAs or cities of at least 50,000 persons.[47]

36. In considering whether to establish boundaries on the overall size of an applicant's CGSA in non-metropolitan areas,[48] we concluded that maximum system design flexibility would best serve the public interest by freeing applicants to identify local demand, market growth potential and marketing receptivity and design their systems accordingly.[49] We also concluded that

[38] Petitioners asserting this argument are Baldwin Telecom, Inc., St. Croix Telephone Company, and Roggin Telephone Cooperative Co., *et al.*

[39] Petitions of Hamel-St. Jacob, *et al.*, and Maxcell.

[40] Bell Atlantic Mobile Systems, Inc., Bell South Mobility, Inc., Centel Corporation and Pactel Mobile Access filed separate comments opposing reconsideration of the fill-in policy as provided in n. 82 of the Cellular Lottery Decision.

[41] Bell Atlantic suggests that in fact the policy announced in n. 82 has expanded the opportunities for non-licensees to file for uncovered MSA/NECMA areas. It suggests that previously non-licensees could not file any fill-in application after the date-certain filing period for a market had passed whereas now, they may file without restriction during the final open-ended application period.

[42] The policy enunciated in n. 82 is consistent with the Common Carrier Bureau's treatment of fill-in applications by non-permittee/licensees for top-30 markets. *See, e.g.* letter re: Maxcell Telecom Plus, Inc. File Nos. 27040-CL-L-84; 27041-CL-L-84 (April 27, 1984). The Bureau further articulated this policy in New Orleans CGSA, Inc., Mimeo 6904, released October 1, 1984, *app. for review pending.*

[43] By fill-in applications we mean applications for new cellular systems for unapplied for portions of MSAs for which filing dates have passed.

[44] Cellular Lottery Decison, supra, para. 55.

[45] Id.

[46] Coastal estimates that a system designed to serve an interstate highway would, due to the service radius of each site, be capable of covering only about 110 miles of highway before exceeding the overall 2,000 square mile limit. *See* Coastal petition at p. 2.

[47] The United States Telephone Association comments that in considering this issue, we should act so as to maximize system design flexibility. In addition, it asks that we allow non-MSA/non-NECMA applicants to amend their applications as a matter of right to eliminate mutual exclusivity by reducing their CGSAs or dividing the proposed system into smaller distinct systems and applications. We believe that we have already provided such applicants an opportunity to resolve frequency conflicts to achieve these goals. *See* Cellular Lottery Decision, *Supra*, at para. 61, § 22.918(c)(1) of the Rules.

[48] Boundaries considered included entire states, Basic Trading Areas, and single and multi-county areas.

[49] Cellular Lottery Decision, *supra*, paras. 50–60.

some maximum limit on CGSA size is necessary in order to simplify our determination of mutual exclusivity, discourage abusive filings and reduce disparities in CGSA size. The petitions on this issue suggest that we have for the most part reached a proper balance of the need for administrative efficiency and the crucial need for maximum system design flexibility in these less densely populated areas. However, the petitions do point out one situation in which the CGSA limitation could unnecessarily restrict an applicant's ability to design its system to accommodate cellular demand, thereby hindering the design of a viable system. At the same time, we cannot totally discount the possibility that creating the requested exception could have certain disadvantages, e.g., it could increase incidence of mutually exclusive applications, complicate the achievement of settlements among mutually exclusive applicants particularly on the wireline side, and render essentially meaningless the exchange presence requirement for wireline carriers.[50] Given all of these factors, we conclude that the 2,000 square mile limitation must be maintained. An applicant wishing to serve a greater non-MSA area must file separate applications, covering no more than 2,000 square miles each.[51]

F. The 1% Rule

37. Four petitioners request reconsideration of § 22.921 of the Rules which prohibit any party in markets beyond the top-90 from holding an ownership interest of 1% or more in more than one cellular application per MSA market, or from holding ownership interests of 1 percent or more in mutually exclusive cellular applications for a non-MSA/non-NECMA area.[52] In general, the petitioners contend that a 1% ownership attribution standard is an unnecessarily strict level for imputing the possibility of control and that there are alternative attribution benchmarks, below 50 percent ownership, that will effectively prevent abuse of the cellular lottery process while ensuring that cellular applicants have reasonable access to financing sources. Specifically, the petitioners assert that the 1% rule poses virtually insurmountable burdens on publicly owned corporations to identify shareholders with a cognizable interest and thus substantially impairs their ability to apply in markets beyond the top 90.[53] They further state that such a strict standard identifies many shareholders with inconsequential ownership interests in terms of their possibility of exercising control and ability to manipulate the lottery process and is likely to generate disputes regarding the accuracy and reporting of interests in multiple cellular applications causing administrative complexity and delay. The petitioners state that while the risk of a 1% shareholder in a publicly held corporation manipulating the lottery process is virtually nonexistent, the goal of achieving nationwide cellular service could be substantially impaired by precluding those corporations with the greatest resources and capital raising potential from participating in cellular ventures due to an unreasonably low attribution standard.[54] They also assert that the consideration that led to the adoption of the 1% rule in the Low Power Television Service (LPTV) do not apply with equal force for cellular; [55] that the Commission has recognized that a 1% ownership standard can be a substantial obstacle to securing investment; [56] and that this is a more significant problem in the capital-intensive cellular industry than the relatively low-cost LPTV service.

38. The petitioners support a variety of alternative ascertainment guidelines. For example, Western Union and Associated urge a 5% attribution standard, similar to that established in the *Multiple Ownership Decision* for the broadcast and cable services, with a 10% benchmark for passive investors.[57] American Financial Corporation would have us not disqualify a party with a controlling interest in a cellular application by virtue of its non-controlling minority interest in a mutually exclusive applicant, provided that the aggregate of all its interests in a single market do not exceed 100% of a single application. In the alternative, it also supports a 5% attribution standard.[58] The United States Telephone Association urges that a 10% ascertainment benchmark is appropriate, arguing that shareholders with lesser interests can only rarely influence corporate decision-making and that 10% represents a reasonable correlation between ownership and control. Cellular Communications, Inc., (CCI), supports a separate rule for closely-held corporations, which it would define as those with 50 or fewer stockholders whose shares are not traded publicly, under which voting interests of less than 33% would be ignored. In addition, the various petitioners and commenters propose a number of additional guidelines regarding non-voting stock and other non-voting interests, provisions for rebutting the selected benchmark in appropriate circumstances to allow a higher level of ownership and the use of a multiplier for determining attribution in vertical ownership chains.[59]

39. In the *Cellular Lottery Decision*, we stated that the issue of minority ownership shares in more than one application in a market is difficult to resolve in a totally satisfactory manner because there is no single point below 50 percent ownership at which a

[50] *See*, opposition comments filed by Centel Corporation to the petitions of Coastal and New Vector.

[51] Applicants may, however, indicate in the separate applications that if granted the systems would be constructed and operated as an integrated whole.

[52] Petition for Partial Reconsideration of American Financial Corporation; Petition for Reconsideration of Cellular Communications, Inc.; Petition for Reconsideration of Western Union Personal Communications, Inc., and Associated Communications Corporation.

[53] For example, Western Union and Associated state that the 1% rule requires a publicly held corporation to ascertain the identity of all its shareholders with a cognizable interest. Many such corporations have thousands of constantly changing shareholders and, in many instances, the shares are held in "street names" by brokerage houses and investment banks reluctant to disclose the beneficial owners. Moreover, even if its shareholders can be identified, it may be impossible for the corporation to ascertain whether those shareholders also hold interests in prospective mutually exclusive applications. In addition, many shareholders with a greater than 1% interest are passive investors, such as mutual funds and bank trust departments, which are likely to have a cognizable interest in other corporations applying for cellular licenses. Although such passive investors usually do not exercise a managerial or control interest in the corporations in which they hold stock, the 1% rule could have the effect of precluding the publicly-held corporation from applying in a particular market.

[54] Petition of Western Union and Associated, page 7.

[55] For example, Western Union states that the 1% rule in LPTV was intended to prevent "stuffing the ballot box" such that the Congressional preference for diversity of ownership and minority group status would be nullified. Western Union states that these considerations are not present in the cellular service.

[56] In the matter of Corporate Ownership Reporting and Disclosure by Broadcast Licensees (Multiple Ownership Decision), FCC 84-115, released April 30, 1984.

[57] Western Union and Associated support adopting virtually all of the rules set forth in the Multiple Ownership Decision, particularly the multiplier for determining attribution in vertical ownership chains, an opportunity to rebut the 5% benchmark in appropriate cases, and the standard under which non-voting stock is non-cognizable as well as certain other classifications.

[58] Cellnet Partners and MCI also commented in favor of the Western Union/Associated proposal.

[59] National Cellular Communications Limited Partnership was the only commenter supporting continuation of the 1 percent rule and opposing reconsideration. It contends that no party has demonstrated how a modification would serve the public interest. We disagree to the limited extent discussed below.

presumption of control clearly arises.[60] For example, in a closely-held corporation, anything less than 50 percent ownership typically deprives that owner of effective control, whereas, in a widely-held public company, as little as 10 percent ownership may vest control. Accordingly, we attempted to balance our desire to give applicants wide latitude in forming business relationships against the need to promote consistency and simplicity in the administration of the cellular lottery, i.e., to avoid making case-by-case ownership determinations. Thus, we adopted with slight modification the standard used in the Low Power Television Service and decided to bar mutually exclusive applications in which any party common to both applications is an officer, or director, or has any interest, direct or indirect, except that interests of less than 1% will not be considered. Our decision to adopt the 1% rule was intended to promote administrative efficiency and fairness in the lottery process given the absence of any evidence that allowing the ownership of a minority share in multiple applications would advance the public interest. In general, we continue to believe that this approach best promotes the public interest by minimizing the likelihood that any applicant may have a substantial or controlling interest in more than one application for a cellular license. However, our experience with the application process for the fourth round markets and the evidence presented by the petitioners supports a limited modification of the one percent rule to reduce the burden it places on widely-held, publicly-traded corporate applicants, as discussed below. Except for this limited modification, however, we will retain the one percent rule for governing all other ownership interests in mutually exclusive applications in a market as well as ownership interests in applications for both frequency blocks in a market.[61]

40. Accordingly, we will modify § 22.921 of the Rules to adopt a 5 percent rule for active investors in publicly-traded corporate applicants and a 10 percent rule for passive investors in publicly-traded corporate applicants similar to the attribution standards for all corporate entities adopted in the *Multiple Ownership Decision*. For markets beyond the top-120, we will prohibit active investors in corporate applicants from having ownership interests of 5 percent or more in mutually exclusive applications. In the case of passive investors, we will not attribute ownership interests in corporate applicants of less than 10 percent.[62] These standards were adopted for the mass media services after a lengthy and comprehensive proceeding assessing the levels of stock ownership at which a corporate shareholder would be capable of affecting the affairs of the licensee. We conclude that minority interests below these levels are very unlikely to be characterized by the kind of control relationships that could result in abusive multiple application strategies. Moreover, these revised benchmarks for investors in corporate applicants will reduce the ascertainment burden on widely-held corporations as applicants can refer to the data provided under the stockholding disclosure requirements of the Securities and Exchange Commission providing for the collection and public availability of information on all entities holding 5 percent of the stock of large publicly-held corporations.[63] These new benchmarks will assure the availability of capital in the cellular service while still providing a sufficient barrier to lottery manipulation.[64]

41. The petitioners and commenters have also suggested that we adopt in this proceeding most of the remaining attribution rules adopted in the *Multiple Ownership Decision* including the use of a multiplier for determining attribution in vertical ownership chains and an exclusion for non-voting stock and qualified limited partnership interests. We will use the multiplier adopted in that decision here to attribute indirect corporate interests for purposes of implementing the 5 and 10 percent ownership benchmarks.[65] This will realistically reflect a party's attenuated interest in a corporate applicant when there are intervening corporations by taking account of the diminution of involvement that results. Thus, any party's interest in an applicant which is indirectly held through a chain of companies will have the appropriate benchmark applied for determining attribution to the product of the percentage values of the successive stockholdings which lead to the applicant.[66]

42. In the *Multiple Ownership Decision*, we treated non-voting stock interests and qualifying limited partnership interests as non-attributable because in both cases the holder of that interest lacks the means to influence or control the activities of the issuing entity. In the mass media context, where our multiple ownership rules are designed to promote diversity of ownership in order to maximize diversity of programming and service viewpoints, these kinds of ownership interests may be ignored since such parties have little or no influence over programming content and viewpoints.[67] Here, however, our concern is to maintain consistency, simplicity and fairness in the lottery selection process by preventing schemes whereby an applicant may obtain a controlling or significant interest in more than one application in a market. In this context, treating limited partnership interests as non-attributable could allow the same individuals to have limited partnership interests in a number of mutually exclusive applicants and thus create a cumulative chance. Even with a 5 percent attribution benchmark, large numbers of limited partners could subscribe to multiple mutually exclusive applications in an attempt to have more

[60] Cellular Lottery Decision, supra, para. 78.

[61] Section 22.921 prohibits interests of 1 percent or more in more than one application for a market, and interests of 1 percent or more in mutually exclusive applications for non-MSA/non-NECMA areas. The petitions before us do not request reconsideration of the 1 percent rule with regard to "cross-over" wireline/non-wireline ownership interests for the same market or among different markets. We will, if necessary, consider these questions in the context of a petition for rulemaking filed by McCaw Cellular Communications, Inc. to establish rules and regulations governing the transfer or assignment of cellular radio ownership interests which cross over the wireline set-aside structure of § 22.902(b) of the Commission's Rules. Our action here is limited to the application of the 1 percent rule to applications for the same frequency block in a single market.

[62] Passive investors include bank trust departments, insurance companies and mutual funds. We will classify passive investors using the guidelines set forth in the Multiple Ownership Decision, *supra*, at paras. 36–40.

[63] 15 U.S.C. 78m(d).

[64] These revised benchmarks apply only to attribution of ownership interests in publicly-traded corporate applicants. We are retaining the one percent rule for attributing ownership in applications filed by privately-held corporations, partnerships, limited partnerships, sole proprietorships and other business entities, as discussed below.

[65] In the Multiple Ownership Decision, we adopted a multiplier providing that where a link in the ownership chain represents a percentage interest exceeding 50 percent, that link will not be included in the successive multiplication used to determine the cognizable status of ownership interests in the vertical chain. This pass through provision reflects the line of *de jure* control.

[66] For example, assume that stockholder A owns 10 percent of company X, which owns 20 percent of company Y, which owns 60 percent of company Z, which owns 15 percent of company L, a cellular applicant. Under the multiplier approach, Y's interest in L would be 15 percent (the same as Z's interest because Y's interest in Z exceeds 50 percent), X's interest would be 3 percent (0.2×0.15) and A's interest would be 0.3% (0.1×0.2×0.15). Neither A nor X would have an attributable interest in L.

[67] We note that the attribution of limited partnership interests in the mass media context is the subject of a petition for reconsideration of the Multiple Ownership Decision.

than one chance at a significant ownership interest in a licensee. In a lottery context, the same potential exists if non-voting stock interests are either non-attributable or treated as voting interests. Therefore, we will not treat these ownership interests as non-attributable in the cellular lottery context and will maintain the 1 percent ownership limitation for these interests.[68] Our purpose in initially adopting the 1 percent rule was to protect the integrity of the lottery process by precluding an applicant from participating in more than one application for a cellular license. On the basis of the record before us, we conclude that the public interest will be best served by limiting the opportunities for applicants to attempt to obtain an interest in more than one lottery chance for a cellular license unless there is an identifiable public benefit to be gained from the use of a different approach.[69]

43. Our experience with applications filed for markets 91–120, as well as the petitions on this issue, indicate that the problem with implementation of the 1 percent rule has been the burden it placed on widely-held corporations to identify less than 1 percent shareholders and the chilling effect this could have on the availability of capital for cellular systems. The modifications we announce today for ownership interests in publicly-traded corporate applicants should solve this problem while still effectively preventing a party from having a controlling or other significant interest in more than one mutually exclusive application. Given the potential for abusive application practices that similar treatment of non-corporate ownership interests and non-voting stock could engender, we conclude that the public interest favors retaining the existing cellular application ownership restrictions for these interests.

G. Miscellaneous

44. Mid-American Cellular Systems, Inc. (MACS) filed a petition for reconsideration asking that we delete certain language in the *Cellular Lottery Decision* which it interprets as redefining the comparative criteria for pending cellular proceedings in the top-30 markets. Specifically, MACS points to the statement in paragraph 19 that the designated issues in comparative proceedings for the top-30 markets "do not include a comparative inquiry into the benefits of a 'gold-plated,' high-cost system or opposed to a 'no-frills,' lower-cost system." It characterizes this observation as a radical deviation from established policy announcing for the first time that economic efficiency is not a basis of comparative evaluation in comparative cellular proceedings. MACS asserts that this modification of existing policy is outside the subject matter and legally permissible scope of the lottery proceeding under the Administrative Procedure Act and is prejudicial to the rights of top-30 market applicants whose proposals are still under consideration.

45. Radiophone, Inc. filed an opposition characterizing MACS' arguments as frivolous. It states that although each of the comparative issues[70] developed for the top-30 comparative proceedings contains an element of economic efficiency considerations, the Commission has never held that economic efficiency *per se* is the focus of comparison either under the designated issues or as a separate and distinct issue. Thus, Radiofone concludes that the complained-of language does not represent a departure from existing Commission policy.[71]

46. We will deny MACS' petition for reconsideration. As MACS points out, revision of the top-30 comparative criteria is outside the scope of this proceeding.[72] Accordingly, we did not intend to vary in any way the comparative criteria established in the respective designation orders for the top-30 markets. MACS appears to have taken our statement in paragraph 19 out of context and to have interpreted it in a manner intended to support its comparative position in certain top-30 proceedings.[73] In paragraph 19, we merely observed that the expedited comparative process is not well-suited to reaching qualitative determinations among divergent cellular proposals, particularly where the differences represent varying, but equally legitimate, approaches to such factors as technical design, marketing, staffing and organization and customer service. In other words, comparative factors which are concerned with service coverage and capacity, expansion ability, service proposals and rates do not bring into the comparative analysis the complex set of engineering, financial, marketing and service trade-offs that a prospective operator must make and do not enable us to make qualitative decisions regarding these diverse system approaches. Therefore, we suggested that if each competing proposal meets the basic technical criteria, it might not be in the public interest to prefer one particular system over another.[74] These observations were only intended to support the adoption of lotteries in markets other than the top-30 and not to revise the comparative process for the remaining top-30 proceedings. Therefore, we find no merit in MACS' petition.[75]

47. *Application Procedures.* In many of the filings for markets 91–120, the forms were filled out in a way that made it difficult for the staff to determine information necessary to log in or pre-screen applications. In some cases, the first page of the application did not reveal the applicant's name or the market and frequency block applied for. Information concerning the legal qualifications of the applicant was, in some instances, intermixed with engineering exhibits. Boilerplate exhibits concerning the application's design concepts and demand

[68] Even with a one percent rule, however, it may be possible for a creative applicant, using various financing, voting or other arrangements, to enter into such schemes. Accordingly, we emphasize our intent to carefully scrutinize any application which appears to be directed toward skewing the lottery or giving an individual or group control, or the opportunity to obtain control, over more than one mutually exclusive application. We will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license. See also note 26.

[69] We recognize that non-voting stock and limited partnership interests are used by entrepreneurs to raise capital for new ventures, such as cellular systems. Our action here does not prevent the use of these ownership forms, but simply limits them to one application per frequency block in a market. Given the generally widespread availability of financial support for cellular systems, the record does not support the conclusion that continuing to apply the 1 percent rule to limited partnership interests and non-voting stock interests will significantly restrict the availability of financial support for new cellular systems.

[70] Mutually exclusive non-wireline applications in the top-30 markets were designated for hearing on the following common issues: (1) geographic area and population coverages, the relative demand for service and ability to accommodate demand; (2) system expansion plans; and (3) each applicant's unique service proposal and rates.

[71] MCI filed comments noting that MACS concerns appear to be "well-taken" and that the complained-of language should not be relied upon.

[72] Cellular Lottery Decision, *supra*, para. 1 and n. 12.

[73] MACS was an applicant in the proceedings to select a nonwireline licensee in the New Orleans MSA and the Dallas-Ft. Worth MSA. In the New Orleans proceeding, Docket No. 83-717, MACS filed exceptions to the Initial Decision of Administrative Law Judge James F. Tierney, asserting that it should receive a preference in area and population coverage based on economic efficiency considerations. The Commission declined to award such a preference. Mid-America Cellular Systems, Inc., CC Docket No. 83-717, FCC 84-648 at para. 12, released January 10, 1985.

[74] Cellular Lottery Decision, *supra*, para. 19.

[75] In the alternative, MACS contends that if economic efficiency is not a comparative factor, then there are no significant differences among top-30 applicants and we must use lotteries in these markets also. Given our resolution of MACS' basic economic efficiency contentions, its alternative argument is irrelevant.

assessments were excessively lengthy. In addition, many applications were bound together inadequately or hazardously (e.g., exposed sharp-edged metal fasteners).

48. To streamline the application intake and prescreening process, we are adopting the following requirements[76] for all cellular construction permit applications filed henceforth:

(1) Applications must be enclosed in stiff covers and fastened securely along the left edge without exposed sharp edges (*e.g.*, looseleaf binders, plastic binding strips, covered metal clasps);

(2) The applicant's name and the market and frequency block applied for must appear on the cover and the first page of the application form;

(3) The initial Form 401 shall be the first item inside the cover followed by a table of contents;

(4) Exhibits shall be attached to the initial Form 401, with engineering data, frequency plan, and individual application forms for the cell-sites at the end; exhibits shall have tabs;

(5) Exhibits other than engineering, financial, and ownership, i.e., those specified by Sections 22.913(a), (4), (5), (7) and (9) shall not exceed three pages;

(6) In addition to map(s) with a scale of 1:250,000 indicating the CGSA and 39 dBu contours, an 8½ by 11 inch reduced map shall be included.

(49) These steps should reduce the bulk of future applications somewhat, as well as streamline processing. The exhibits we are limiting to no more than three pages in length are those that do not require extensive discussion in a lottery context where there are no comparative criteria, and where these issues are not indicative of the relative ability of an applicant to implement its proposal. Finally, we will require all future cellular applications to be filed in a "letter perfect" condition, and failure to conform to this standard will constitute grounds for rejection of the application as unacceptable for filing.

50. In addition, because space is at a premium at the Commission, we are taking one further step to reduce the volume of applications. For all new station applications, two microfiche copies[77] must accompany the full-sized original and one paper duplicate. These will be used for public reference purposes. While we recognize that having microfiche copies of applications made will increase the complexity and expense of preparing filings somewhat, we do not believe this burden to be either excessive or unfairly placed on the applicant. There are numerous companies in the Washington area and in other major cities offering micrographic services on reasonable terms.[78] By using microfiche copies for public reference, we will be able to avoid the need for additional reference areas and associated personnel.

III. Conclusion

51. We are now well along in implementing the delivery of cellular radio service to the American public. We have authorized competing cellular systems in every top-90 cellular market and are moving quickly to advance the licensing process for the remaining cellular markets. In the *Cellular Lottery Decision*, we adopted lottery selection procedures to reduce the delay inherent in the comparative hearing process and expedite the nationwide implementation of cellular service. Our action here reaffirms our commitment to this licensing mechanism and our belief that it provides the best approach for expediting the availability of cellular service in the remaining markets. The refinements we have adopted today, in response to petitions for reconsideration as well as the staff's experience processing applications filed for lottery selection, will further streamline the licensing process by reducing the incentive for applicants to file "sham" or speculative applications and by ensuring that all applicants are qualified, and that each application itself is complete, easily read and ready for processing. With these refinements, we can procede to process applications for the beyond 90 markets and thus provide nationwide the benefits of cellular service as quickly as possible.

Ordering Clauses

52. Accordingly, it is ordered, That the Petitions for Reconsideration filed in this proceeding are granted to the extent set forth herein, and are otherwise denied.

53. It is further ordered, That the Motion of Bluegrass Broadcasting Co., Inc. for Leave to File Supplementary Comments, the request of Harry J. Pappas and Fresno Mobile Radio, Inc. d/b/a California Portaphone for Leave to Supplement its Petition for Reconsideration, the Motion for Leave to File a Supplement to Petition for Reconsideration filed by Northwestern Indiana Telephone Company, Inc. and the Motion of Maxcell Telecom Plus, Inc. for Leave to Exceed Page Limitation are granted.

54. It is further ordered, That Part 22 of the Rules is amended as specified in Appendix B. These amendments and other policies adopted in this order will become effective June 19, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Petitions for Reconsideration

American Financial Corporation
Baldwin Telecom, Inc. and St. Croix Telephone Company
Cellular Communications, Inc.
Coastal Utilities, Inc.
Henry Geller and Donna Lampert
Hamel-St. Jacob Cellular Telephone Company, Lake Bridge Cellular Telephone Company, La Star Telephone Company
Harry J. Pappas and Fresno Mobile Radio d/b/a California Portaphone
Maxcell Telecom Plus, Inc.
Mid-America Cellular Systems, Inc.
New Vector Communications, Inc.
Roggin Telephone Cooperative Company, Wiggins Telephone Association, Strasburg Telephone Company, Eastern Slope Rural Telephone Association, Inc.
Western Union Personal Communications, Inc.

Parties Filing Comments or Oppositions

Baldwin Telecom, Inc. and St. Croix Telephone Company
BEDCO Cellular Corporation
Bell Atlantic Mobile Systems, Inc.
Bell South Mobility, Inc.
Bluegrass Broadcasting Company, Inc.
Cellnet Partners
Cellular System One Partnerships of Canton, Charlotte, Flint, Lansing and Youngstown
Centel Corporation
Coastal Utilities, Inc.
Interstate Cellular Network, Inc.
Hamel-St. Jacob Cellular Telephone Company, Lake Bridge Cellular Telephone Company, La Star Telephone Company
Maxcell Telecom Plus, Inc.
MCI Cellular Telephone Company and MCI Airsignal, Inc.
National Cellular Communications Limited Partnership
New Vector Communications, Inc.
Northwestern Indiana Telephone Company, Inc.
Pactel Mobile Access
Radiofone, Inc.
Roggin Telephone Cooperative Company, Wiggins Telephone Association, Strasburg Telephone Company, Eastern Slope Rural Telephone Association, Inc.

[76] These non-substantive requirements are adopted as rules of practice and procedure, and accordingly, no notice of proposed rulemaking is required. *See* 5 U.S.C. (b)(3)(A).

[77] The microfiche copies must be in a format similar to that used for the **Federal Register**: 3 by 5 inches positive microform, 24 x reduction, readably labeled at the top, enclosed in a paper jacket. The two microfiche copies must be in a clearly labeled envelope accompanying the original application.

[78] For example, one Washington area service will produce microfiche copies in small quantities for less than $15.00 per fiche, with a turn-around time of one week. This expense is nominal in comparison with the other expenses involved in filing cellular applications.

United States Telephone Association

Parties Filing Reply Comments

Baldwin Telecom, Inc. and St. Croix Telephone Company
Hamel-St. Jacob Cellular Telephone Company, Lake Bridge Cellular Telephone Company, La Star Telephone Company
Maxcell Telecom Plus, Inc.
Mid-America Cellular Systems, Inc.
Roggin Telephone Cooperative Company, Wiggins Telephone Association, Strasburg Telephone Company, Eastern Slope Rural Telephone Association, Inc.

Appendix B

PART 22—[AMENDED]

47 CFR Chapter I, Part 22, Subpart B, is amended as follows:

1. The authority citation for Part 22 continues to read:

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

2. Section 22.33 is amended by revising paragraph (b) to read as follows:

§ 22.33 Grants by random selection.

* * * * *

(b) *Cumulative chances of partial cellular settlements.* (1) Top-120 Markets. The joint enterprise resulting from a partial settlement among mutually exclusive cellular applicants for any one of the top-120 cellular modified Metropolitan Statistical Areas, if entered into after the filing of individual applications by its members, will receive the cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached.

(2) Markets Beyond the Top-120. In markets beyond the top-120 cellular modified Metropolitan Statistical Areas, the cumulative lottery chances described in paragraph (1) will be awarded to joint enterprises resulting from partial settlements among mutually exclusive wireline applicants only. Any joint enterprise resulting from a partial settlement among mutually exclusive nonwireline applicants for markets beyond the top-120 will not be entitled to any cumulative lottery chances.

* * * * *

3. Section 22.913 is amended by revising the heading, the introductory text of (a), (a)(2), redesignating and revising (b) as (d), and adding new paragraphs (b) and (c) to read as follows:

§ 22.913. Content and form of applications.

(a) *Contents.* Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. The following exhibits shall be attached to any such application:

* * * * *

(2) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in § 22.903(a). In addition, this exhibit shall include an 8½ by 11 inch reduced copy of the 1:250,000 scale map required by § 22.903(a).

* * * * *

(11) An exhibit setting forth the information required by Section 22.13(a)(1). In addition, all applicants other than publicly-traded corporations must disclose those parties with any ownership interest in the applicant who also hold any ownership interest in another cellular application for the same market.

(b) *Form of Applications.* Applications for construction permits for initial cellular systems in markets beyond the top 120 shall be filed as set forth below:

(1) Applications must be enclosed in stiff covers and fastened securely along the left edge without exposed sharp edges (e.g., looseleaf binders, plastic binding strips, covered metal clasps).

(2) The applicant's name and the market and frequency block applied for must appear on the cover and the first page of the application form. In lieu of the name of the market, applications for non-MSA/non-NECMA areas shall include a list of all major cities within the proposed CGSA.

(3) The initial Form 401 shall be the first item inside the application cover followed by a table of contents. The exhibits specified in §§ 22.13(a)(1) and (2), and §§ 22.913(a) (1), (2), (8) and (10), shall immediately follow the initial Form 401 and table of contents, with the remaining exhibits required by § 22.13, § 22.913(a) and the individual cell sites after that. All exhibits shall be tabbed in accordance with the table of contents.

(4) The exhibits required by § 22.913(a) (4), (5), (7) and (9) shall not exceed three pages in length each.

(c) *Copies.* Each applicant for an initial construction permit in markets beyond the top-120 shall submit an original and one paper copy of its application. In addition, each applicant shall submit two microfiche copies of its application using a 3 by 5 inch positive microform, 24x reduction, readably labeled at the top and enclosed in a paper jacket. The two microfiche must be in a clearly labeled envelope accompanying the original application. Applicants for other forms of cellular authorizations shall submit an original and two paper copies.

(d) Applications proposing modifications to existing stations which do not involve new facilities, a change in height or power of existing facilities, or a change in CGSA, may be filed on FCC Form 489.

4. Section 22.921 is revised to read as follows:

§ 22.921 Ownership in applications for cellular service for markets below the top-90.

(a) *Markets 91–120.* No party may have an ownership interest, direct or indirect, in more than one application for the same MSA market, or have a mutually exclusive application for the same non-MSA/non-NECMA area, except that interests of less than one percent will not be considered.

(b) *Markets beyond the top-120.*

(1) General. Except as otherwise provided herein, no party may have an ownership interest, direct or indirect, in more than one application for the same MSA market, or have a mutually exclusive application for the same non-MSA/non-NECMA area, except that interests of less that one percent will not be considered.

(2) Ownership interests in publicly-traded corporate applicants. Notwithstanding paragraph (b)(1) above, no party may have an ownership interest, direct or indirect, in mutually exclusive applications filed by publicly-traded corporations for an MSA market, or a non-MSA/non-NECMA area, except that interests of less than five percent will not be considered.

(c) *Application.* In applying the provisions of subsection (b), ownership and other interests in cellular applicants will be attributed to their holder and deemed cognizable as set forth below.

(1) *Passive Investors.* Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies, and banks holding stock through their trust departments in trust accounts will be deemed to have a cognizable interest in a publicly-traded cellular applicant only if they hold 10 percent or more of the stock of the applicant. This provision applies only if an applicant in which such parties hold an interest certifies in its application that no such party has exerted or attempted to exert any influence or control over the officers of the applicant.

(2) *Multiplier.* Attribution of ownership interests in a publicly-traded cellular applicant that are held indirectly by any party through one or more intervening corporations will be

determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication.

[FR Doc. 85-11976 Filed 5-17-85; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1161, and 1171

[Ex Parte No. 55; Sub-62]

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules implementing provisions of the Motor Carrier Safety Act of 1984 that require certain foreign motor carriers and foreign motor private carriers to hold a new certificate of registration to conduct specified interstate transportation in the United States. The rules we are adopting are designed to accomplish this in the manner least burdensome to motor carriers, shippers, and the public, consistent with Congressional intent. Proposed rules were published at 50 FR 9298 (March 7, 1985) and corrected at 50 FR 10822 (March 18, 1985). To obtain a certificate a carrier must demonstrate that: (1) It is fit, willing, and able to provide the involved service, and (2) that it has paid, or will timely pay, applicable Federal motor vehicles taxes.

EFFECTIVE DATE: May 20, 1985.

FOR FURTHER INFORMATION CONTACT:
Joseph B. O'Malley (202) 275-7928
or
Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, D.C., 20423, or call, 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Environmental and Energy Considerations

We adopt our preliminary finding in the notice of proposed rulemaking that the new rules will not have an adverse impact on either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Brownsville Navigation District/Port of Brownsville disagees with our prior assessment that these rules will not have a significant economic impact on a substantial number of small entities.

We reaffirm our prior certification. The rules we are adopting will provide an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates of registration mandated by the Motor Carrier Safety Act of 1984. All applicants will be seeking initial grants of operating authority, and in framing these rules we have attempted, as noted above, to minimize the burdens on these carriers consistent with Congressional intent.

List of Subjects:

49 CFR Part 1011

Administrative practice and procedure.

49 CFR Part 1161

Administrative practice and procedure, Motor carriers.

49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

(49 U.S.C. § 10922 and 10530, and 5 U.S.C. § 553)

Decided: May 10, 1985.

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

James H. Bayne,

Secretary.

Appendix A—Final Rules

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: Interstate Commerce Act, 49 U.S.C. 1 et seq., and especially 49 U.S.C. 17; in Reorganization Plan No. 1 of 1969, 5 U.S.C. Appendix (38 Stat. 59); and in 5 U.S.C. 553(b)(A), unless otherwise noted.

2. Section 1011.6 is amended by adding a new paragraph (k)(4) to read as follows:

§ 1011.6 Empoyees boards and divisions of the Commission.

* * * * *

(k) * * *

(4) Applications for certificates of registration by foreign motor carriers and foreign motor private carriers under 49 U.S.C. 10530.

PART 1161—PROCEDURES FOR ISSUANCE OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS UNDER 49 U.S.C. 10931.

3. The authority citation for Part 1161 continues to read as follows:

Authority: 49 U.S.C. 10321; 10931; 5 U.S.C. 559.

4. Part 1161 is amended by revising the title to read as set forth above.

5. Title 49, Code of Federal Regulations, is amended by adding a new Part 1171 to read as follows:

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

Sec.

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

§ 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530 (section 226 of the Motor Carrier Safety Act of 1984). Under 49 U.S.C. 10530, certain foreign motor carriers and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. A foreign motor carrier may not provide interstate transportation of exempt items unless the Commission has issued the carrier a certificate of registration. A foreign motor carrier providing interstate transportation of non-exempt items is not required to hold a certificate of registration under this section. A foreign motor private carrier may not provide interstate transportation of property (including exempt items) without such a certificate. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(l)(2)(B).

(b) These rules apply only to carriers of a contiguous foreign country with

respect to which a moratorium is in effect under 49 U.S.C. 10922(l)(1).

§ 1171.2 Definitions.

(a) *The Act.* The Motor Carrier Safety Act of 1984.

(b) *Registrable year.* The first registrable year is the 6-month period beginning July 1, 1985, and ending December 31, 1985. Subsequent registrable years shall coincide with the calendar year.

(c) *Foreign motor carrier.* A motor carrier of property: (1) Which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923, and (2) which (i) is domiciled in any contiguous foreign country, or (ii) is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States.

(d) *Foreign motor private carrier.* A motor private carrier, (1) which is domiciled in any contiguous foreign country, or (2) which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States.

(e) *Exempt items.* Commodities described in detail at or transported under 49 U.S.C. 10526(a) (4), (5), (8), (11), (12), (13), and (15).

(f) *Interstate transportation.* Transportation described at 49 U.S.C. 10521, and transportation in the United States otherwise exempt from the Commission's jurisdiction under 49 U.S.C. 10526(b)(1).

(g) *Fit, willing, and able.* Safety fitness and proof of minimum financial responsibility as defined in 49 U.S.C. 10530(e).

(h) *Motor vehicle taxes.* Taxes imposed under 26 U.S.C. 4481.

(i) *Most recent taxable period.* Same as defined in 26 U.S.C. 4482(c).

§ 1171.3 Procedures used generally.

(a) All applicants must file a completed Form OP-2. All required information must be submitted in English on the Form OP-2. The application will be decided based on the submitted Form OP-2 and any attachments. Notice of the authority sought will not be published in either the **Federal Register** or the *ICC Register.* Protests or comments will not be allowed (except for intervention by the Department of Transportation). There will be no oral hearings.

(b) Applications must be filed for each registrable year. Under the Act, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the Act. 49 U.S.C. 10530(g). Applications for a particular registrable year may be filed at any time.

(c) The Form OP-2 may be obtained at Commission Regional and Field Offices, or by calling the Office of the Secretary at 202-275-7833.

(d) Applicants must concurrently serve a copy of their completed applications on the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety. The Department of Transportation may intervene in any proceeding on the issue of safety fitness by filing an appropriate pleading detailing its reasons for opposing a grant of authority. The pleading must be filed within 30 days of receiving a copy of the application. Applicant may respond to any such pleading within 20 days of its filing.

§ 1171.4 Information on Form OP-2.

(a) Applicants must furnish all information required on Form OP-2 by completing all spaces on the form and providing any necessary attachments. Failure to do so will result in rejection of the application.

(b) Notarization of the application is not required; however, applicants are subject to applicable Federal penalties for filing false information.

§ 1171.5 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the $150 application fee. An additional fee of $8 along with form BOC-3 (designation of service of process agent) must accompany the application. Make a single check or money order for $158 payable to the Interstate Commerce Commission in United States dollars.

(b) One copy of the application shall be sent to the Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, Washington, DC 20590.

§ 1171.6 Commission review of the application.

(a) Commission staff will review the application for correctness, completeness, and adequacy of the evidence.

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected.

(b) Except in those proceedings in which the Department of Transportation intervenes under 49 CFR 1171.3(d), compliance will be determined solely on the basis of the application. An employee review board will decide whether the authority sought falls under the statute, and whether and to what extent the evidence warrants a grant of authority.

(1) If the authority sought does not require a certificate of registration, or if the evidence does not warrant a grant of the authority sought, the employee review board will deny the application in whole or in part. In the case of a full or partial denial of an application, the Commission will inform the applicant by letter setting forth the reasons for the denial.

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations for the registrable year for which the authority is sought provided that applicant has demonstrated compliance with (i) 49 CFR 1044 (designation of process agent), and (ii) either 49 CFR Part 1043 (insurance), or State insurance requirements, as applicable under the Act. If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be assigned to an appropriate division of the Commission for decision. If the division grants all or part of the application, it will issue a certificate in accordance with the procedure described immediately above in 49 CFR 1171.6(b)(2).

§ 1171.7 Appeals.

A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is governed by the Commission's appeal regulations at 49 CFR 1115.2.

Appendix B

Note.—The following appendix will not appear in the Code of Federal Regulations.

Before the Interstate Commerce Commission

Docket No. _____
(For Office Use Only)

Application for Certificate of Registration for Certain Motor Carriers of Property Under Section 10530 of the Interstate Commerce Act for the Registrable Year Ending December 31, 19__

(Note: Read Instructions Before Answering)

I. (a) Applicant (Legal Name)

_____

Trade Name, if any _____
(b) Business Address _____
(Actual Street Address)
(City) _____
(State) _____
(Zip Code) _____
*Mailing Address (if different) _____

_____

*Mailing address may be given but actual street address must be shown.

Phone Number (Include Area Code) ———

(c) Form of Business. Applicant must check one of the following and provide the additional information, if pertinent, in the space below:

( ) Corporation If so, give State of Incorporation———
( ) Partnership (If so, identify each of the partners below
( ) Sole Propietorship (Individual)
( ) Other (Please specify below)

(d) Applicant's representative to whom inquiries may be made (if you are the applicant you may represent yourself; if so, put your name and address here):

(Name) ———
(Street Address) ———
(City) ———
(State) ———
(Zip Code)———

Phone Number (Include Area Code)

II. (a) Applicant is domiciled in: (check one)

( ) Mexico
( ) Canada
( ) Other foreign country (specify:)

(b) Applicant is owned or controlled by persons of the following country(ies):

( ) Mexico
( ) Canada
( ) United States
( ) Other country (specify:)

(c) If applicant is a corporation, list the names, country of residence, citizenship, and place of ownership (if any) of corporation, all principal officers and stockholders (holding more than 10 percent of stock) of applicant. If applicant is a partnership, list the names, country of residence, citizenship, and percent ownership of partnership for each partner. If applicant is an individual, enter that individual's name, country of residence, and citizenship.

Name	Country of residence	Citizenship	Percent ownership

III. (a) Applicant seeks to operate as a (check):

( ) private motor carrier of property (handling only its *own* goods)
( ) for-hire motor carrier of property (handling the goods of *others*) that would otherwise be exempt under 49 U.S.C. 10526(a) (4), (5), (6), (11), (12), (13), and (15)

(b) Applicant seeks authority to operate within (check):

( ) a municipality in the U.S. that is adjacent to Mexico, in contiguous municipalities in the U.S. any one of which is adjacent to Mexico, or in a zone in the U.S. that is adjacent to and commercially a part of the municipality(ies) (specify:)

( ) other (specify:)

(Note.—If this box is checked, applicant must be owned or controlled by persons of the United States.)

(c) Will applicant be transporting hazardous materials, oil, hazardous substances, or hazardous wastes? (check one):

( ) No
( ) Yes

If yes, applicant certifies that it is in compliance with the minimum level of financial responsibility regulations (49 CFR Part 387) of the U.S. Department of Transportation for such materials.

Certification

(Note.—This certification must be signed by the person signing the oath on p. 4.)

Applicant certifies that it has access to and will comply with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation.

Applicant certifies that it has paid or will pay the taxes imposed by section 4481 of the Internal Revenue Code for the most recent taxable period as defined under section 4482(c) of the Internal Revenue Code, ending before the first day of the registrable year specified on this application.

Applicant if a motor private carrier, certifies that it will operate in full compliance with the laws of minimum financial responsibility of each State in which it seeks authority to operate.

Applicant, if a for-hire motor carrier or a motor private carrier transporting hazardous materials, certifies that it is or will be in compliance with the minimum level of financial responsibility regulations of the U.S. Department of Transportation (49 CFR Part 387), and the Interstate Commerce Commission (49 CFR Part 1043) prior to operating in the United States.

Applicant certifies that on this day it has hand-delivered or mailed a copy of this application, by first class mail, to the Bureau of Motor Carrier Safety, U.S. Department of Transportation (address is in instructions).

Signature ———
Date ———

Required Attachments

(1) All applicants for registrable years ending on or after December 31, 1986 (*i.e.*, applications for the registrable year beginning January 1, 1986) must submit a copy of Schedule I, IRS Form 2290 that has been receipted by the Internal Revenue Service, showing payment of Federal Taxes applicable under 26 U.S.C. 4481 for the period ending June 30 of the year immediately prior to the registrable year. If not attached, applicant must explain why these taxes have not been paid.

(2) All for-hire motor carrier applicants and those private motor carrier applicants handling hazardous materials, oil, hazardous wastes, or hazardous materials must submit completed forms BMC 91 or 91X (liability insurance) before the Commission will issue a certificate of registration.

(3) All other private motor carrier applicants must submit proof of compliance with the minimum level of financial responsibility requirements of each State in which they seek to operate before the Commission will issue a certificate of registration. (Note.—In lieu of this proof, applicant may submit the forms identified in (2) above.)

Oath

I, (Name), certify under penalty of perjury under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, such misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

(Signature) ———
(Date)———

(Relationship to Applicant)

Instructions

Who must file

Foreign motor carriers—motor carriers of property (1) that (a) are domiciled in any contiguous foreign country, *or* (b) are owned or controlled by persons of any contiguous foreign country and are not domiciled in the United States; *and* (2) that do *not* hold a certificate issued under 49 U.S.C. 10922 or a permit issued under 49 U.S.C. 10923. Those foreign motor carriers transporting items exempt under 49 U.S.C. 10526(a) *must* file. Those foreign motor carriers transporting non-exempt items in interstate commerce are *not* required to file.

Foreign motor private carriers—motor private carriers (1) that are domiciled in any contiguous foreign country, *or* (2) that are owned or controlled by persons of any contiguous foreign country and are not domiciled in the United States. All foreign motor private carriers *must* file.

When to file

Applications must be filed before or during *each* registrable year in which the foreign motor carrier or foreign motor private carrier intends to operate. A carrier cannot operate during any registrable year unless it has filed an application and obtained a certificate of registration authorizing it to operate during that registrable year.

Registrable years are:

(1) The 6-month period beginning July 1, 1985, and ending December 31, 1985.
(2) Calendar year 1986.
(3) Each calendar year after calendar year 1986.

Where to file

All applicants must send orginal application (Form OP-2) and one copy to: Secretary Interstate Commerce Commission, Washington, D.C. 20423.

All applicants must also send designation of service of process agent (Form BOC–3) to the same address.

Send one copy of application to: Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, Washington, D.C. 20590.

There is a $150 fee for filing an application and an $8 fee for designation of service of process agents. A single check or money order for the total $158 amount must be made payable to the Interstate Commerce Commission in United States dollars.

How to complete the application form

The application must be typewritten or written in ink. Applications written in pencil will be rejected.

The application must be completed in English.

All questions on the application form must be answered.

The oath and certifications must be signed by the applicant, not an attorney or other representative.

Where to get help in completing the application form

Contact any Commission regional or field office. Telephone numbers are in local telephone directories.

Contact the Commission's Small Business Assistance Office at the Commission's Washington headquarters, at 202–275–7597.

FINANCIAL RESPONSIBILITY (INSURANCE)

[Minimum insurance requirements for vehicles operated under certificates of registration issued pursuant to 49 U.S.C. 10530. Insurance companies must be authorized to do business in the United States]

Kind of equipment	Transportation provided	Minimum limits
I. All Certificates of Registration for transporting hazardous cargo as described in Section 226(a)(1) of the Motor Carrier Safety Act of 1984.		
(a) Freight vehicles of 10,000 pounds or more GWR	Hazardous substances, as defined in 49 CFR 171.8 transported in cargo tanks, portable tanks or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk classes A and B explosives, poison gas, (poison A) liquefied compressed gas or compressed gas, or highway route controlled quantity radioactive materials as defined in 49 CFR 173.455.	$5,000,000
(b) Freight Vehicles of 10,000 pounds or more GWR	Oil Listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (a) above or (c) below.	1,000,000
(c) Freight vehicles under 10,000 pounds GWR	Any quantity of classes A or B explosives; any quantity of poison gas (poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR 173.455.	5,000,000
II. Certificates of Registration issued to foreign motor private carriers providing transportation not described in I above.		
All	Property (non-hazardous)	(1)
III. Certificates of Registration issued foreign motor carrier (for-hire) providing transportation not described in I above.		
(a) Freight vehicles of 10,000 pounds or more GWR	Property (non-hazardous)	750,000
(b) Fleet including only vehicles under 10,000 pounds GWR	Commodities not subject to limits in I (c) above	300,000

[1] Those of the State or States in which operations are conducted.

Appendix C

Note.—The following appendix will not appear in the Code of Federal Regulations.

U.S.-MEXICO TRUCKING

[Effects of sections 225 and 226 of Pub. L. 96–554]

Mexican domiciled, Mexican owned or controlled	Before July 1, 1985	After July 1, 1985
For-hire movement of regulated commodity beyond border commercial zone.	ICC certificate of operating authority required. Proof of insurance required. New grants of authority prohibited by § 225 of P.L. 98–554.	No change.
For-hire movement of regulated commodity within border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	No change.
For-hire movement of exempt commodity beyond border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	Proof of insurance required. New ICC registration required by § 226 of P.L. 98–554.
For-hire movement of exempt commodity within border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	Proof of insurance required. New ICC certificate of registration required by § 226 of P.L. 98–554.
Private movement beyond border commercial zone	No certification/documentation required	Prohibited by § 226 of P.L. 98–554.
Private movement within border commercial zone	No certification/documentation required	New ICC certificate of registration required by § 226 of P.L. 98–554.
For-hire movement of regulated commodity beyond border commercial zone.	ICC certificate of operating authority required. Proof of insurance required. New grants of authority prohibited by § 225 of P.L. 98–554.	No change.
For-hire movement of regulated commodity within border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	No change.
For-hire movement of exempt commodity beyond border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	Proof of insurance required. New ICC registration required by § 226 of P.L. 98–554.
For-hire movement of exempt commodity within border commercial zone.	Proof of insurance required. No ICC certificate of operating authority required.	Proof of insurance required. New ICC certificate of registration required by § 226 of P.L. 98–554.
Private movement beyond border commerical zone	No certifications documentation required	New ICC certificate of registration required by § 226 of P.L. 98–554.
Private movement within border commercial zone	No certification/documentation required	New ICC certificate of registration required by § 226 of P.L. 98–554.

[FR Doc. 85–12053 Filed 5–17–85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status With Critical Habitat for Six Plants and One Insect in Ash Meadows, Nevada and California; and Endangered Status With Critical Habitat for One Plant in Ash Meadows, Nevada and California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Ash Meadows blazing star, Ash Meadows gumplant, Ash Meadows milk-vetch, Ash Meadows ivesia, Ash Meadows sunray, spring-loving centaury, and Ash Meadows naucorid to be threatened and designates their critical habitat. The Service also determines the Amargosa niterwort to be an endangered species with critical habitat. These actions are being taken because these species are restricted to the Ash Meadows region and ground water basin in Nye County, Nevada, and Inyo County, California, where they are facing intensifying threats. The loss of habitat by recent agricultural and municipal development activities, the clearing of land for road construction, the removal of ground water and diversion of surface spring flow, and local mining activities threaten the integrity of the species' habitat and, therefore, their survival. The Service also announces in the "Proposed Rules" section of today's **Federal Register** the opening of a 60-day comment period of whether additional areas should be added to the designated critical habitat of two of the subject species.

DATES: The effective date of this rule is June 19, 1985.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River in California and Nevada. This wetland is maintained by flow from several dozen springs and seeps which are fed by an extensive ground water system that extends more than 100 miles northwest of Ash Meadows. Hundreds of plant and animal species, many of them endemic, are associated with this wetland and depend upon it for survival. The eight species that are the subjects of this final rule occur only in Ash Meadows. These eight species are briefly described below:

1. The spring-loving centaury (*Centaurium namophilum* Reveal, Broome, & Beatley) was first recognized in 1973 (Reveal at el, 1973). Even though *Centaurium namophilum* was described in 1973, it had been collected as early as 1891 by Coville and Funston (Reveal et al. 1973). The spring-loving centaury is an erect annual reaching 4.5 decimeters (dm) in height, and has pink flowers. It is found on "moist to wet clay soils along the banks of streams or in seepage areas" (Mozingo and Williams 1980) and is often found with the Ash Meadows gumplant.

The Service originally proposed endangered status for the spring-loving centaury (48 FR 46590; October 13, 1983) under the scientific name *Centaurium namophilum* var. *namophilum* Broome. As discussed later in the summary of comments, the Service no longer accepts the validity of varietal designations for *Centaurium namophilum*. Further, *Centaurium namophilum* var. *nevadense* is now considered a synonym of *Centaurium exaltatum* (Griseb.) W. Wright. Populations of *Centaurium namophilum* formerly occurred outside Ash Meadows at Furnace Creek and Tecopa Springs, Inyo County, California. All known living populations of *Centaurium namophilum* are now restricted to Ash Meadows, Nevada.

2. The Ash Meadows gumplant (*Grindelia fraxino-pratensis* Reveal & Beatley) was described by Reveal and Beatley in 1971, although it had been collected as early as 1965 by Beatley (Reveal and Beatley 1971). It is an erect biennial or perennial reaching 7 to 10 dm in height with yellow flowers in heads measuring 8 to 10 millimeters (mm) in diameter (Mozingo and Williams 1980). Its primary habitat is saltgrass meadows along streams and pools, but it occasionally occurs in alkali clay soils in drier areas (Cochrane 1981). It is found in both Nevada and California.

3. The Ash Meadows ivesia (*Ivesia eremica* (Coville) Rydberg) was first described as *Potentilla eremica* in 1892. It is a perennial with a tuft of leaves emerging from a woody root crown. The inflorescences bear few flowers and these have petals about 7 mm long. The Ash Meadows ivesia occurs only in Nevada in saline seep areas of light-colored clay uplands (Mozingo and Williams 1980).

4. The Ash Meadows blazing star (*Mentzelia leucophylla* Brandegee) was described by Brandegee (1899) based on material collected by Purpus in 1898 (Reveal 1978a). It is a biennial or short-lived perennial with one to several white stems that reach a height of 5 dm, and its light yellow flowers occur in broad inflorescences (Mozingo and Williams 1980). It occurs only in Nevada on sandy or saline clay soils along canyon washes and on alkaline mounds. It is often found with the Ash Meadows milk-vetch and the Ash Meadows sunray (Mozingo and Williams 1980).

5. The Ash Meadows milk-vetch (*Astragalus phoenix* Barneby) was described in 1970, although it was collected as early as 1898 by Carl Anton Purpus (Barneby 1970). It is "a low matted perennial forming mounds 40 to 50 cm across" and its "pinkish to purple flowers are borne on short, erect stems in the mat and commonly number only one or two per inflorescence" (Mozingo and Williams 1980). The flowers are about 25 mm long. The Ash Meadows milk-vetch is found only in Nevada on "dry, hard, white, barren saline, clay flats, knolls, and slopes" (Mozingo and Williams 1980).

6. The Ash Meadows sunray (*Enceliopsis nudicaulis* (A. Gray) A. Nelson var. *corrugata* Cronquist) was described in 1972 from material collected by Cronquist in 1966 (Cronquist 1972), although Mozingo and Williams (1980) reported that earlier collections were made by others. This perennial plant occurs in clumps 1 to 4 dm high, and has flower heads borne singly on leafless stalks. The ray flowers have yellow corollas and the disk is 2 to 3.5 centimeters (cm) across. It occurs only in Nevada in dry washes on whitish saline soil associated with outcrops of pale, hard limestone.

7. The Amargosa niterwort (*Nitrophila mohavensis* Munz and Roos) was first collected by J. C. and A. R. Roos and then described by Munz and J. C. Roos in 1955. The plants are long lived and low (up to 8 cm high) with small bright green leaves and small, inconspicuous flowers (Reveal 1978b). It is found on salt-encrusted alkaline flats at the south end of Carson Slough on both sides of the Nevada/California border (Beatley 1977).

8. The Ash Meadows naucorid (*Ambrysus amargosus* La Rivers) is an insect (Order Hemiptera, Family Naucoride) that was described in 1953 based on material collected by Ira La Rivers and T. Frantz in 1951 (La Rivers 1953). It has been found only at Point of

Rocks Springs and their outflow streams. It is a small aquatic insect reaching about 6 mm in length that is apparently unable to fly.

Many other plant and animal species are endemic to Ash Meadows. The Service proposed the Ash Meadows turban snail (*Fluminicola erythropoma*) as threatened on April 28, 1976 (41 FR 17742); that proposal was withdrawn on December 10, 1979 (44 FR 70796) for administrative reasons as a result of the 1978 Amendments to the Endangered Species Act. Current evidence indicates that this species, as proposed, actually comprised more than one species. This area has an extraordinarily diverse freshwater molluscan fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails that are found within a 5-mile radius in Ash Meadows, and that give Ash Meadows the highest concentration of endemic species in an area of comparable size within the United States. Most of these mollusc species have not been scientifically described and named. Of the molluscs found in Ash Meadows, eight species are included in Category 1, and two species are in Category 2, of the May 22, 1984 (49 FR 21664), notice of review for invertebrate wildlife. One beetle, the Devils Hole warm spring riffle beetle (*Stenelmis calida calida*), is also included in this notice (Category 2) and is endemic to Ash Meadows.

Five endemic fishes have been recorded from Ash Meadows. The Devils Hole pupfish (*Cyprinodon diabolis*) was listed as endangered on March 11, 1967 (32 FR 4001), and the Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*) was listed as endangered on October 13, 1970 (35 FR 16047). The Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*) and the Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*) were listed as endangered with critical habitat on September 2, 1983 (48 FR 40178). A fifth endemic Ash Meadows fish species, the Ash Meadows poolfish (*Empetrichthys merriami*), is now extinct.

The Tecopa birds-beak (*Cordylanthus tecopensis*) is included in Category 2 of the November 28, 1983 (48 FR 53640), notice of review supplement for plant taxa. It is not endemic to Ash Meadows, but is a rare member of plant communities associated with desert aquatic ecosystems in Ash Meadows and elsewhere.

Much of Ash Meadows has been disturbed by past development and much of the habitat occupied by endemic plants and animals has been eliminated. An extensive marsh in Carson Slough was destroyed when it was mined for peat in the early 1960's; roads were built through plant habitats; many thousands of acres were cleared and plowed for crop production; and aquatic environments were eliminated or severely altered by ground water pumping, water diversion, and/or impoundment.

Early homesteaders attempted to farm Ash Meadows, using the free flowing water from the springs for irrigation. These efforts failed because of the absence of adequate water and because the salty, clay soils were not suitable for crops. Agricultural practices in the late 1960's and early 1970's included the plowing of large tracts of land, and the installation of ground water pumps and diversion ditches to support a cattle feed operation. These practices resulted in the destruction of many populations of plants and animals and their wetland habitats by alteration of the land surface and lowering of the water table. In 1976, the Supreme Court limited the amount of ground water pumping in Ash Meadows to ensure sufficient water levels in the only known habitat of the endangered Devils Hole pupfish. The agricultural interests in Ash Meadows sold approximately 23 square miles of land to a real estate developer, Preferred Equities Corporation (PEC), in 1977.

While the U.S. Bureau of Land Management has jurisdiction over most of Ash Meadows, approximately 11,173 acres of land and all of the certified water rights previously owned by PEC were recently purchased by the U.S. Fish and Wildlife Service to establish the Ash Meadows National Wildlife Refuge (NWR). This purchase stopped the municipal and agricultural development of Calvada Lakes, which had been initiated by PEC and designed to support a population of 55,000 people. The purchase was undertaken to protect the large number of candidate, proposed, and listed plants and animals found in Ash Meadows.

The terrestrial habitats of the Ash Meadows ecosystem are as fragile as the aquatic habitats. The endemic plant species are dependent upon the unique hydrological characteristics of the basin and nearly all require undisturbed soils for sustenance and propagation.

Previous governmental actions affecting the subject species of this final rule began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. These plant taxa included all the plant taxa included in the present rule.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. These 1,700 plant taxa were selected on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. The proposed rule included proposals of endangered status for the spring-loving centaury, Ash Meadows ivesia, Ash Meadows blazing star, Ash Meadows milk-vetch, and Amargosa niterwort. General comments on the proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act amendments of 1978 placed time limits for final action on proposed listings. On December 10, 1979 (44 FR 79796), the Service published a notice of the withdrawal of the June 16, 1976, proposal because the time period for final action on the proposal had expired.

On December 15, 1980, the Service published a notice of review of plant taxa (45 FR 82480). That notice identified the seven plant taxa that are subjects of the present proposal as taxa for which the Service had sufficient biological information to support their being proposed to be listed as endangered or threatened species.

On February 24, 1983, while a proposed rule was being prepared, the Service received a petition from the Northern Nevada Native Plant Society. This petition requested that the Amargosa niterwort, Ash Meadows milk-vetch, Ash Meadows blazing star, spring-loving centaury, and Ash Meadows sunray be listed as endangered and that the Ash Meadows gumplant be listed as threatened.

The Service proposed the above six species, as well as the Ash Meadows ivesia and Ash Meadows naucorid, as endangered species with critical habitat on October 13, 1983 (48 FR 46590). This proposal was to list all considered species as endangered because the development proposed by PEC would

have resulted in elimination of most habitats occupied by Ash Meadows endemic species.

A public hearing regarding the proposal to list seven plants and one insect in Ash Meadows and to designate their critical habitats was held in Amargosa, Nevada on April 24, 1984. The testimony recorded at this hearing and all written comments received by May 25, 1984, are part of the public record and have been carefully considered in the drafting of this final rule. In response to comments regarding the proposal and the Federal acquisition of additional Ash Meadows lands, the Service altered this final rule, to more accurately reflect the status of the subject species; whereas these species were all proposed as endangered with critical habitat, this final rulel recognizes only the Amargosa niterwort as endangered with critical habitat, and recognizes the Ash Meadows milk-vetch, Ash Meadows gumplant, Ash Meadows ivesia, Ash Meadows sunray, spring-loving centaury, Ash Meadows blazing star, and Ash Meadows naucorid as threatened with critical habitat. The critical habitat boundaries designated here are the same as those proposed. Additional areas may be added to the critical habitat of the Ash Meadows gumplant and the Amargosa niterwort, pending an additional period of comment.

Summary of Comments and Recommendations

In the October 13, 1983, proposed rule (48 FR 46590) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices of the proposal, inviting general public comment, are published in the *Tonopah Times* and *Pahrump Valley Times-Star* on November 24, 1983. A total of 25 comments were received through May 25, 1984, from parties including individuals, organizations, and government agencies; 13 of these were received during a public hearing held on April 24, 1984, in Amargosa, Nevada.

Ms. Deborah Fox, attorney for Mr. James Owen, stated that Mr. Owen was not properly notified of the proposal. The Service replies that its proposal was made public through newspaper notices published in the *Pahrump Valley Times-Star and Tonopah Times* on November 24, 1983. The Governor of Nevada, Nye County officials, and private land owners whose lands contain populations of these species were notified of the proposal by certified mail during the week of April 16, 1984. Mr. Owen was not specifically notified because none of the proposed species are found on land he owns.

Ms. Fox; Robert N. Revert; Commissioner, Nye County, Nevada; and Mr. Hank Records, Amargosa Valley resident, all commented that the proposal was inappropriate because of inadequate scientific evidence and because the development planned by PEC will not occur, since all of its land in Ash Meadows planned for development had been sold to The Nature Conservancy (TNC). The U.S. Bureau of Land Management (BLM) also questioned the necessity for listing in consideration of TNC acquisition of PEC lands. Section 3 of the Act defines "threatened species" as any species that is likely to become an endangered species throughout all or a significant portion of its range in the foreseeable future, and an "endangered species" as any species that is in danger of extinction throughout all or a significant portion of its range. The recent acquisition of land for the Ash Meadows NWR may afford some protection for the following specified portions of the remaining habitat of the species indicated: Ash Meadows naucorid—100 percent, Ash Meadows invesia—45 percent, Ash Meadows milk-vetch—30 percent, Ash Meadows sunray—39 percent, spring-loving centaury—37 percent, Ash Meadows gumplant—26 percent, Ash Meadows blazing star—37 percent, and Amargosa niterwort—0 percent. Habitat presently occupied by each of these species, except the Amargosa niterwort, is reduced from what it was known to occupy historically. Continued threats to the livelihood of these species include trampling and grazing by wild and free roaming horses, introduction of exotic plants and/or animals, mining, road construction, and ground water depletion. The Service has determined that the threats to the continued existence of the subject species, and their present status resulting from past activities, warrant listing of these species as endangered or threatened with critical habitat.

Ms. Fox and Commissioner Revert also commented that the Service had not completed an economic analysis of the proposed listing and critical habitat designation for the seven plants and one insect. The Service replies that the 1982 amendments to the Act require that determinations to list species as threatened or endangered be based solely on the best available scientific and commercial information on the species. Economic impacts may not be considered in making a listing determination. The Act specifies, however, that the economic impact of designating a particular area as critical habitat must be considered. The Service has accordingly prepared an economic analysis for the areas determined in this rule to be critical habitat.

Commissioner Revert also commented that the listing is a major Federal action requiring preparation of an Environmental Impact Statement. The Service replies that, as presented in the notice published in the **Federal Register** on October 25, 1983 (48 FR 49244), it is not required to prepare Environmental Impact Statements in connection with listing species under the Endangered Species Act.

The BLM further commented that the listing of the Ash Meadows naucorid serves little purpose because its habitat is included within the designated critical habitat of the endangered Ash Meadows Amargosa pupfish. The Service recognizes that the naucorid occurs within the designated critical habitat for this pupfish; however, available biological information shows that the naucorid occurs only in extremely limited habitat and its existence could easily be jeopardized by a single, local action that may have little or no impact on the Ash Meadows Amargosa pupfish. This listing and critical habitat designation is, therefore, appropriate to clarify and emphasize the location of habitat essential to this naucorid.

The BLM identified zeolite and potassium mining claims within Ash Meadows whose development may be impacted by listing the seven plants and one insect. The Service recognizes mining as a threat to several of these species and would become involved in Section 7 consultation as required by the Act, to ensure that all proposed activities requiring Federal actions or permits would proceed without jeopardizing the continued existence of an affected species.

Comments in support of the listing of one, several, or all subject species of this proposal were submitted by nine organizations. These are the Northern Nevada Native Plant Society (NNNPS), California Native Plant Society, Nevada Wildlife Federation, Sierra Club Public Lands Committee, Smithsonian Institution National Museum of Natural History, Defenders of Wildlife, International Union for Conservation of Nature, The Nature Conservancy, and California Department of Fish and Game. The U.S. Army Corps of

Engineers submitted comments stating their jurisdiction in Ash Meadows pursuant to Section 404 of the Clean Water Act, and noting that actions affecting any plants or animals listed in the future will be subject to the same permitting process now required for actions affecting species presently listed in Ash Meadows.

H.D. Carper, Director, California Department of Fish and Game, noted that the greatest threat to the existence of the Amargosa niterwort and Ash Meadows gumplant was the development planned by PEC, and since that threat has passed, a listing of threatened is more appropriate. Mr. Carper further commented that critical habitat for the Ash Meadows gumplant and Amargosa niterwort should be expanded to include all of the known habitat of these two species. The Service has determined that endangered status is appropriate for the Amargosa niterwort because the species is located only in a restricted habitat that is vulnerable to the threats of ground water depletion and road construction, and that is totally outside of the boundaries of the Ash Meadows NWR. The Service has responded to the comment regarding critical habitat by opening a comment period announced in the "Proposed Rules" section of today's Federal Register on the addition of more area for the Amargosa niterwort and Ash Meadows gumplant critical habitats to include all of the species' known habitats. A determination of whether these areas will be added to the critical habitat designated herein will be made following the closing of that comment period.

Defenders of Wildlife supported the proposal and urged the Service to initiate status surveys and when appropriate list an additional species of plant and 17 species of animals that are either endemic to Ash Meadows or are rare and found within and outside of Ash Meadows. The Service is in the process of preparing management guidance for its activities that will occur on the Ash Meadows NWR. It is believed that information provided by status surveys will guide these management activities so they can be conducted in a manner that will benefit the subject species.

Eleven comments regarding the proposal were received from individuals. All of these comments were received during the public hearing held in Amargosa, Nevada on April 24, 1984. Comments received during this hearing did not always specifically address the proposal; many were presented as comments against all activities proposed by the Service in Ash Meadows. Mr. Ken Redelsperger requested additional time to comment. The Service considered all comments received through May 25, 1984. This gave the public a total of 225 days to comment on the proposal.

Mr. C.L. Barr, President, Industrial Mining Ventures (IMV) commented that IMV had mining claims for clay on 1,900 acres of BLM land in the Ash Meadows area. The listing of species under the Endangered Species Act does not specifically prohibit mining activities on public or private lands. Activities occurring on public lands must, however, proceed through Section 7 consultation with the Service if they may affect a listed species, and be implemented only in a manner that does not jeopardize the continued existence of any listed species.

Mr. Ed Rigler commented that the U.S. Government had spent far too much money on the Ash Meadows project and wanted to know to which government agency he could go to refute the Service's interest in Ash Meadows. The Service replies that actions taken in Ash Meadows are a result of Congressional mandates directed by the 1973 Endangered Species Act, as amended. The Service makes decisions about including species on the Lists of Endangered and Threatened Wildlife and Plants from information it receives, in writing or from transcripts of public hearings, from knowledgeable government agencies, individuals, and institutions.

Mr. Robert Bieganski asked what the Service had planned to remedy current problems regarding water management in Ash Meadows. Furthermore, he asked why a farming operation was allowed to continue in Ash Meadows when the Service is supposedly interested in protecting the area from threats posed by local development for agriculture. The Service replies that management schemes will be developed in the near future to guide programs that will direct water flow. Approximately 2,000 acres of Ash Meadows is currently leased for farming until the end of 1984. This lease was agreed upon to minimize the economic impact of Service acquisition on the lessee, who had been leasing agricultural lands from PEC.

During the public hearing, Ms. Betty Boyd voiced her doubt of the fact that there are plants and animals restricted to Ash Meadows. The Service replies that it has reviewed and concurs with scientific literature accepted by botanists, ichthyologists, and entomologists as correctly identifying a large number of plants and animals endemic to Ash Meadows.

Discussion by Dr. Stanley Welsh, Arnold Theim, and John Kartesz during the February, 1984, meeting of the NNNPS included consideration of the taxonomic status of the Ash Meadows ivesia and spring-loving centaury. Mr. Kartesz stated that from his analysis of herbarium specimens, he believes *Centaurium namophilum* (spring-loving centaury) is not distinguishable from *Centaurium exaltatum*. Mr. Theim stated that his informal field analysis of these taxa leads him to believe that these two species of *Centaurium* are indeed specifically distinct. The Service considered additional information presented in recent literature and concludes from information presented in Cronquist et al. (1984) that *Centaurium namophilum* is specifically distinct from *Centaurium exaltatum*, that the varieties recognized by Broome (1981) are not supportable, and that *Centaurium namophilum* is endemic to the Death Valley area of Nevada and California, although it has been extirpated outside Ash Meadows.

Mr. Kartesz also voiced his doubt of the taxonomic validity of *Ivesia eremica* (Ash Meadows ivesia). Based on his analysis of herbarium specimens, he does not believe *Ivesia eremica* is different from *Ivesia kingii*. Mr. Theim took exception to the opinion; basing his opinion on his field studies of *Ivesia kingii* and *Ivesia eremica*, he believes the two taxa are valid. The Service investigated these opinions and concludes from the best available scientific information that *Ivesia eremica* is a valid taxon; however, its proper taxonomic rank cannot be determined at this time. Dr. Barbara Ertter, University of Texas at Austin, is presently conducting taxonomic studies of the genus *Ivesia* and believes from field investigations conducted during 1983 and 1984 that *Ivesia eremica* is a distinguishable taxon endemic to Ash Meadows. She believes that an appropriate taxonomic rank will be determined following the accumulation of information she has planned for the next several years.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Ash Meadows blazing star, Ash Meadows gumplant, Ash Meadows sunray, Ash Meadows milkvetch, Ash Meadows ivesia, spring-loving centaury, and Ash Meadows naucorid should be listed as threatened species with critical

habitat and that the Amargosa niterwort should be listed as an endangered species with critical habitat. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; recently revised at 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Enceliopsis nudicaulis* (Gray) Nels. var. *corrugata* Cronquist (Ash Meadows sunray), *Mentzelia leucophylla* Brandegee (Ash Meadows blazing star), *Grindelia fraxino-pratensis* Reveal & Beatley (Ash Meadows gumplant), *Astragalus phoenix* Barneby *(Ash Meadows milk-vetch), Ivesia eremica* (Coville) Rydberg (Ash Meadows ivesia), *Centaurium namophilum* Reveal, Broome, & Beatley (spring-loving centaury), *Nitrophila mohavensis* Munz & Roos (Amargosa niterwort), and Ash Meadows naucorid (*Ambrysus amargosus*) are given below. Each factor is discussed first in a summary of general application to the Ash Meadows ecosystem and then in a specific manner for each taxon.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The subjects of this action occur only in Ash Meadows and depend on the integrity of this fragile ecosystem and on flows from the Ash Meadows basin aquifer for their survival. A significant portion of plant habitat in Ash Meadows was eliminated in the 1960's when the Carson Slough was drained to facilitate peat mining. Following the cessation of peat mining, plowing for large-scale farming by Spring Meadows, Inc. removed most of the native plants in the northern portion of Ash Meadows and destroyed much of the habitat of the spring-loving centaury, Ash Meadows gumplant, Ash Meadows ivesia, Ash Meadows blazing star, Ash Meadows milk-vetch, and Ash Meadows sunray. Although Amargosa niterwort habitat was not plowed, free-flowing water to its habitat was interrupted by upstream plowing and reduction of spring flows resulting from ground water pumping.

The Ash Meadows aquifer is estimated to yield a total of 25,000 acre-feet annually; approximately 17,000 acre-feet of this discharged from springs in Ash Meadows (Winograd and Thordarson 1975, Dudley and Larson 1976). Cook and Williams (1982) analyzed the amount of available water within the Ash Meadows aquifer and compared it to the amount of water certified to users within the area; they estimated that consumption of water is certified to exceed the annual yield of the aquifer by approximately 225 percent. Recent purchase of land and certified water rights for the Ash Meadows NWR ensures that discharge from springs will continue; however, the sensitive nature of spring discharge (Dudley and Larson 1976) suggests that any large-scale ground water manipulation may alter spring discharge. The dependence of the endemic species on limited spring discharge indicates that such changes may influence terrestrial and aquatic habitats so that they may no long be inhabited by these species.

The Ash Meadows sunray is endemic to Ash Meadows (Beatley 1977), where it occupies dry washes and weathered saline soils. It is one of the more common species of plants endemic to Ash Meadows but its populations have been reduced during the past 15 years by habitat elimination for agricultural production, the initial phases of PEC's development, and road construction. Trampling by resident wild and free-roaming horses, off-road vehicle activity, and road development continue to detrimentally impact populations (Mozingo and Williams 1980). Acquisition of PEC lands includes only approximately 39 percent of the proposed critical habitat for this species, with the remainder of its habitat located on BLM and private lands in the area. The clearing of these private lands would eliminate approximately 20 percent of remaining habitat.

The Ash Meadows milk-vetch is one of the rarest plants endemic to Ash Meadows, with specific habitat requirements for particular arid, stable soils. Its populations are small and widely scattered over the eastern portion of Ash Meadows (Beatley 1977). Existing populations have been greatly reduced from those known over the past 15 years by land development during road construction and cropland establishment. Threats to this species include alterations of storm drainage patterns by road construction activities, mining on lands occupied by populations not located within the bounds of the Ash Meadows NWR, trampling by wild and free-roaming horses, and elimination during planned road construction. Approximately 30 percent of the habitat occupied by the Ash Meadows milk-vetch is located on lands the Service recently purchased for the Ash Meadows NWR.

The Ash Meadows gumplant is peripherally associated with riparian areas in habitats where soil moisture is maintained by perched ground water distantly provided by spring discharge (Cochrane 1981). Situated in the transition zone between riparian areas intimately associated with springs and the arid desert uplands, this species is extremely vulnerable to decreases in spring discharge that would effectively reduce the available amount of perched ground water and dry its habitat. It is found in areas where mining claims for clays are located, and in proposed corridors for road construction. Its populations are reduced by the trampling and grazing of wild and free-roaming horses. Habitat presently occupied by the species has been dramatically reduced, from that known historically, by water diversion into pipes and concrete ditches, agricultural development, and ground water depletion. Approximately 26 percent of the known populations of the Ash Meadows gumplant are found on lands recently purchased by the Service to establish the Ash Meadows NWR.

The spring-loving centaury once occurred outside of Ash Meadows near Beatty, Nye County, Nevada; near Tecopa in Inyo County, California; and at Furnace Creek in Death Valley National Monument. It has not been recently found at these sites and is now considered extirpated outside of Ash Meadows (Reveal, Broome, and Beatley 1973). It is found in riparian areas in Ash Meadows bordering springs and seeps and is frequently associated with the Ash Meadows gumplant. Remaining populations are smaller and less numerous than those known historically, because of riparian habitat elimination attributed to ground water depletion, water diversion, spring alteration, peat mining in Carson Slough during the early 1960's, and land development for agriculture and municipal facilities. Threats to its continued existence include ground water depletion causing decreases in spring discharge, road construction through riparian areas, and trampling and overgrazing by wild and free-roaming horses. Approximately 37 percent of the known spring loving centaury populations were recently purchased by the Service during establishment of the Ash Meadows NWR.

The Ash Meadows blazing star is associated with upland alkaline soils found in arroyos and on knolls only within the more xeric portions of Ash Meadows. This uncommon plant is often found with the Ash Meadows milk-vetch and Ash Meadows sunray (Beatley 1977). Existing populations have been greatly reduced, from those known to

have occurred as little as 15 years ago, by habitat disturbance during road construction, cropland development, and peat mining in Carson Slough. Threats to its existence include the alteration of storm drainage patterns through arroyos by road construction, habitat destruction in locations where road construction activities are proposed, and the trampling by wild and free-roaming horses (Mozingo and Williams 1980). Approximately 37 percent of the habitat occupied by the Ash Meadows blazing star is located on lands the Service recently purchased for the Ash Meadows NWR.

The Ash Meadows ivesia is associated with highly alkaline, clay lowlands or depressions where soil moisture remains high from perched ground water maintained by springs and seeps (Mozingo and Williams 1980). Its presently existing populations are smaller and less numerous than those known historically, because of habitat eliminations during agricultural development, including cropland development, spring alteration, and stream channelization and diversion; and during road construction occurring with municipal development. Ground water depletion, drying ivesia habitat, poses the greatest threat to the existence of this species. Its dependence on perched ground water issuing from seeps and springs or their outflows makes it extremely vulnerable to decreases in spring discharge that result in less water seeping to areas distantly removed from water sources. Proposed road construction could eliminate populations by passing through habitat or interrupting drainage patterns and drying areas that are presently moist. Approximately 45 percent of the known populations occur on land recently purchased to establish the Ash Meadows NWR.

The Amargosa niterwort is confined to specific habitat that is restricted to extremely local areas within the Carson Slough in Nevada and California, where saline and alkaline sinks occur near the terminuses of seepage from springs that lie many miles to the north and east in Ash Meadows (Beatley 1977). Threats to this species in its extremely restricted habitat include off-road vehicle activity, nearby mining activity, and ground water depletion drying its habitat. All of the known populations occur on land managed by BLM; no populations are known to occur within land recently purchased by the Service to establish the Ash Meadows NWR.

The Ash Meadows naucorid is found only in flowing water associated with Point of Rocks Springs in east-central Ash Meadows. Its remaining habitat is greatly reduced from that known to have existed historically, because of channelization of the springs' outflow for agricultural diversion, and because of large-scale alteration of the Point of Rocks Springs area when PEC impounded approximately 90 percent of the flowing water. This species is now restricted to several stream channels less than 0.3 meters wide and 10 meters long. Threats to its livelihood include ground water depletion decreasing spring discharge, and extremely limited range making it susceptible to decline because of a single event disturbing its habitat or causing mortality. All of the remaining habitat of this species occurs within land purchased to established the Ash Meadows NWR.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threats from overutilization are presently known to exist that may adversely affect the plant species. The extremely small population size of the Ash Meadows naucorid makes this species vulnerable to collection for scientific purposes.

C. *Disease or predation.* The spring-loving centaury, Ash Meadows gumplant, and Ash Meadows ivesia are grazed by cattle and feral horses. The Ash Meadows gumplant has been found to be 90 percent depleted within a fenced area where cattle and horses graze near Ash Meadows Rancho. Introduced fishes and crayfish occur in Ash Meadows and are potential predators of the Ash Meadows naucorid.

D. *The inadequacy of existing regulatory mechanisms.* The State Forester Fire Warden of the Nevada Division of Forestry maintains a list of critically endangered plants. That list includes the spring-loving centaury, Ash Meadows gumplant, Ash Meadows milk-vetch, and Ash Meadows blazing star. Other than providing recognition of these species' status, inclusion on this list provides no legal protection of the individual plants or their habitats. The Amargosa niterwort is listed as endangered on the State of California list of rare and endangered species. That designation does not protect this species from the major threat to its existence, interruption of the water supply for its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Trampling by cattle and/or feral horses is a threat to the native plants throughout Ash Meadows.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Ash Meadows sunray, Ash Meadows blazing star, Ash Meadows milk-vetch, Ash Meadows ivesia, Ash Meadows gumplant, spring-loving centaury, and Ash Meadows naucorid as threatened species, and to list the Amargosa niterwort as an endangered species. These listings are appropriate because of past disturbance to habitats has eliminated these species outside of a few relatively pristine areas. These areas may be adversely impacted by future ground water depletion, mining activities, road construction, and/or grazing activities of cattle and wild and free-roaming horses.

These species were proposed for endangered status on October 13, 1983 (48 FR 46590). The recognition of the Ash Meadows sunray, Ash Meadows blazing star, Ash Meadows milk-vetch, Ash Meadows gumplant, spring-loving centaury, Ash Meadows ivesia, and Ash Meadows naucorid as threatened species, rather than endangered species, reflects the recent acquisition of PEC lands to create the Ash Meadows NWR and thereby protect populations of these species. The threatened classification, in spite of this recent acquisition, is appropriate because the Ash Meadows NWR includes only a relatively small portion of the remaining populations of the subject plants, or in the case of the Ash Meadows naucorid, a single, extremely small population. The land recently purchased does not include adequate area to maintain the endemic plants and animals occurring in sharply defined and restricted habitats within the Ash Meadows ecosystem. Even the populations on this land remain vulnerable to a variety of problems.

The Amargosa niterwort is listed as endangered because none of its habitat is located within the area of management concern that will ultimately encompass all of the acreage proposed for the Ash Meadows NWR (Sada 1984). Its extremely localized distribution makes it vulnerable to extinction by single events such as mining, off-road vehicle activity, or ground water depletion.

An explanation of critical habitat designation is presented in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination 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 concurrently with the determination that a species is endangered or threatened.

Critical habitat being designated for the Ash Meadows sunray consists of about 1,760 acres in Ash Meadows, Nye County, Nevada. These areas include dry washes or whitish, saline soil associated with outcrops of a pale whitish limestone.

Critical habitat being designated for the Ash Meadows milk-vetch consists of 1,200 acres in Ash Meadows, Nye County, Nevada. These areas include dry, hard, white, barren, saline, clay flats, knolls and slopes.

Critical habitat being designated for the Ash Meadows gumplant consists of 1,968 acres in Ash Meadows, Inyo County, California, and Nye County, Nevada. These areas include saltgrass meadows along streams and pools or drier areas with alkali clay soils. An additional 40 acres (NW¼NW¼ sec. 30, T26N, R6E) in Inyo County may be added in the near future (see the announcement in the Proposed Rules section of today's **Federal Register**).

Critical habitat being designated for the Ash Meadows blazing star consists of 1,240 acres in Ash Meadows, Nye County, Nevada. These areas include sandy or saline clay soils along canyon washes and near springs and seeps.

Critical habitat being designated for the Ash Meadows ivesia consists of 880 acres in Ash Meadows, Nye County, Nevada. These areas include saline seep areas of light colored clay uplands.

Critical habitat being designated for the spring-loving centaury consists of 1,840 acres in Ash Meadows, Nye County, Nevada. These areas include moist to wet clay soils along banks of streams or in seepage areas.

Critical habitat being designated for the Amargosa niterwort consists of 1,200 acres in Ash Meadows, Inyo County, California. These areas include salt encrusted alkaline flats. An additional 1,200 acres (W½ sec. 6, W½NW¼ and S½ sec. 7, sec. 18 T25N, R6E) in Inyo County and 160 acres (SW¼ sec. 9, T18S, R50E) in Nye County, Nevada, may be added in the near future (see the announcement in the Proposed Rules section of today's **Federal Register**).

Critical habitat being designated for the Ash Meadows naucorid consists of about 10 acres in Ash Meadows, Nye County, Nevada, including Point of Rocks Springs and their immediate outflows. These areas include flowing warm water over rock and gravel substrate.

Taking into account the overlaps in these critical habitat areas, an area of 6,933 acres includes all of the critical habitat being designated for these 8 species at this time.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those actions (public and private) which may adversely modify such habitat or be affected by such designation. Except for the Ash Meadows gumplant and the Amargosa niterwort, the critical habitats designated in this rule include the entire known present ranges of the subject species.

Activities that may adversely modify critical habitats are mining, overgrazing, land development for agriculture, road construction, ground water depletion, and/or off-road vehicle use. All of these activities could modify habitats so that they would no longer be occupied by the subject species. The Service notes that activities on public lands (Fish and Wildlife Service and BLM) in the designated areas are generally consistent with protection of critical habitats. Activities occurring on public lands will be subject to review pursuant to section 7 of the Act; and, therefore, may proceed in a manner whereby the continued existence of these species is not jeopardized. The designation of critical habitat on private lands does not preclude all development. The listing of animals that occurs on private land may affect development only if such development takes, harms, or harasses these animals as discussed in section 9 of the Act.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered these critical habitat designations in light of additional information obtained during the public comment period. H.D. Carper, Director, California Department of Fish and Game, requested that 80 acres for the Ash Meadows gumplant and 1,320 acres for the Amargosa niterwort be added to the proposed critical habitat in California. One hundred-sixty acres is being considered for addition to the niterwort critical habitat in Nevada in response to the recent discovery of a new population of this species. These areas are not being included at this time, but their addition will be considered following the closing of the 60 day comment period. The current designations of critical habitat for the seven plants and one insect consist of about 10,158 acres (not counting overlaps; see third paragraph above) of Federal and private lands. Primary activities in the area include issuing of mining claims, road construction, grazing, recreation, and agriculture. There is no known involvement of Federal funds or permits for the private lands. Analyses of local mining activities and other land use practices on Federal land indicate that no significant economic impacts are expected to result from the designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm for listed animals, and removal and reduction to possession for listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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 proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Bureau of Land Management has jurisdiction over much of the critical habitat area designated

herein. Many activities presently being conducted on BLM lands are consistent with the conservation of these species. Small-scale mining activities and consideration for easements on BLM land are activities that may require Section 7 consultation. Pursuant to Section 404 of the Clean Water Act, the United States Army Corps of Engineers (COE) has jurisdiction over activities that may place dredge or fill in the waters or adjacent wetlands within Ash Meadows. Road construction activities in Ash Meadows would require Section 7 consultation with COE prior to its issuance of permits allowing dredging or filling to occur. The Service manages approximately 11,000 acres of the area as the Ash Meadows NWR; activities anticipated on this refuge are compatible with the conservation of these species. There is no known involvement of Federal funds or permits for the private lands within the critical habitat designations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered, and 17.71 and 17.72 for threatened species set forth a series of general trade prohibitions and exceptions that apply to plants. With respect to the Ash Meadows sunray, Ash Meadows blazing star, Ash Meadows gumplant, Ash Meadows milk-vetch, spring-loving centaury, Ash Meadows ivesia, and Amargosa niterwort, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 or 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since these species are not common in cultivation or the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to the Amargosa niterwort. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to the Ash Meadows sunray, Ash Meadows blazing star, Ash Meadows gumplant, Ash Meadows ivesia, Ash Meadows milk-vetch, and spring-loving centaury once regulations are promulgated. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. The Ash Meadows sunray, Ash Meadows blazing star, Ash Meadows gumplant, Ash Meadows milk-vetch, Ash Meadows ivesia, and spring-loving centaury are found on both private and Federal lands in the Ash Meadows area. The Amargosa niterwort is known only on Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife and will apply to the Ash Meadows naucorid beginning on the effective date of this rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. In some instances, permits may be issued during a specific period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

In an accompanying announcement in the "Proposed Rules" section of today's **Federal Register**, the Service solicits comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning the possible addition of areas to the critical habitats designated in the present rule for the Ash Meadows gumplant and the Amargosa niterwort. These possible additional areas are described in the critical habitat section of this rule. The comment period opens on the date of publication of this rule and the accompanying notice of request for further comments and will remain open for 60 days. A final decision on the inclusion of these additional areas will be made and published in the **Federal Register** following the conclusion of the comment period.

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 these 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.*). No significant economic or other impacts are expected to result from the designations of critical habitat for the seven plants and one insect of Ash Meadows. The critical habitat areas are located on Federal and private lands. Federal management of the critical habitat areas by the BLM and the Service is expected to be compatible with the critical habitat designations. There is no known involvement of Federal funds or permits for the private lands within the critical habitat designations. No direct costs, enforcement costs, or information collection or recordkeeping

requirements are imposed on small entities by the designations. These determinations are based on a Determination of Effects that is available at the Service's Portland Regional Office at the address given at the beginning of this document.

Literature Cited

Barneby, R.C. 1970. A New *Astragalus* (Fabaceae) from Nevada. Madrono 20:395–398.

Beatley, J.C. 1977. Endangered plant species of the Nevada Test Site, Ash Meadows, and central-southern Nevada. Contract E (11–1)–2307, U.S. Energy Research and Development Administration.

Brandegee, T.S. 1899. New species of western plants. Bot. Gaz. 27:444–457.

Broome, C.R. 1981. A new variety of *Centaurium namophilum* (Gentianaceae) from the Great Basin. Great Basin Naturalist 41:192–197.

Cochrane, S.A. 1981. Unpublished status report on *Grindelia fraxino-pratensis* Reveal and Beatley.

Cook, S.F., and C.D. Williams. 1982. The status and future of Ash Meadows, Nye County, Nevada. Unpublished report. Office of the Nevada State Attorney General.

Coville, F.V. 1892. Descriptions of new plants from southern California, Nevada, Utah and Arizona, Proc. Biol. Soc. Washington 7:65–80.

Cronquist, A. 1972. A new variety of *Enceliopsis nudicaulis* (Asteraceae) from southern Nevada. Bull. Torrey Bot. Club. 99:246–248.

Cronquist, A., A.H. Holmgren, N.H. Holmgren, J.L. Reveal, and P.K. Holmgren. 1984. Intermountain Flora, Volume 4, 573 pp.

Dudley, W.W., Jr., and J.D. Larson. 1976. Effect of irrigation pumping on desert pupfish habitats in Ash Meadows, Nye County, Nevada. U.S. Geological Survey Prof. Pap. 927, 52 pp.

La Rivers, I. 1953. New gelastocorid and naucorid records and miscellaneous notes with a description of the new species, *Ambrysus amargosus* (Hemiptera: Naucoridae). The Wasmann Journal of Biology 11:83–96.

Mozingo, H.N. and M. Williams. 1980. Threatened and endangered plants of Nevada. U.S. Fish and Wildlife Service and Bureau of Land Management.

Munz, P.A., and J.C. Roos. 1955. California miscellany III. Aliso 3:112–114.

Reveal, J.L. 1978a. Status report on *Mentzelia leucophylla* Brandegee (Ash Meadows blazing star). Unpublished report submitted to the Department of the Interior.

Reveal, J.L. 1978b. Status report on *Nitrophila mohavensis* Munz and Roos (Amargosa nitewort). Unpublished report submitted to the Department of the Interior.

Reveal, J.L., and J.C. Beatley. 1971. Two new species from Nevada. Bull. Torrey Bot. Club 98:332–335.

Reveal, J.L., C.R. Broome, and J.C. Beatley. 1973. A new *Centaurium* (Gentianaceae) from the Death Valley region of Nevada and California. Bull. Torrey Bot. Club 100:353–356.

Sada, D.W. 1984. Ash Meadows, Nye County, Nevada Land Protection Plan. U.S. Fish and Wildlife Service, Portland, Oregon. Unpublished U.S. Fish and Wildlife Service report.

Winograd, I.J., and W. Thordarson. 1975. Hydrogeologic and hydrochemical framework, South Central Great Basin, Nevada/California, with special reference to the Nevada Test Site. U.S. Geological Survey. Prof. Pub. 712–C. 126 pp.

Author

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List of Subjects in 50 CFR Part 17

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

Regulations 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 continues to read 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 § 17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
Naucorid, Ash Meadows	*Ambrysus amargosus*	U.S.A. (NV)	NA	T	178	17.95(i)	NA

3. Amend § 17.12(h) by adding the following, in alphabetical order under family names indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*	*	
Enceliopsis nudicaulis var. *corrugata*	Ash Meadows sunray	U.S.A. (NV)	T	178	17.96(a)	NA
Grindelia fraxinopratensis	Ash Meadows gumplant	U.S.A. (CA, NV)	T	178	17.96(a)	NA
*	*	*	*	*	*	
Chenopodiaceae—Goosefoot family:						
Nitrophila mohavensis	Amargosa niterwort	U.S.A. (CA)	E	178	17.96(a)	NA
*	*	*	*	*	*	
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus phoenix	Ash Meadows milk-vetch	U.S.A. (NV)	T	178	17.96(a)	NA
*	*	*	*	*	*	
Gentianaceae—Gentian family:						
Centaurium namophilum	Spring-loving centaury	U.S.A. (CA, NV)	T	178	17.96(a)	NA
*	*	*	*	*	*	
Loasaceae—Loasa family:						
Mentzelia leucophylla	Ash Meadows blazing star	U.S.A. (NV)	T	178	17.96(a)	NA
*	*	*	*	*	*	
Rosaceae—Rose family:						
*	*	*	*	*	*	
Ivesia eremica	Ash Meadows ivesia	U.S.A. (NV)	T	178	17.96(a)	NA
*	*	*	*	*	*	

4. Amend Section 17.95(i) by adding critical habitat of the Ash Meadows naucorid as follows: The position of this entry under 17.95(i) will follow the same sequence as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(i) * * *

* * * * *

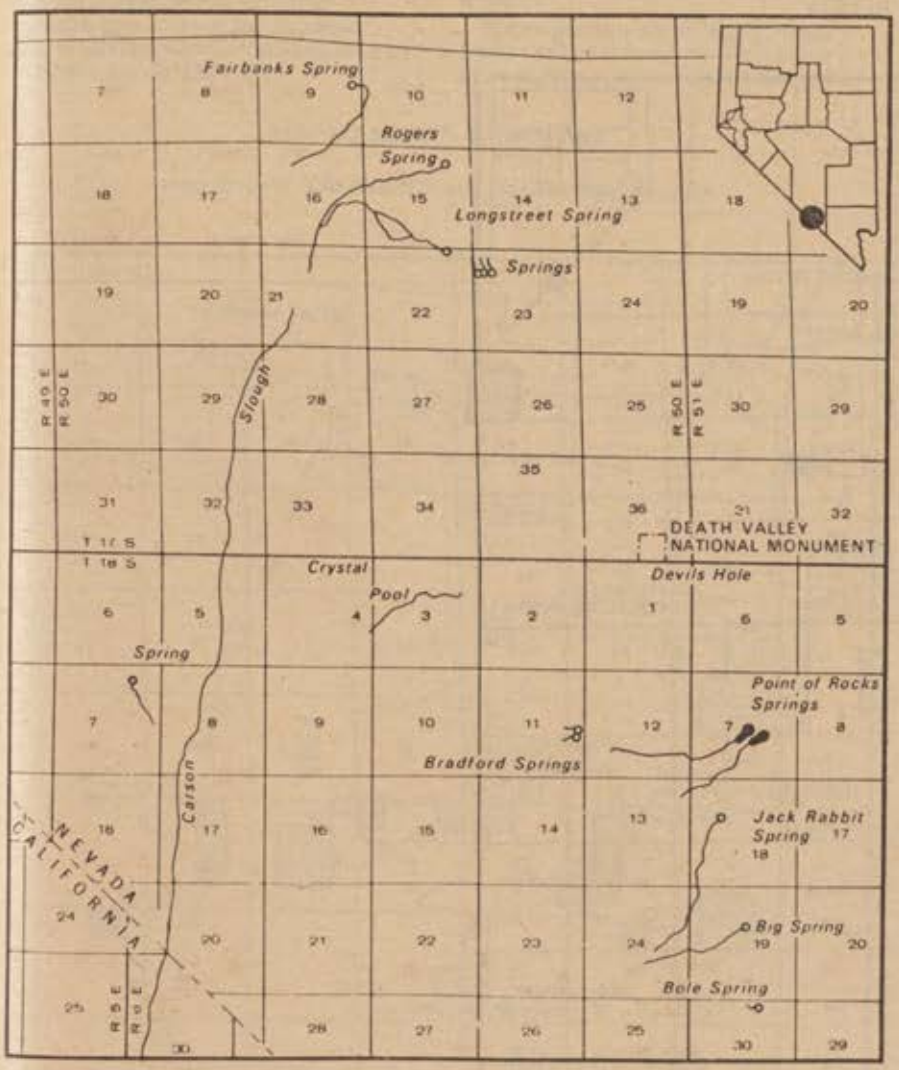
Ash Meadows Naucorid *(Ambrysus amargosus)*

Nevada. Nye County, Point of Rocks Springs and their immediate outflows in SE¼ sec. 7, T18S, R51E.

Known primary constituent elements include flowing warm water over rock and gravel substrate.

ASH MEADOWS NAUCORID

Nye County, NEVADA



* * * * *

5. Amend Section 17.96(a) by adding critical habitat of the Ash Meadows sunray as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * *

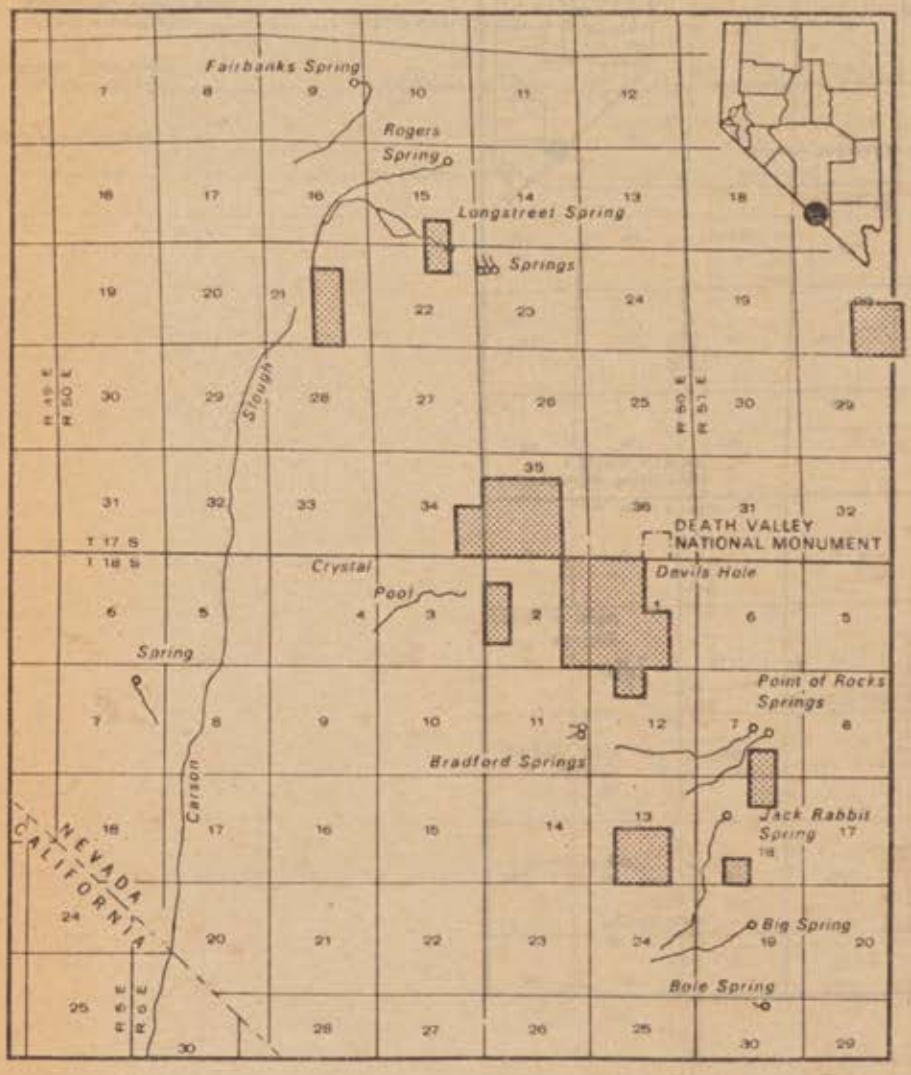
Family Asteraceae—*Enceliopsis nudicaulis* var. *corrugata* (Ash Meadows sunray).

Nevada. Nye County, Ash Meadows: SW¼SE¼ sec. 15, SW¼NE¼ and W½SE¼ sec. 21, NW¼NE¼ sec. 22, E½SE¼ sec. 34, SW¼NE¼, S½NW¼, SW¼, and W½SE¼ sec. 35, T17S R50E. SE¼ sec. 20, T17S, R51E. NW¼, SW¼, and W½SE¼ sec. 1, E½NE¼, SW¼NW¼, NW¼SW¼, and E½SE¼ sec. 2, Ne¼NW¼S. 12, E½SW¼ and W½SE¼ sec. 13, T18S, R50E. SW¼SE¼ sec. 7, NW¼NE¼ and SE¼SW¼ sec. 18, T18S, R51E.

Known primary constituent elements include dry washes or whitish saline soil associated with outcrops of pale whitish limestone.

ASH MEADOWS SUNRAY

Nye County, NEVADA



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6. Amend § 17.96(a) by adding critical habitat of the Ash Meadows gumplant as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * *

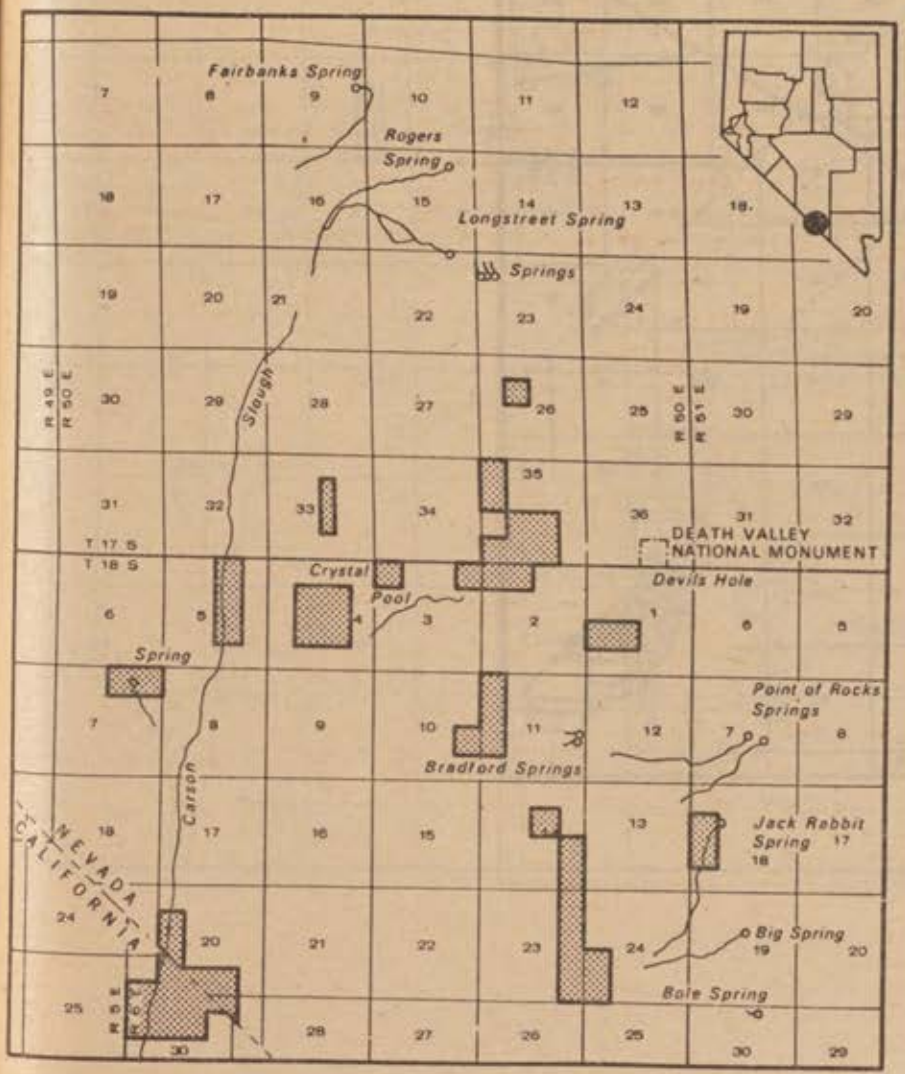
Family Asteraceae—*Grindelia fraxinopratensis* (Ash Meadows gumplant). California, Inyo County, Ash Meadows: NE¼, E½NW¼, SW¼NW¼, N½SW¼, and NW¼SE¼ sec. 30, T26N, R6E.

Nevada, Nye County, Ash Meadows: SE¼NW¼ sec. 26, W½SW¼NE¼ and W½NW¼SE¼ sec. 33, W½NW¼, SW¼SW¼, E½SE¼, and W½SE¼ sec. 35, T17S, R50E. N½SW¼ sec. 1, N½NW¼ sec. 2, NE¼NE¼ and NW¼NW¼ sec. 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, and, NW¼SE¼ sec. 4; W½NE¼ and NW¼SE¼ sec. 5, N½NE¼ sec. 7, NE¼SE¼ sec. 10, W½NW¼ and NW¼SW¼ sec. 11, SW¼NE¼ and E½SE¼ sec. 14; SW¼NW¼, SW¼SE¼, W½SW¼, and SE¼SW¼ sec. 20 northeast of the Nevada-California boundary, E½NE¼ and E½SE¼ sec. 23, W½SW¼ sec. 24, NW¼NE¼ sec. 29 northeast of the Nevada-California boundary, T18S, R50E. SW¼NW¼ and NW¼SW¼ sec. 18, T18S, R51E.

Known primary constituent elements include saltgrass meadows along streams and pools or drier areas with alkali clay soils.

ASH MEADOWS GUMPLANT

Inyo County, CALIFORNIA and Nye County, NEVADA



* * * * *

7. Amend § 17.96(a) by adding critical habitat of the Amargosa niterwort as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

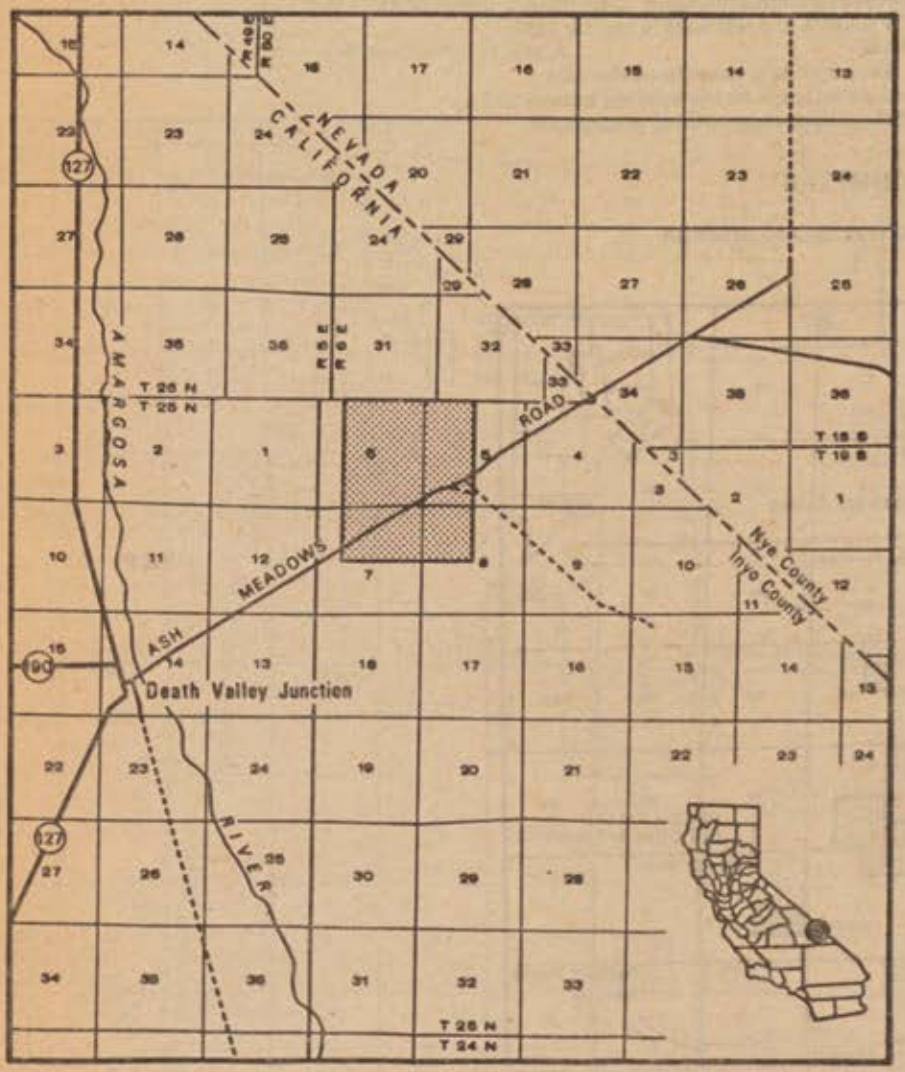
* * * * *

Family Chenopodiaceae—*Nitrophila mohavensis* (Amargosa niterwort). California, Inyo County, Ash Meadows: W½ sec. 5, E½ sec. 6, NE¼ and E½NW¼ sec. 7, NW¼ sec. 8, T25N, R6E.

Known primary constituent elements include salt-encrusted alkaline flats.

AMARGOSA NITERWORT

Inyo County, CALIFORNIA



* * * * *

8. Amend § 17.96(a) by adding critical habitat of the Ash Meadows milk-vetch as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * *

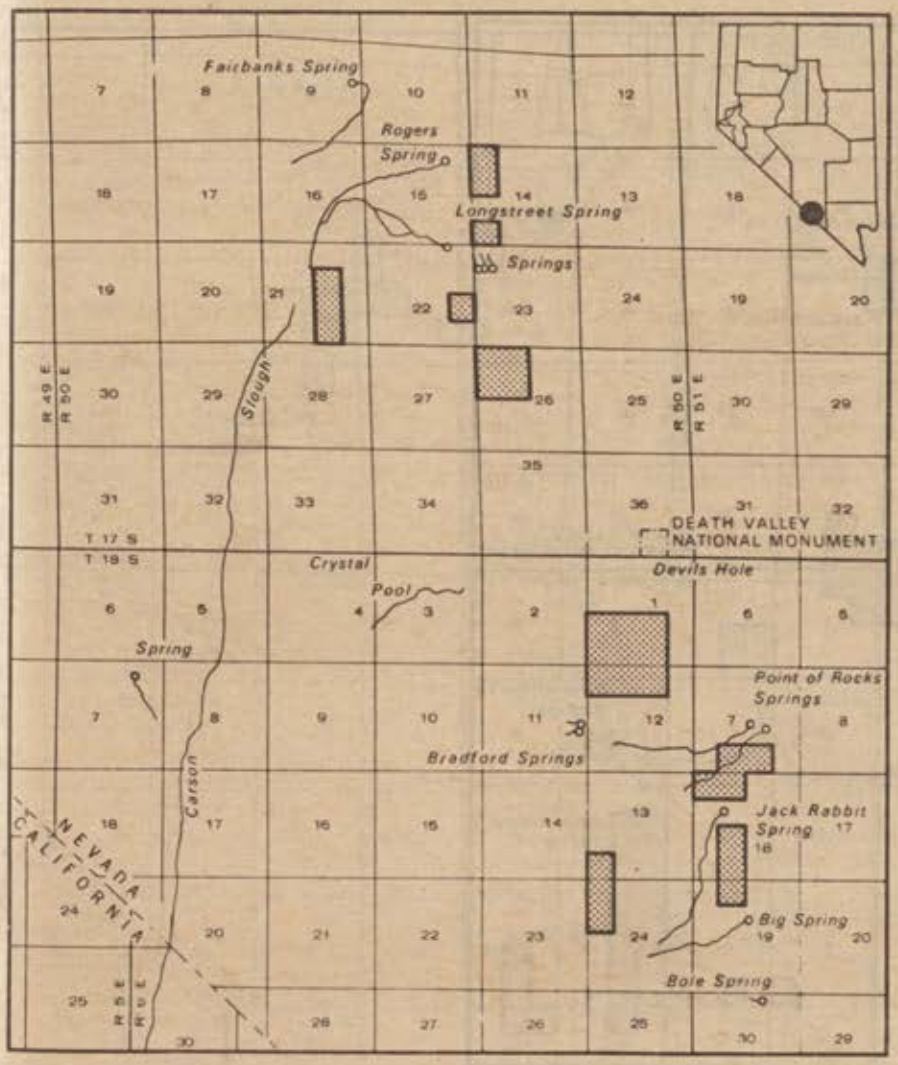
Family Fabaceae—*Astragalus phoenix* (Ash Meadows milk-vetch). Nevada, Nye County, Ash Meadows: W½NW¼ and SW¼SW¼ sec. 14, SW¼NE¼ and W½SE¼ sec. 21, NE¼SE¼ sec. 22, NW¼ sec. 26,

T17S, R50E. SW¼ and W½SE¼ sec. 1, NW¼NE¼ and N½NW¼ sec. 12, SW¼SW¼ sec. 13, W½NW¼ sec. 24, T18S, R50E. SE¼SW¼ and SW¼SE¼ sec. 7, N½NW¼ and E½SW¼ sec. 18, NE¼NW¼ sec. 19, T18S, R51E.

Known primary constituent elements include dry, hard, white, barren, saline, clay flats, knolls, and slopes.

ASH MEADOWS MILK-VETCH

Nye County, NEVADA



* * * * *

9. Amend § 17.96(a) by adding critical habitat of the spring-loving centaury as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

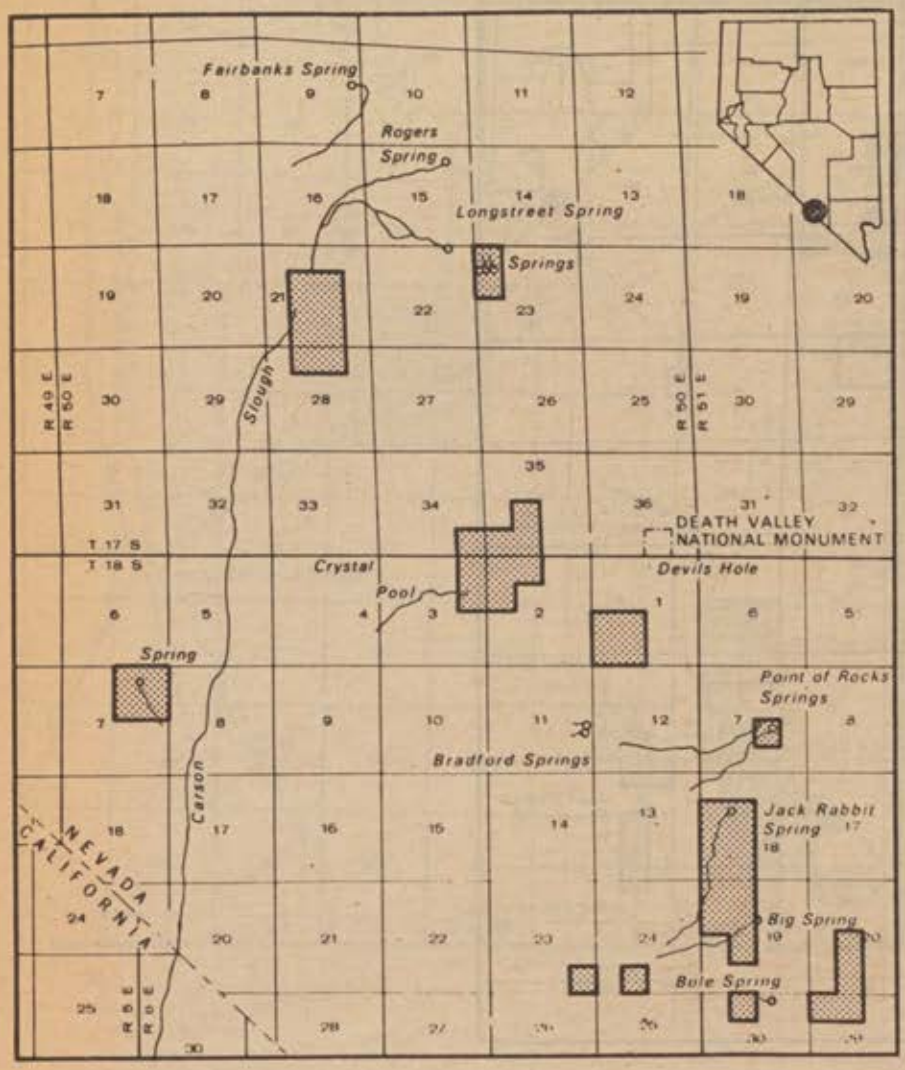
* * * * *

Family Gentianaceae—*Centaurium namophilum* (spring-loving centaury). Nevada. Nye County. Ash Meadows: SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼ sec. 21; W½NW¼ sec. 23, NW¼NE¼ and NE¼NW¼ sec. 28, SE¼SE¼ sec. 34, SW¼SW¼ and E½SW¼ sec. 35, T17S, R50E. SW½ sec. 1, NE¼NW¼ and W½NW¼ sec. 2, E½NE¼ sec. 3, NE¼ sec. 7; SE¼SE¼ sec. 23, SE¼SW¼ sec. 24, T18S, R50E. NW¼SE¼ sec. 7, S½NW¼ and SW¼ sec. 18, NW¼ and NE¼SE¼ sec. 19, E½SW¼ sec. 20, N½NW¼ sec. 29, NE¼NW¼ sec. 30, T18S, R51E.

Known primary constituent elements include moist to wet clay soils along banks of streams or in seepage areas.

SPRING-LOVING CENTAURY

Nye County, NEVADA



* * * * *

10. Amend § 17.96(a) by adding critical habitat of the Ash Meadows blazing star as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

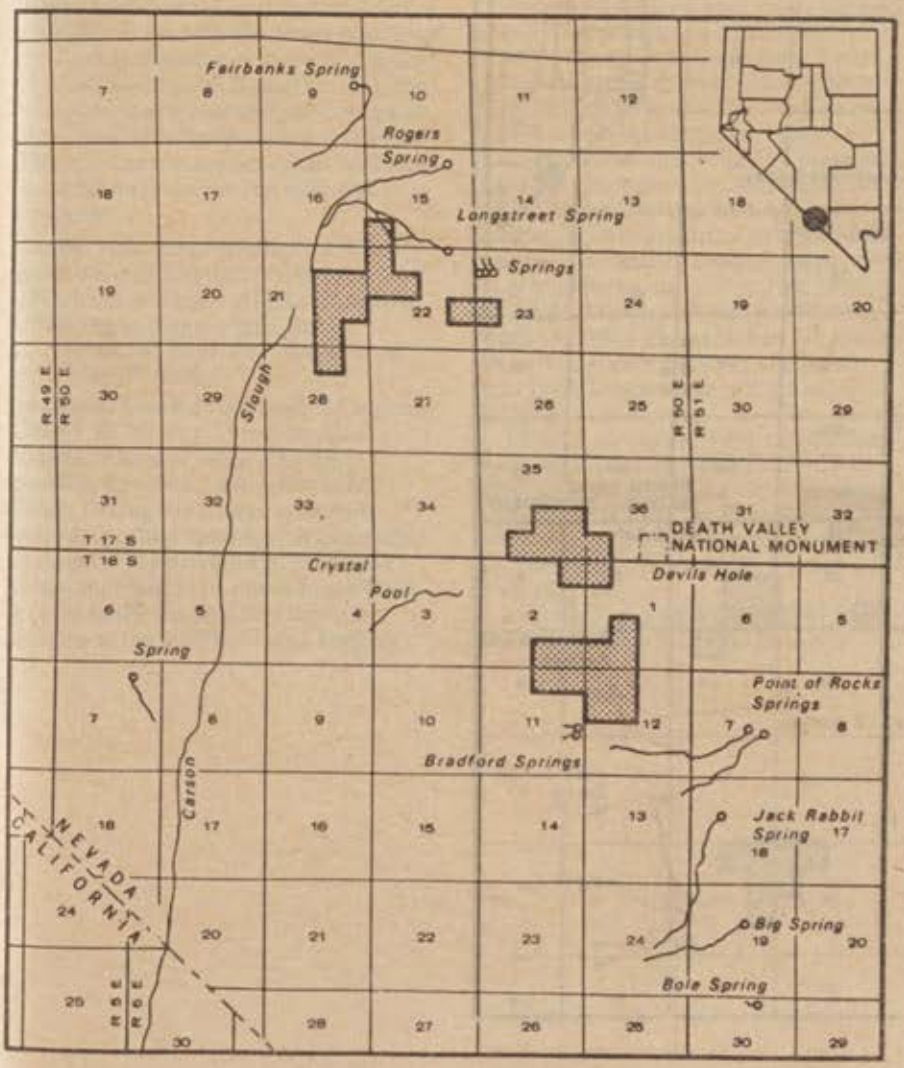
* * * * *

Family Loasaceae—*Mentzelia leucophylla* (Ash Meadows blazing star). Nevada, Nye County, Ash Meadows: SW¼SW¼ sec. 15, S½NE¼, N½SE¼, and SW¼SE¼ sec. 21, NW¼NW¼, S½NW¼, and NE¼SE¼ sec. 22, NW¼SW¼ sec. 23, NW¼NE¼ sec. 28, SE¼SW¼ and SE¼ sec. 35, SW¼SW¼ sec. 36, T17S, R50E. NW¼NW¼, SW¼SW¼, and E½SW¼ sec. 1, NE¼NE¼ and S½SE¼ sec. 2, N½NE¼ sec. 11, NW¼ sec. 12, T18S, R50E.

Known primary constituent elements include sandy or saline clay soils along canyon washes and near springs and seeps.

ASH MEADOWS BLAZING STAR

Nye County, NEVADA



* * * * *

11. Amend § 17.96(a) by adding critical habitat of the Ash Meadows ivesia as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

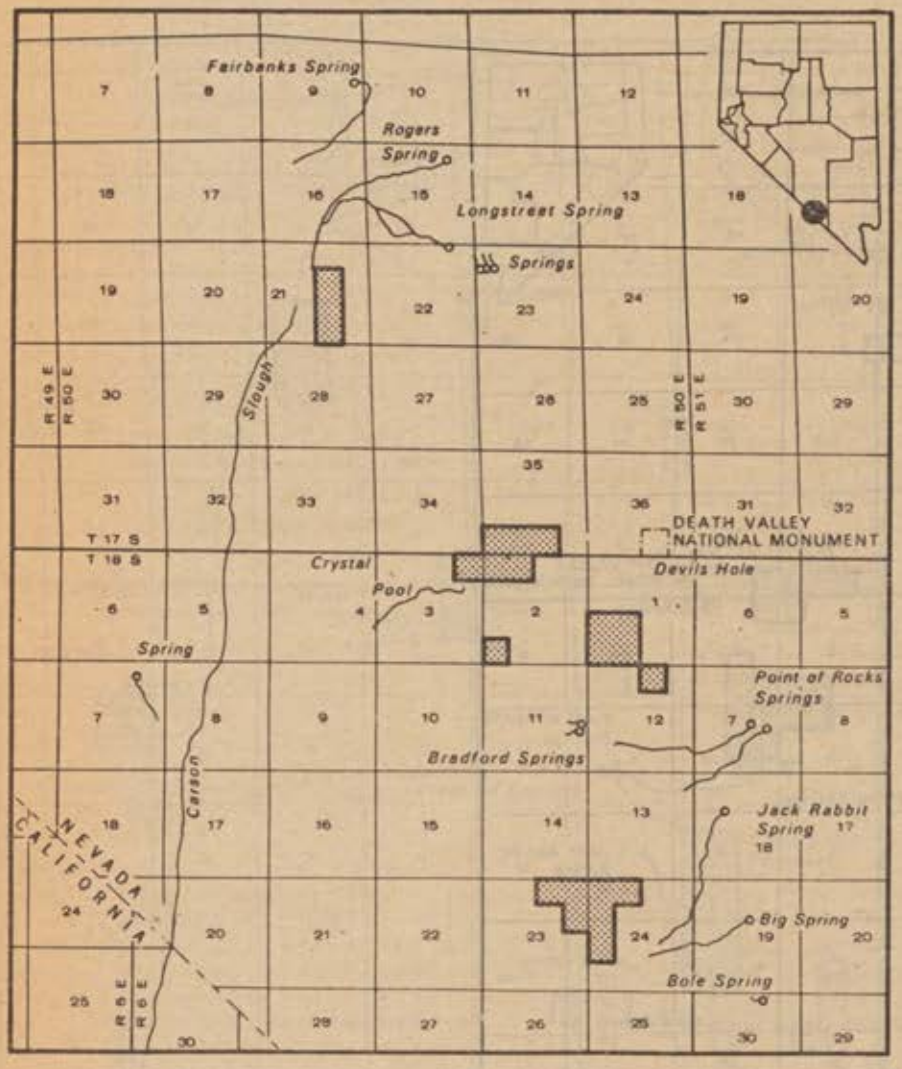
* * * * *

Family Rosaceae—*Invesia eremica* (Ash Meadows invesia). Nevada, Nye County, Ash Meadows: SW¼NE¼ and W½SE¼ sec. 21, S½SW¼ and SW¼SE¼ sec. 35, T17S, R50E. SW¼ sec. 1, N½NW¼ and SW¼SW¼ sec. 2, NE¼NE¼ sec. 3, NW¼NE¼ sec. 12, N½NE¼ and SE¼NE¼ sec. 23, N½NW¼, SW¼NW¼, and NW¼SW¼ sec. 24, T18S, R50E.

Known primary constituent elements include saline seep areas of light colored clay uplands.

ASH MEADOWS IVESIA

Nye County, NEVADA



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Dated: March 21, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-12034 Filed 5-17-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 41046-4171]

Groundfish of the Gulf of Alaska; Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield of sablefish in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be achieved on May 15, 1985, and that a closure is necessary to protect sablefish stocks in this district. This closure is a management measure intended to conserve the sablefish resource.

DATES: This notice is effective from noon, Alaska Daylight Time, May 15, 1985, until midnight, Alaska Standard Time, December 31, 1985. Public comments are invited on this closure until May 30, 1985.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of fishing seasons and areas. Implementing rules at § 672.20 specify that these orders will be made by the Secretary of Commerce (Secretary) by notice in the **Federal Register** under criteria set out in that section.

Three regulatory areas of the Gulf of Alaska are defined in § 672.2. One of these is the Eastern Regulatory Area, which is further divided into the three regulatory districts for the purpose of better managing sablefish: West Yakutat, East Yakutat, and Southeast Outside. The optimum yields (OY) for sablefish for the East Yakutat and Southeast Outside Districts have been achieved and those districts were closed to sablefish fishing on April 21, 1985 (50 FR 11368, March 21, 1985; 50 FR 15426, April 18, 1985). The sablefish OY for the West Yakutat District is 1,680 metric tons (mt). This amount will be reached on May 15, 1985.

To date, 45 vessels have conducted a directed fishery for sablefish, with the landed catch reported as of April 29, 1985, totaling 1,058 mt. Based on a linear projection of the catch rate since April 29, the OY will be reached at noon on May 15, 1985.

In accordance with § 672.20(b), the Secretary issues this closure under § 672.22(a), prohibiting further fishing for sablefish in these districts until midnight, December 31, 1985. This closure will become effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following the effective date. In view of any comments received, the necessity of this closure will be considered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the West Yakutat districts will be subject to harm unless this order takes effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under §§ 672.20 and 672.22, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 15, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-12093 Filed 5-15-85; 2:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 97
Monday, May 20, 1985

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309 and 310

[Docket No. 84-014]

Sulfonamide Residues in Swine

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of intent to institute proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is concerned about the continuing occurrence of sulfonamide residues in swine at levels above the established tolerance. To deal with this problem, FSIS is considering amending regulations to implement a stringent residue control program employing in-plant analytical procedures. The goal of this program would be to reduce the incidence of violative sulfonamide residues in swine and to decrease the likelihood that adulterated meat will enter into human food channels. These procedures may have a significant impact on many pork producers and packers. FSIS is giving advance notice of its intentions in order to permit those affected to comment regarding this matter before proposed rulemaking is published.

DATE: All comments must be received on or before August 30, 1985.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. John E. Spaulding, Director, Residue Evaluation and Planning Division, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2807.

SUPPLEMENTARY INFORMATION:

Comments

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

Background

Under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Secretary is responsible for assuring consumers that meat and meat food products are wholesome and not adulterated. As part of the inspection procedures used to prevent adulterated products from being distributed in commerce, FSIS conducts a national residue program that monitors product for potentially adulterating residues of a variety of substances, including animal drugs. Among the animal drugs are the sulfonamides, drugs added at low levels to animal feed to promote growth. Residues of sulfonamides have been found in swine for many years.

The Food and Drug Administration's (FDA) tolerance level for sulfonamide residues in the edible tissues of swine is 0.1 part per million (ppm) (see 21 CFR 556.670, Sulfamethazine and 21 CFR 556.690, Sulfathiozole). In 1977, the estimated national incidence of sulfonamide residues in swine above the tolerance level exceeded 10 percent. This resulted in an intense effort by FSIS, supported by other agencies in the Department and FDA, to determine the cause for the high rate of violations. The most significant identifiable cause was the carryover of powdered sulfamethazine, a strongly electrostatic form of the most commonly used sulfonamide drug, from batches of medicated to non-medicated feed mixed with the same equipment. This information was conveyed to swine producers through educational programs carried out by the Department's Extension Service (ES), along with information concerning other management practices for removing sources of sulfonamides from swine during the required withdrawal period.

By 1981, the incidence of sulfonamide residues in swine had dropped to about 5 percent nationwide, and in some States to below 2 percent. At that time, the drug industry introduced a granular form of sulfamethazine that reduced the carryover problem. Judging from the availability of the granular drug formulation and the apparent success of the educational effort, FSIS expected the incidence of sulfonamide residues above the tolerance levels to continue to decline. The national residue program for swine sulfonamide residues was continued at a level sufficient to measure the changes in incidence.

Over the last several years, FSIS concentrated its efforts on learning more about the factors affecting residue incidence, largely through improved methods for in-plant testing. During the same period, ES, under the Department's Residue Avoidance Program, documented the effect of production management practices on residue occurrence in animals presented for slaughter. Residue avoidance projects in several States indicated that producers, through practical management controls, can present animals with below-tolerance residue levels, including sulfonamide residues in swine. In all cases, certain management practices were found to be essential and had to be followed carefully.

Rather than declining, however, the sulfonamide residue violations measured by the national monitoring program since 1981 have gradually increased to a current incidence level of about 7 percent in swine presented for slaughter. Approximately 50 percent of the violative levels are high enough to indicate that many producers have made little or no effort to withdraw their animals from medicated feed. The residue levels in the other 50 percent indicated either incomplete withdrawal or incidental exposure, problems that may be corrected by a greater commitment to good management practices.

FSIS has concluded that this problem may still be corrected by producers, but the impetus for change apparently must come from increased regulatory action in the form of a sulfonamide testing program in order to protect the health of consumers. This program would entail the testing of "lots" of swine as they are delivered to the slaughter plant using analytical technology that permits determination of acceptability of the entire lot within 18 hours or less.

Developing a suitable program to provide this impetus requires, among other things, that FSIS consider how such a program may be accomplished without causing undue hardship for producers and packers and still safeguard the consuming public from adulterated products. Yet, the program must be restrictive enough to ensure that all producers will be responsive and take necessary corrective action.

FSIS is considering the following inspection procedures for reducing the occurrence of sulfonamide residues in swine:

1. Lot Determination

Each lot of swine submitted for ante-mortem inspection would be subject to selection for retention and sampling for sulfonamide residues. A "lot" of swine would be defined as the hogs delivered on one truck at one time to the slaughter premises. The actual number of lots selected for retention and sampling at any one establishment would be one or more (usually two) each day and, in addition would include all lots from any source previously identified as supplying swine whose tissues contained sulfonamide residues above tolerance levels. A "source" would be defined as the location where the truck was loaded unless the Agency is provided with evidence that the origin of individual animals in the lot is other than where the truck was loaded.

Due to resource constraints, the Agency cannot test every individual lot of swine or even a statistically valid number of lots from each day's kill. Therefore, the in-plant inspectors must use their judgment in selection of lots for testing. Selection may be based on previous experience, information available to the Agency, or a random sampling plan. The major principle of selection would be that the establishment would not know in advance which lot would be selected, except for lots from a known previous-violator source, which would be in addition to those tested under the random testing program.

2. Sample Selection

The inspector-in-charge would randomly select up to six but no more than 30 individual swine from the test lot for sample collection and analysis. FSIS has recently discovered that there is a consistent correlation among drug levels in the various tissues, blood serum, and urine of swine. This permits the determination of residue levels in the various tissues and fluids by determining the level in one. In this specific program, the testing material of choice is urine. It is believed the most efficient method to collect urine under slaughter plant conditions would be to allow the slaughter of test animals under retention as provided for in the Federal meat inspection regulations [section 309.16(a)]. The remainder of the lot would be held in the ante-mortem pens until test results are available (this should be within 2 hours after sample collection, if a chemistry method is used). As an alternative, the entire test lot could be slaughtered under retention with all carcasses in the lot segregated from other products until test results are available.

3. Ante-Mortem Screening Tests

The test material (urine) would be analyzed by the inspector-in-charge using either a chemical or microbiological method. Positive test results would indicate that the lot of swine contains one or more animals whose tissues contain sulfonamide residues above tolerance. The "lot" of swine with positive screening test results would be retained subject to further testing as provided in sections 309.16 and 310.3 of the Federal meat inspection regulations. The screening procedures currently available to the Agency are adequate only to approximate the level of sulfonamide residues present in individual animals within a lot. The disposition of individual animals within a positive lot would depend on results for individual animals, or their carcasses and/or parts, from conventional laboratory tests.

It is estimated that the urine screening tests (chemistry method) result would be available to the plant within 2 hours after sample collection; within the microbiology method, 18 hours after sample collection; and in the case of a potential immunoassay method, somewhat less than 2 hours. If blood or tissues are used instead of urine for these tests, 1 to 4 hours would be added to the above times to allow for additional preparation procedures.

4. Post-Mortem Laboratory Tests

Tissue samples from muscle, liver, or kidney used to determine final disposition of individual swine carcasses would be analyzed at a laboratory accredited by FSIS for swine testing in accordance with "The Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 14th ed., 1984, Sections 41.040–41.058, or the "Chemistry Laboratory Guidebook", sections 5.011 and 5.013.

The results of such analyses would be available approximately 3 days after the arrival of the sample at the laboratory. Actual laboratory times would depend on the number of samples awaiting analysis at the laboratory when the sample in question arrives.

5. Disposition of Lots Retained for Testing

A. Those lots of animals which do not contain sulfonamide residues above tolerance levels based on the screening test would be released for normal slaughter and post-mortem inspection procedures.

B. If the results of the in-plant screening test of animals in the lot indicate to FSIS that the offal product of the animals in the lot contains sulfonamide residues above tolerance levels, but the muscle tissues of the carcasses and parts do not contain sulfonamide residues above the tolerance levels, only the offal product from all animals in the lot would be condemned and destroyed for human food purposes. The edible muscle tissues of the animals in the lot would be released for processing under Federal inspection as provided in the Federal Meat Inspection Act (FMIA). However, in lieu of condemnation and destruction of the offal product from such animals, the establishment could exercise one of the following options:

1. Animals involved in the screening test would be slaughtered and their offal would be condemned and destroyed for human food purposes unless handled as provided in #2. The remaining animals in the lot would be retained under the supervision of the inspector-in-charge in clean ante-mortem pens for 48 hours on non-medicated feed and water. Such animals would then be slaughtered and processed under Federal inspection as provided under the FMIA.

2. Slaughter the animals in the lot and retain the offal product from such animals for laboratory testing at the establishment's expense. The conditions for retaining the offal for testing and collection of samples for laboratory testing must be acceptable under FSIS criteria to the Supervisory Veterinary Medical Officer (SVMO) assigned to the establishment. Any offal found not to contain sulfonamide residues above the tolerance levels by such laboratory testing may be presented by the establishment, with the corresponding laboratory results for reinspection. The SVMO would examine the offal offered for reinspection and make or cause to make any additional test that he/she may deem to be necessary before making a final disposition of the product. All offal which is determined by the SVMO to be adulterated, or which is not offered for reinspection, shall be condemned and destroyed for human food purposes. Offal found not

adulterated by the SVMO would be released for human consumption.

C. If the results of the in-plant screening test of animals in the lot indicate to FSIS that the lot contains one or more animals whose muscle tissue, as well as the offal, contains sulfonamide residues above tolerance levels, the carcasses and parts of all animals in the lot would be considered to be adulterated and would be condemned and destroyed for human food purposes. However, the establishment could exercise any one of the following options:

1. Animals involved in the screening test would be slaughtered and their carcasses and parts would be condemned and destroyed for human food purposes unless handled as provided in #2. The remaining animals in the lot would be retained under the supervision of the SVMO in clean ante-mortem pens for 96 hours on non-medicated feed and water. Such animals would then be slaughtered and processed under Federal inspection as provided under the FMIA.

2. Slaughter all the animals in the lot and retain their carcasses and/or parts for laboratory testing at the establishment's expense. The retained carcasses and/or parts of carcasses must be held under security satisfactory to the SVMO to assure that adulterated product is segregated from non-adulterated products. Each individual carcass and part must be marked so that sample results can be related to specific carcasses and parts. The establishment would present any carcass or part of carcass found to not contain sulfonamide residues above the tolerance level by such laboratory testing with the test results to the SVMO for reinspection. The SVMO would examine the carcasses and parts presented for reinspection and make or cause to make any additional tests that he/she deems necessary before making final disposition of the articles. All carcasses and parts which are determined by the SVMO to be adulterated, or not offered for reinspection, shall be condemned and destroyed for human food purposes. All carcasses or parts determined by the SVMO not to be adulterated would be released for human consumption.

Discussion of Options

The Agency particularly welcomes comments on certain options concerning the proposed program.

1. Determination of Lots for Screening

FSIS has considered the possibility of allowing the combination of lots from multiple sources. The Agency believes this would be feasible only if additional information were made available to the Agency regarding those lots; for example, evidence that animals offered for ante-mortem inspection had been properly withdrawn from sulfonamide and other drugs before leaving the production unit. This evidence should originate with the producer, who may rely on existing analytical procedures and production controls in providing such evidence. If lots from premises believed to be producing residue-clean animals are mixed, these claims could be vertified by selective testing on a regular basis.

FSIS is also aware that swine frequently pass through intermediate sales points on their way to slaughter. However, the final owner or agent must truthfully represent the animal. Existing customary practices for commerical transactions in the industry readily allow buyers to require that sellers truthfully represent the condition of the animals being offered for sale.

2. Location of Retention

There are essentially two locations for retention on the official premises: In the ante-mortem pens for live animals and in coolers for carcasses and parts. Retention in pens is advantageous because as long as the animal is alive and held in clean pens and on non-medicated feed, the residue level of sulfonamides will deplete at a uniform rate (half-life=16 hours). Once the animal is slaughtered, there is no known way to remove sulfonamide residues from the carcass.

3. Collection of Sample for Analysis and Testing

The use of urine as the test media would be unique to this program. However, as a direct relationship of average urine levels to tissue levels has been established, the Agency would be able to use this rapid test for screening animals. Because of the location on the slaughter line where the bladder is removed, the most efficient method of collecting the sample would be to have an establishment employee remove the bladder from the test animal. But, because of retention and identification requirements, it may be easier to have carcasses of test animals railed out on the final rail for sample collection. Test animals would have to move through slaughter as a unit, and thus just before or after normally scheduled open spaces on the slaughter line would be ideal points for collecting samples.

The actual test to be used would probably depend on each slaughter establishment's operations. The Agency would attempt to provide timely test results, so that slaughter schedules may be maintained. FSIS would carefully consider requests from companies already having accredited laboratory facilities in the slaughter establishments to conduct the required tests under accredited laboratory requirements.

4. Acceptable Disposition of Condemned Material

FSIS has begun discussion with FDA's Center for Veterinary Medicine concerning the disposition of carcasses and parts condemned for sulfonamide residues. In the past, simple adherence to good manufacturing practices normally ensured there would be no problem with the use of rendered product containing an occasional violative carcass or part. With this program, however, there would be a potential for relatively large proportions of residue-adulterated carcasses and parts going into inedible rendered product and animal feed.

FDA has consistently held that when the owner of large numbers of carcasses and parts containing an adulterating residue wishes to use them in animal feed, the disposition must be decided on an individual case basis. Otherwise, disposition must be in a sanitary land fill in a manner acceptable to local health and environmental authorities.

5. Use of Other Information

Non-analytical information may provide a basis for more selective sampling. The experience gained from the sulfonamide residue program in 1979–1981 and current information obtained from ES and FSIS' in-plant test development work indicate that it is feasible to reduce testing when assurances can be given concerning the proper handling of the swine. The information gained from in-plant testing shows that animals sold to the slaughter establishment directly by producers consistently have a lower incidence of sulfonamide residues compared with animals arriving through intermediate sources. Also, management practices that include withdrawing animals from all sources of sulfonamides for 14 days would result in acceptable levels. There are also procedures for testing animals or feed on the farm that give assurance equal to that provided by in-plant testing that a given lot does not contain unacceptable levels of sulfonamide residues.

The use of such information by FSIS as a basis for sampling depends on its being available to FSIS personnel at the slaughter establishment in a credible form at the time of ante-mortem inspection. Examples of acceptable

documentation are available in FSIS' residue program in cooperation with the poultry industry and the current effort to reduce antibiotic and sulfonamide residues in bob veal calves. These methods of documentation could be included eventually in the regulatory program.

Done at Washington, D.C., on May 14, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-12052 Filed 5-17-85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-39]

Southern California Edison Co. Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from Southern California Edison Company.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking. This petition, filed by Southern California Edison Company, and dated March 29, 1985, was docketed by the Commission on April 3, 1985, and assigned Docket No. PRM-50-39. The petitioner requests the Commission to amend its emergency planning regulations to clarify that onsite and offsite emergency response plans need only include medical arrangements for persons who are both contaminated with radioactive material and physically injured in some other manner which requires emergency medical treatment.

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Single copies of the petition may be obtained free by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition, copies of comments, and accompanying documents to the petition may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or Toll Fee: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

I. Petitioner's Interest

The petitioner is one of the owners of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, and the licensed operator of Units 2 and 3. The petitioner states that the Court of Appeals decision in *Guard* v. *Nuclear Regulatory Commission*, 753 F.2d 1144, 1150, (D.C. Cir. 1985) has left undecided the planning standard to be applied pursuant to 10 CFR 50.47(b)(12). Particularly, the class of people for whom advance arrangements for medical services are required is not clearly stated in the present wording of 10 CFR 50.47(b)(12). The petitioner is interested in establishing standards for pre-arranged emergency medical services which are based upon a scientific and medical understanding of what is necessary to protect the public.

II. Statement In Support of Petition

a. Specific Issues Involved

The petitioner believes that this petition raises one fundamental question: Does the public safety require that emergency medical treatment be pre-arranged for severely irradiated persons who have not also suffered physical injury requiring immediate treatment in a medical facility?

b. Petitioner's View

The petitioner contends that public safety does *not* necessitate the pre-arrangement of emergency medical treatment for severely irradiated persons who have not also suffered physical injury requiring immediate treatment in a medical facility. Specifically, the petitioner contends that scientific and medical studies, as well as evidence developed in hearing with respect to the licensing of SONGS 2 & 3, support the following conclusions:

1. Time is not of the essence in treatment of excessive radiation and, therefore, persons suffering from irradiation do not require emergency treatment.

2. Existing hospitals are capable of treating far more than the number of persons who potentially would be so severely irradiated as to require non-emergency hospitalization. The nature of radiation injury is such that transport to facilities anywhere in the United States would not increase the danger to such persons.

3. A grant of this petition would be consistent with the studies upon which 10 CFR 50.47(b)(12) was based.

c. Facts In Support of Petitioner's View

In support of the petition for rulemaking, but not as an integral part of it, Petitioner submitted to the Commission four volumes of documents,[1] a brief summary of which is as follows:

SONGS Record Volume I (pages 1-435): This volume is the Joint Appendix submitted to the United States Court of Appeals for the District of Columbia (Docket No. 84-1091; *GUARD* v. *United States Nuclear Regulatory Commission*, 753 F.2d 1144 (1985)).

SONGS Record Volume II (pages 436-543): This volume consists of selected testimony dealing with the necessity for arrangements for medical services for injured contaminated individuals pursuant to 10 CFR 50.47(b)(12) from the extensive hearing in the SONGS 2 & 3 Operating License Proceeding. (*Southern California Edison Co.)* (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-82-39, NRC 1163 (1982) (NRC Docket Nos. 50-361 OL and 50-362 OL).

SONGS Record Volume III (pages 544-964): This volume consists of certain exhibits entered in the above-cited operating license proceeding.

SONGS Record Volume IV (pages 965-1364): This volume consists of excerpts from present emergency reponse plans of various California agencies and governments which are relevant to SONGS 2 & 3 as well as letters of agreement which are part of the SONGS 2 & 3 Emergency Plan.

The petitioner asserts that the record in *San Onofre* provides ample evidence of the fact that persons experiencing excessive doses of radiation (such as might be received from a nuclear power plant accident) do not need immediate emergency medical attention. The conclusiveness of the evidence is reflected in the Licensing Board's Initial Decision of May 14, 1982 (15 NRC 1163)

[1] Bracketed citations in this petition refer to the cited documents as bound and paginated in the four SONCS Record volumes submitted with the petition. Citation in also made to cited documents as officially printed. Transcript references ("tr.") refer to the transcript from the hearing record developed in *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-82-39, 15 NRC 1163 (1982).

[vol. I, p. 1] and the Appeal Board's Decision (ALAB-680 of July 16, 1982 (16 NRC 127) [vol. I. p. 131].

The petitioner states that there is a significant medical distinction between the class of persons who are both contaminated and severely injured and those persons who are only irradiated. Petitioner notes that there are more than sufficient numbers of prepared hospitals to handle persons who suffer only from severe irridation, and therefore recognition of this distinction in an amendment of 10 CFR 50.47(b)(2) will in no way compromise the treatment and care of the general public.

III. Proposed Amendment to 10 CFR Part 50

Therefore, the petitioner proposes that § 50.47(b)(12) be revised to read as follows:

§ 50.47 Emergency plans.

* * * * *

(b) * * *

(12) Arrangements are made for emergency medical services for persons who are both (i) contaminated with radioactive material and (ii) physically injured such that immediate treatment in a medical facility is required.

* * * * *

IV. Conclusion

In conclusion, the petitioner contends that in the absence of alternative actions by the Commission, this rulemaking is required to respond to the mandate of the Court of Appeals in *Guard* v. *NRC*. A rulemaking which establishes clearly that 10 CFR 50.47(b)(12) applies only to persons both traumatically injured and contaminated with radioactive material is warranted by the facts that (1) time is not the essence in treatment of excessive radiation and (2) sufficient facilities exist in the form of accredited hospitals to adequately treat persons suffering from severe irradiation. Petitioner asserts that these facts are well established. The petitioner argues that this proposed amendment would properly implement the findings dictated by current scientific and medical evidence and currrent hospital accreditation regulations.

Dated at Washington, DC this 14th day of May 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-12094 Filed 5-17-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 85-6]

Rules, Policies and Procedures for Corporate Activities; Change in Bank Control

Correction

In FR Doc. 85-10943, beginning on page 19183 in the issue of Tuesday, May 7, 1985, make the following corrections:

1. In the second column on page 19183, the **DATES** paragraph was inadvertently omitted. It should precede the **ADDRESS** paragraph in the second column and should read.

DATES: Comments must be received on or before June 21, 1985.

2. On page 19184, third column, in the paragraph entitled "*Disposition*", the last line should read: "U.S.C. 1817 (j)(8)(A)."

BILLING CODE 1505-01-M

Internal Revenue Service

26 CFR Part 1

[EE-130-80]

Deduction of Employer Liability Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the deduction of employer liability payments. Changes to the applicable tax law were made by the Multiemployer Pension Plan Amendments Act of 1980. The regulations would provide the public with an additional guidance needed to comply with that Act and would affect all employers that maintain qualified plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 19, 1985. The amendments are proposed to be effective for employer payments made after September 23, 1980.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (EE-130-80), Washington, D.C. 20224.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 404(g). These amendments are proposed to conform the regulations to section 205 of the Multiemployer Pension Plan Amendments Act of 1980 ("Multiemployer Act") (94 Stat. 1287).

The Multiemployer Act expanded withdrawal liability for employers in multiemployer plans so that employers would not have an incentive to withdraw from a multiemployer plan and leave the unfunded vested benefits of their employees to be funded by the employers remaining in the plan. The Multiemployer Act also provides for deduction under section 404(g) when paid for certain employer liability payments for withdrawal or termination liability by providing that such payments shall be considered contributions by an employer to or under a stock bonus, pension, or profit sharing, or annutiy plan for the purposes of section 404.

These proposed regulations provide that such deductible employer liability payments shall include, with certain restrictions, payments to a plan pursuant to a commitment made to the Pension Benefit Guaranty Corporation (PBGC) in order to obtain a notice of sufficiency upon termination of the plan. They also provide that in cases where the employer makes contributions to the plan in addition to making an employer liability payment to PBGC or the plan, the maximum amount deductible shall be the higher of the maximum amount deductible under section 404(a) or the amount of the employer liability payment otherwise deductible under section 404(g) and these proposed regulations.

Comments and Request 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**.

Executive Order 12291 and Regulatory Flexibility Act

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Althought 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 Marjorie Hoffman of the Employee Plans and Exempt Organizations 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, both on matters of substance and style.

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

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

Proposed Amendments to the Regulations

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

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 1 is unchanged.

Par. 2. The following new § 1.404(g)–1 is added immediately after § 1.404(e)–1A.

§ 1.404 (g)–1 Deduction of employer liability payments.

(a) *General rule.* Employer liability payments shall be treated as contributions to a stock bonus, pension, profit-sharing, or annuity plan to which section 404 applies. Such payments that satisfy the limitations of this section shall be deductible under section 404 when paid without regard to any other limitations in section 404.

(b) *Employer liability payments.* For purposes of this section, employer liability payments mean:

(1) Any payment to the Pension Benefit Guaranty Corporation (PBGC) for termination or withdrawal liability imposed under section 4062 (without regard to section 4062(b)(2)), 4063, or 4064 of the Employee Retirement Insurance Security Act of 1974 (ERISA). Any bond or escrow payment furnished under section 4063 of ERISA shall not be considered as a payment of liability until applied against the liability of the employer.

(2) Any payment to a non-multiemployer plan pursuant to a commitment to the PBGC made in accordance with PBGC Determination of Plan Sufficiency and Termination of Sufficient Plans. See PBGC regulations, 29 CFR 2617.13(b) for rules concerning these commitments. Such payment shall not exceed an amount necessary to provide for, and used to fund, the benefits guaranteed under section 4022 of ERISA.

(3) Any payment to a multiemployer plan for withdrawal liability imposed under part 1 of subtitle E of title IV of ERISA. Any bond or escrow payment furnished under such part shall not be considered as a payment of liability until applied against the liability of the employer.

(c) *Limitations, etc.*—(1) *Permissible expenses.* A payment shall be deductible under section 404(g) and this section only if the payment satisfies the conditions of section 162 or section 212. Payments made by an entity which is liable for such payments because it is a member of a commonly controlled group of corporations, or trades or businesses, within the meaning of section 414 (b) or (c), shall not fail to satisfy such conditions merely because the entity did not directly employ participants in the plan with respect to which the liability payments were made.

(2) *Qualified plan.* A payment shall be deductible under section 404(g) and this section only if the payment is made in a taxable year of the employer ending within or with a taxable year of the trust for which the trust is exempt under section 501(a). For purposes of this paragraph, the payment timing rules of section 404(a)(6) shall apply.

(3) *Full funding limitation.* (i) If the employer liability payment is to a plan, the total amount deductible for such payment and for other plan contributions may not exceed an amount equal to the full funding limitation as defined in section 412(c)(7) for the taxable year with respect to which the contributions are deemed made under section 404.

(ii) If the total contributions to the plan for the taxable year including the employer liability payment exceed the amount equal to this full funding limitation, the employer liability payment shall be deductible first.

(iii) Any amount paid in a taxable year in excess of the amount deductible in such year under the full funding limitation shall be treated as a liability payment and be deductible in the succeeding taxable years in order of time to the extent of the difference between the employer liability payments made in each succeeding year and the maximum amount deductible for such year under the full funding limitation.

(4) *Maximum deduction allowable under section 404.* The amount deductible under section 404 is limited to the higher of the maximum amount deductible by the employer under section 404(a) or the amount otherwise deductible under section 404(g). If the contributions are to plan to which more than one employer contributes, this limit shall apply to each employer separately rather than all employers in the aggregate. Thus, each employer may deduct the greater of its allocable share of the deduction determined under sections 404(a) and 413(b)(7) or 413(c)(6) or its allocable share of the amount deductible under section 404(g).

However, pursuant to the rule in subdivision (ii) of subparagraph (3), in determining each employer's allocable share under section (404(a), the total amount deductible under section 404(a) by all employers shall not exceed the difference between the full funding limitation and the total amount deductible by all employers under section 404(g).

(5) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. In the 1983 taxable year, Employer *A* makes a withdrawal liability payment of $700,000 to multiemployer Plan *X* to which Employer *A* and Employer *B* are required to contribute. Employer *A*'s allocable share of the deduction allowable under sections 404(a) and 413(b)(7) in the 1983 taxable year is $600,000. Employer *B*'s allocable share of the deduction allowable under section 404(a) and 413(b)(7) in the 1983 taxable year is $400,000.

The full funding limitation for the 1983 taxable year is $1,000,000. Based on paragraph (c)(4) of this section, Employer *A* may deduct $700,000, the amount of the withdrawal liability payment. However, the deduction of Employer *B* is limited to $300,000, the difference between the full funding limitation and the amount deductible under section 404(g).

(d) *Effective date etc.*—(1) *General rule.* This section is effective for employer payments made after September 25, 1980.

(2) *Transitional rule.* For employer payments made before September 26, 1980, for purposes of section 404, any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which section 404 applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-12149 Filed 5-17-85; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-83-83]

Exclusion From Gross Income for Certain Foster Care Payments; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the exclusion from gross income for certain foster care payments.

DATES: The public hearing will be held on Monday, June 24, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, June 10, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-83-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 131 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, February 1, 1985 (50 FR 4702).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, June 10, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-12151 Filed 5-17-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-09]

Regatta; Seattle Seafair Triathon

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an area of controlled navigation upon the waters of Lake Washington on Sunday, July 21, 1985. This is necessary due to the number of swimmers participating in the ¾ mile swim as part of Seattle's Seafair Triathon. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event.

DATES: Comments must be received on or before June 14, 1985.

ADDRESSES: Comments should be mailed to Commander (bs), Thirteenth Coast Guard District, 915 Second Ave., Seattle, WA 98174. The comments and other materials referenced in this notice will be available for inspection and copying at the Thirteenth Coast Guard District Office, Boating Safety Branch, Room 3262, 915 Second Ave., Seattle, WA 98174. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt T. Mitchell, Chief, Boating Standards Branch, (206) 442-7355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 85-09) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are Lt T. Mitchell, USCG, project officer, Thirteenth Coast Guard District Boating Standards Branch, and Lcdr D. G. Beck, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

Each year, Seafair Inc., a non-profit corporation, sponsors a Triathon with a ¾ mile swim on the waters of Lake Washington in Andrews Bay. This one (1) day event draws more than a thousand participants to the waters of Lake Washington. To promote the safety of the participants and spectators, special local regulations are required.

By the authority contained in Title 33, U.S. Code, Section 1233 (formerly 46 U.S.C. 454), as implemented by Title 33, Code of Federal Regulations, Part 100, a special local regulation controlling navigation on the waters described is required. The waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulations and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034;

February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulations affect only spectators and participants and applies to a small area of Lake Washington. In addition, the regulations will be in effect for only a portion of one (1) day—this day being a Sunday. There is no commercial traffic in this area of the lake.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations:

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding section 100.35–1305 to read as follows:

§ 100.35–1305 Lake Washington 1985 Seafair Triathon.

(a) On July 21, 1985, this regulation will be in effect from 6:00 a.m. until 10:00 a.m. or until one half hour after the conclusion of the swimming portion of the Triathon race (whichever is later).

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is: The waters of Lake Washington (known as Andrews Bay) bounded by Bailey Peninsula, the western shore of Lake Washington, and bounded on the North by an East-West line drawn tangent to the Northern tip of Bailey Peninsula.

(c) The Coast Guard will maintain a patrol consisting of active and/or auxiliary Coast Guard Vessels. The Coast Guard patrol of this area is under the direction of a designated Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is enpowered to control the movement of vessels or persons on or in the designated waters or adjoining waters during the periods this regulation is in effect.

(d) Only authorized vessels or persons may be allowed to enter the area during the hours this regulation is in effect.

(e) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: May 3, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85–12120 Filed 5–17–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 8

[Docket No. 85–10869]

Labor Standards Applicable to Employees of National Park Service Concessioners; Correction

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on the Labor Standard Applicable to Employees of National Park Service Concessioners that appeared at page 19548 in the Federal Register of Thursday, May 9, 1985, Vol. 50, No. 90. This action is necessary to correct the typographical error in the telephone number under **"FOR FURTHER INFORMATION CONTACT:"** it reads: Telephone: (202) 523–1741 and it should read: Telephone: (202) 523–1564.

Russell Olsen,

Federal Register Liaison Officer.

[FR Doc. 85–12029 Filed 5–17–85; 8:45 am]

BILLING CODE 4310–70–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Insurance Coverage and Rates

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the chargeable rates, which apply to all structures located in communities participating in the emergency phase of the National Flood Insurance Program and to certain structures in communities in the regular phase, and revise the National Flood Insurance program regulations dealing with flood insurance coverage and the Standard Flood Insurance Policy (SFIP) terms and provisions. The purpose of the proposed rule is to revise the Program regulations to reflect the proposed increase in the chargeable rates, to reflect a change in the minimum premium, and to reflect changes in the payment for losses to insureds who receive multiple claims payments because their properties are subject to repetitive flooding.

DATES: All comments received on or before July 19, 1985 will be considered before final action is taken on the proposed rule.

ADDRESS: Persons who wish to comment should submit comments in duplicate to the Rules Docket Clerk Office of the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 646–3419.

SUPPLEMENTARY INFORMATION: These proposed amendments are the result of an ongoing review and reappraisal of the National Flood Insurance Program (NFIP) and of continuing efforts to maintain a business-like approach to the administration of the NFIP by emulating successful property insurance programs in the private sector and, at the same time, to achieve greater administrative and fiscal effectiveness in the operation of the NFIP.

In this regard, a system is being proposed to be effective on October 1, 1986, whereby insureds who receive multiple claims payments because their properties are subject to repetitive flooding will share in the loss through a co-payment procedure. The co-payment system will be utilized when three or more flood claims are paid within the ten-year period ending on the date of the loss or the period beginning January 1, 1978 (the date the Federal government became the sole risk-bearer, or insurer, under the NFIP), and ending on the date of the loss, whichever is shorter.

In 1983 the Federal Emergency Management Agency (FEMA) considered the implementation of a premium surcharge system for insureds whose properties were subject to repetitive flooding and received comments, both positive and negative on this subject. Because of the substantive issues that were raised, it was determined that consideration of such a system should be deferred until it could be studied further. It is FEMA's belief that the co-payment system that is

now being proposed is a more equitable procedure to follow for having insureds who receive multiple claims payments because their properties are subject to repetitive flooding assume an appropriate share in the taxpayers' cost of providing the insurance.

The requirements that the insured share in the loss through the co-payment system is similar in principle to situations in the private sector where an insured under a policy of automobile insurance finds that his driving record can affect the cost of his insurance at renewal time. In the case of the NFIP, the insured's co-payment share, assuming the occurrence of a third (or more) claim involving the property within a ten-year period or less, which will not begin earlier than January 1, 1978, will be calculated as follows. First the amount of the claim that would be payable if there were no co-payment is calculated by applying the applicable deductible, applying any applicable depreciation, and limiting recovery to the policy limits. The NFIP will then pay 90% of this amount, leaving the insured to bear, as a co-payment the remaining 10%. However, the amount of the co-payment will be limited to $2000 in the aggregate for the building and/or contents loss.

The chargeable or "subsidized" rates, for which an increase is being proposed, are the rates applicable to structures located in communities participating in the emergency phase of the NFIP and to certain structures in communities in the regular phase. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant, produce a premium income somewhat less than the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in Section 408 of the Housing and Urban Development Act of 1969) and for the use in the Regular Program on construction or substantial improvement started before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973) or the effective date of the initial Flood Insurance Rate Map (FIRM), whichever is later. From 1978 through 1983, these rates produced an average premium earned per policy of $118, while losses and expenses for policies using these rates amounted to $222 per policy. This translated to an average subsidy provided annually by the general taxpayer to each subsidized policyholder of $104.

The statutory mandate to establish reasonable chargeable rates requires the Federal Insurance Administrator to balance the need for providing reasonable rates to encourage potential insureds to purchase flood insurance with the requirement that the NFIP be a flexible program which minimizes cost and distributes burdens equitably among those who will be protected by flood insurance and the general public. The Federal Insurance Administration (FIA) has examined the current chargeable rates and the amount of subsidy required to supplement the inadequate premium income derived from insurance policies to which these rates apply. Based on this examination, FIA has determined that the general public continues to bear too great a share of the burden for subsidized insurance rates. In addition FIA has determined that it is necessary to bring the National Flood Insurance Program closer to a self-supporting basis and create a sounder financial basis for the Program. Therefore, to meet these needs, FIA proposed to increase the chargeable or subsidized rates as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.50	$0.60
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.60	1.20

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.45	$0.55
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.55	1.10

The need for the proposed increase has been balanced with the statutory requirement that the chargeable rates be consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase flood insurance. Although insureds will be required to pay more for flood insurance coverage for existing structures subject to the chargeable rates and for new structures in Emergency Program communities, this proposed increase is only the third increase in the chargeable rates over the 16 years since the Emergency Program was added to the NFIP; and FIA has determined that the premium payments for policies purchased or renewed, to which the new rates are applicable, will be reasonable as required by statute. For example, the rate increase will only amount to an average of about $2.50 per month resulting in an average annual premium of about $245.00.

The amount of the proposed rate increase represents a balance between the need for decreasing the federal subsidy required for the Program, thus more equitably distributing the burden, and the requirement that chargeable rates be reasonable.

In addition, it is proposed that the minimum premium be increased from $50.00 to $75.00.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule does not have a significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that the proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, Subchapter B of Chapter 1 of Title 44 is proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 is revised as set forth below and the authority citations following all the sections in Part 61 are removed.

Authority: 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.5 [Amended]

2. Section 61.5 is amended in the following particulars:

a. By removing in paragraph (h)(1)(v) the amount "$50.00" and inserting in its place the amount "$75.00".

b. By adding a new paragraph (j) to read as follows:

* * * * *

(j) Effective October 1, 1986, if, at the time of a loss, two or more claims have been paid in the ten-year period ending on the date of loss or the period beginning January 1, 1978, and ending on the date of loss, whichever is shorter, and if at least 30, days before the loss, the insurer has mailed written notice to the insured that two or more claims have been paid in a period of ten years or less, and that subsequent claims, if incurred within a ten-year period beginning on the date of the first loss, will result in the co-payment herein described, then the insurer will pay 90% of the claim otherwise payable, i.e., the amount payable after applying the applicable deductible, applying any applicable depreciation, and limiting recovery to the policy limits, leaving the insured to bear, as a co-payment, the remaining 10%; provided that the amount of the copayment for the building and/or contents claim shall in no event exceed $2,000.00 in the aggregate.

(1) If both building and contents damages are paid under one claim as a result of the same flood event, it will count as only one claim for purposes of determining the total number of claims paid within the applicable ten-year period. If building or contents damages are paid under separate claims as a result of separate flood events, each event will be counted separately for purposes of determining the total number of claims paid within the applicable ten-year period.

(2) Claims paid for reasonable expenses incurred in the temporary removal of an insured mobile home or insured personal property from the described premises and away from the peril of flood will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

(3) Claims paid for the reasonable expenses incurred for the purchase of: (i) Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the insured building due to the imminent danger of a flood, will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

3. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.50	$0.60
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.60	1.20

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

4. Section 61.10 is revised to read as follows:

§ 61.10 Minimum premiums.

The minimum premium required for any policy, regardless of the term or amount of coverage, is $75.00.

Appendix A(1) of Part 61—[Amended]

5. Appendix A(1) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. In Artcle II—Definitions, a definition of "Co-payment" is added, alphabetically, to read as follows:

* * * * *

"Co-payment" means your share of a loss when more than two claims are paid for damages as a result of flooding at the same insured property location within the ten-year period ending on the date of loss or the period beginning January 1, 1978, and ending on the date of loss, whichever is shorter.

* * * * *

b. Articles III through X are redesignated as Articles IV through XI and a new Article III is added to read as follows:

* * * * *

Article III—Co-payment of Loss by You

Effective October 1, 1986, if, at the time of loss, two or more claims have been paid for damages as a result of flooding at the same insured property location in the ten-year period ending on the date of loss or the period beginning January 1, 1978, and ending on the date of loss, whichever is shorter, and if at least 30 days before the loss, we have mailed written notice to you: (i) That two or more claims have been paid in a period of ten years or less and (ii) that subsequent claims, if incurred within a ten-year period beginning on the date of the first loss, will result in the co-payment herein described, then we will pay 90% of the claim otherwise payable, i.e., the amount payable after applying the applicable deductible, applying any applicable depreciation, and limiting recovery to the policy limits, leaving you to bear, as a co-payment, the remaining 10%; provided that the amount of the co-payment for the building and/or contents claim shall in no event exceed $2,000.00 in the aggregate.

A. If both building and contents damages are paid under one claim as a result of the same flood event, it will count as only one claim for purposes of determining the total number of claims paid within the applicable ten-year period. If building or contents damages are paid under separate claims as a result of separate flood events, each event will be counted separately for purposes of determining the total number of claims paid within the applicable ten-year period.

B. Claims paid for reasonable expenses incurred in the temporary removal of an insured mobile home or insured personal property from the described premises and away from the peril of flood will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

C. Claims paid for the reasonable expenses incurred for the purchase of: (i) Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of savings the insured building due to the imminent danger of a flood, will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

* * * * *

c. In redesignated Article IX—General Conditions and Provisions, paragraph F.1.e. is revised by removing the amount "$50.00" and inserting in its place the amount "$75.00".

Appendix A(2) of Part 61—[Amended]

6. Appendix A(2) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. In the DEFINITIONS section, a definition of "Co-payment" is added, alphabetically, to read as follows:

* * * * *

"Co-payment" means the insured's share of a loss when more than two claims are paid for damages as a result of flooding at the same insured property location within the ten-year period ending on the date of loss or the period beginning January 1, 1978, and ending on the date of loss, whichever is shorter.

* * * * *

b. A new "Co-payment of Loss by Insured" section is added before the Perils Excluded section to read as follows:

* * * * *

Co-payment of Loss by Insured

A. Effective October 1, 1986, if, at the time of a loss, two or more claims have been paid for damages as a result of flooding at the same insured property location in the ten-year period ending on the date of loss or the period beginning January 1, 1978, and ending on the date of loss, whichever is shorter, and if at least 30 days before the loss, the Insurer has mailed written notice to the Insured: (i) That two or more claims have been paid in a period of ten years or less and (ii) that subsequent claims, if incurred within a ten-year period beginning on the date of the first loss will result in the co-payment herein described, then the Insurer will pay 90% of the claim otherwise payable, i.e., the amount payable after applying the applicable deductible, applying any applicable depreciation, and limiting recovery to the policy limits, leaving the Insured to bear, as a co-payment, the remaining 10%; provided that the amount of the co-payment for the building and/or contents claim shall in no event exceed $2,000.00 in the aggregate.

B. If both building and contents damages are paid under one claim as a result of the same flood event, it will count as only one claim for purposes of determining the total number of claims paid within the applicable ten-year period. If building or contents damages are paid under separate claims as a result of separate flood events, each event will be counted separately for purposes of determining the total number of claims paid within the applicable ten-year period.

C. Claims paid for reasonable expenses incurred in the temporary removal of an insured mobile home or insured personal property from the described premises and away from the peril of flood will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

D. Claims paid for the reasonable expenses incurred for the purchase of: (i) Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the insured building due to the imminent danger of a flood, will not be subject to the co-payment provision nor will such claims be counted for purposes of determining the total number of claims paid within the applicable ten-year period.

* * * * *

c. In the General Conditions and Provisions section, paragraph E.1.e. is revised by removing the amount "$50.00" and inserting in its place the amount "$75.00".

Dated: April 22, 1985.

Issued at Washington, D.C.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 85-12048 Filed 5-17-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Tumamoca Macdougalii To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Tumamoca macdougalii* J.N. Rose (Tumamoc globe-berry), to be an endangered species. Historically, 16 populations were known from Pima County, Arizona, and northern Sonora, Mexico. Presently, 28 U.S. populations are known and occur on Federal, State, Indian, City of Tuscon, and private lands. They are threatened with habitat destruction from increased agricultural development, urbanization, a proposed Central Arizona Project aqueduct, grazing, and collection. One population was recently documented in Sonora, Mexico, however, other formerly known Mexican localities have not been recently confirmed. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Tumamoca macdougalii*. Critical habitat is not being proposed at this time. The Service seeks data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by July 19, 1985. Public hearing requests must be received by July 5, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Tumamoca macdougalii was first collected on July 31, 1908, by D.J. Macdougal, a scientist at the Carnegie Desert Laboratory, on Tumamoc Hill, west of Tuscon, Arizona. The specimen was sent to J.N. Rose, a botanist at the U.S. National Herbarium, who described it as the type of a new genus and species in honor of the type locality and its collector (Rose 1912). This plant is a delicate perennial vine in the gourd family. It grows from a tuberous root and has slender annual stems (Toolin 1982). Its thin leaves have three main lobes, each divided into narrow segments. The plant bears small, yellow, male and female flowers and produces small, red, watermelon-like fruits. Flowering and fruit set occurs after the onset of summer rains, normally in August and September. The population biology and ecological requirements are poorly understood (Toolin 1982).

Historically, *Tumamoca macdougalii* has been found in 16 very scattered populations from Pima County, Arizona to northern Sonora, Mexico. Toolin (1982) searched known localities in Mexico and was unable to relocate any Mexican populations. However, a botanist with Arizona-Sonora Desert Museum collected seeds from a plant near Guaymas, Sonora, Mexico in 1983. The status of this population is not known but it is presumed to consist of at least one reproducing adult plant (Reichenbacher, F.W. Reichenbacher and Assoc., Tuscon, pers. comm. 1985). Reichenbacher (1984) reported 10 U.S. populations containing a total of 338 adults, 11 juveniles and 126 seedlings. Extensive field surveys of 53,500 acres in Aura Valley conducted from August to November, 1984, increased the known U.S. populations to 28, containing 290 reproducing adults, 65 probable adults, and 1627 juveniles (Reichenbacher 1985; Boyd, Tierra Madre Consultants, Riverside, California, pers. comm. 1984). These populations occur on private, Federal, State, Indian, and City of Tucson lands.

Tumamoca macdougalii occurs in the Arizona Upland Subdivision of the Desert Scrub Formation at elevations of 450–795 meters (1,476–2,608 feet) in rocky to gravelly, sandy, silty, and clayey soils derived from granite, basalt, and rhyolite. The vegetation is palo-verde/cactus shrub and creosote bush/bursage desert scrub. Dominant associated species are creosote bush (*Larrea divaricata*), palo-verde (*Cercidium spp.*), white thorn acacia (*Acacia constricta*), saguaro cactus

(*Carnegia gigantea*), prickly pear (*Opuntia phaeacantha*), cane cholla (*Opuntia versicolor*), mesquite (*Prosopis juliflora*), ironwood (*Olneya tesota*), and triangle leaf bursage (*Ambrosia deltoidea*). No symbiotic relationship is known for the Tumamoc glob-berry; however, it is always found under trees and shrubs, which provide shade and protection, as well as support for the vine. The nurse plants for *Tumamoca macdougalii* are creosote bush, triangle leaf bursage, white thorn acacia, all-scale, and pencil cholla (Reichenbacher 1984).

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca macdougalii* was included in category 1. That category comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Tumamoca macdougalii*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Tumamoca macdougalii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threathened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tumamoca macdougalii* J.N. Rose (Tumamoc globe-berry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historic range of the Tumamoc globe-berry extended about 193 kilometers (120 miles) west of Tucson, Arizona, to Gunsight, Arizona, and approximately 322 kilometers (200 miles) south to Caborca and Santa Ana, Sonora, Mexico. Much of the former range of *Tumamoca macdougalii* is presently being modified by agricultural expansion (near Caborca, Sonora, and in the Avra Valley, Pima County, Arizona) and urban expansion (on the west side of Tucson, Arizona). The known historic Mexican populations have been not been relocated despite extensive searches (Toolin 1982); however, recent information indicates seeds have been collected from an additional locality 35 miles south of Santa Ana, Sonora, Mexico. The population at Organ Pipe Cactus National Monument has not been relocated (Reichenbacher 1984).

Since 1970 the only *Tumamoca macdougalii* plants collected or observed in the U.S. have been in the Avra Valley (Reichenbacher 1984) which is undergoing rapid development as Tucson expands westward. This valley is considered desirable not only for agricultural use, but also for homes, trailer courts, business development, and accompanying roads, powerlines, pipelines, canals etc.

Presently, there are 28 known U.S. populations containing approximately 355 adults and 1,627 juveniles. Ten populations of *Tumamoca macdougalii* occur on private land; eight on city, State, and university administered land; and 10 are under Federal administration. Seventy-five percent of the plants occupy habitat on non-Federal land and modification of the habitat could occur and result in destruction or damage to these populations. During 1984, 53,500 acres of land in Avra Valley were surveyed for *Tumamoca macdougalii* and Reichenbacher believes there is little chance of any other large populations being found in Avra Valley.

The city of Tucson owns a parcel of land containing 31 plants of *Tumamoca macdougalii*. The land is administered by the Tucson Parks and Recreation Department and is scheduled to become a Native District Park by December, 1985. The Tucson Parks and Recreation Department (TPRD) is aware of the species and indicates it will be taken into consideration when planning the park (Glen Dixon, TPRD, pers. comm. 1984). The development of this park will defintely affect the species' habitat through an increase in number of people using the area.

The State of Arizona applied for the transfer to State ownership of 2,540 hectares (6,274 acres) of Bureau of Land Management (BLM) administered land in the Avra Valley. Some of this land has already been transferred to the State, incuding portions of two sections that contain two populations of *Tumamoca macdougalii*. All lands obtained under the State indemnity land selections are subject to disposal in order to generate revenue for the State. Thus, these lands are expected to undergo development; however, before the State leases to anyone with the intention of disturbing the surface, a botanical review is done by the Arizona Agriculture and Horticulture Commission (Randy Brenner, Arizona State Land Department, pers. comm. 1984).

Currently, 22 adult plants and 71 juveniles are scattered throughout developed and undeveloped areas of the West Campus of the Pima Community College. Erosion threatens some of the plants located on an embankment adjacent to the school's firing range. With the increase in growth of the Tucson area and the anticipated growth of the Community College, development of *Tumamoca macdougalii* habitat could occur.

The Pan Quemado population of *Tumamoca macdougalii* on BLM administered land is in the vicinity of a land impriniting and seeding project on the Aqua Blanco Ranch. The project will avoid drainage areas; however, it will imprint the creosote between the drainges. Suitable habitat for the globe-berry exists throughout the 7.5 sections of the land proposed for the project (Mary Butterwick, BLM, pers. comm. 1984). An inventory of 122 hectares (301 acres) disclosed a population of 33 plants on BLM administered habitat (Reichenbacher 1985). Also observed at the Pan Quemado site were 5 plants excavated and eaten by animals, presumably javelina.

The U.S. Forest Service (FS) identified a small population, 9 adults and 32 juveniles, in the Santa Catalina Mountains, east of the Santa Cruz River. This population occurs in the middle of a picinic area which, fortunately, receives little use in the summer and fall when the plants are growing (Reichenbacher 1985).

An additional threat to *Tumamoca macdougalii* and its habitat is the proposed construction of the Central Arizona Project (CAP) aqueduct, a Bureau of Reclamation (BR) water diversion project, through an area

containing a population of the plant. Six adult plants were found in the proposed alignment during the 1983 field survey (Reichenbacher 1984). An intensive field survey was conducted August-November 1984 to search the project area specifically for *Tumamoca macdogalii*. A total of 468 plants (the largest, known population) were located on land to be impacted by the CAP (Reichenbacker 1985).

On the San Xavier and Papago Indian Reservations, habitat is also being lost to agricultural and housing development. A portion of the Central Arizona Project includes the allocation of enough water to farm 1,215 hectares (3,000 acres) of land on the Papago Reservation and 4,453 hectares (11,000 acres) of land on the San Xavier Reservation (Tom Gatz, BR, pers. comm. 1983).

The San Xavier Planned Community involves the development of 93 square Kilometers (38 square miles) of land on the San Xavier Indian Reservation. This project is planned to include light industrial complexes, shopping centers, and dense and widely spaced housing developments for 90–100 thousand people over the next 20–30 years. A filed survey of the entire 93 square kilometer (36 square mile) area was conducted in August, 1984 by Tierra Madre Consultants, Riverside, California. The survey identified 104 plants within the proposed project area and several plants within the San Xavier Indian residential area.

The Papago Indian Tribe contracted with Franzoy Corey Engineers to survey 28,000 acres of land for *Tumamoca macdougalii* in 1984. Three populations consisting of 8 adults and 51 juveniles were found in the area planned for agricultural and, possibly, housing development (Reichenbacher, pers. comm. 1985).

Tumamoc Hill, the type locality of *Tumamoca macdougalii*, is a natural resource site administered by the University of Arizona. There are 35 adult plants and 143 juveniles on this property (Reichenbacher 1985). This poplulation is probably the most secure of all the populations because the site was designated a National Historic Landmark in 1975, a National Environmental Study Area in 1976, and a State Scientific and Educational Natural Area in 1981 (Tumamoc Hill Planning Committee 1982). However, with the population of the surrounding ara growing, so too will the negative impacts. Damage from domestic dogs and four-wheel drive vehicles has been minor in the past, but with the increasing numbers of people in the area the damage may be intensified.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Tumamoca macdougalii* is not known to be sought for any of these purposes; however, Reichenbacher (pers. comm. 1984) returned to a known locality and found that a plant had been collected. This species' existence is very vulnerable because of the low number of individual plants and any taking would be detrimental to the populations. Due to its easily accessible locations, vandalism poses an additional threat to *Tumamoca macdougalii*.

C. *Disease or predation.* Antelope jackrabbits (*Lepus alleni*) have been observed to clip stems, leaves, flowers, and fruits of *Tujmamoca macdougalii* (Reichenbacher 1984). Although rodents have not been observed browsing the plant, they are suspected of it (Toolin 1982). Reichenbacher (1985) identified 54 plants excavated by javelina during the 1984 field survey. The javelina foraging pressure varies from population to population. Livestock grazing may not directly affect the Tumamoc globe-berry; however, livestock take shelter under trees on warm days and could possibly trample the *Tumamoca*, which are always located in the shade of trees or shrubs.

D. *The inadequacy of existing regulatory mechanisms.* Presently, there is no Federal or Arizona State law protecting *Tumamoca macdougalii*. The Tumamoc globe-berry is on the BLM Sensitive Species List and it is BLM policy to include candidate species for consideration in its environmental assessments. The Endangered Species Act would provide additional protection for this plant through Section 7 (interagency cooperation) requirements and through Section 9, which prohibits removal and reduction to possession of species on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* The low numbers (335 adult plants and 1,627 juveniles) and limited distribution of *Tumamoca macdougalii* increase the species' vulnerability to natural or man-caused stresses. Although the reproductive biology is not fully understood, survival of all the seedlings to maturity is doubtful, since periodic droughts are common in this species' range and young plants without well-developed root systems would be vulnerable to drought (Toolin 1982). This seedling mortality is well illustrated by the present ratio of adults to seedling.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Tumamoca macdougalii* as endangered without critical habitat. Endangered status seems appropriate because all populations except one are facing imminent threat from urban and agricultural expansion. Thus, *Tumamoca macdougalii* is in danger of extinction throughout a significant portion of its range and may soon disappear unless appropriate protection is extended. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requries that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is consdered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Tumamoca macdougalii* because its restricted distribution and accessibility make it vulnerable to threats from taking. Publication of critical habitat descriptions and maps would call attention to this species, making it more vulnerable to taking and vandalism. Therefore, it would not be prudent to determine critical habitat for *Tumamoca macdougalii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

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

Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This protection would now accrue to *Tumamoca macdougalii*. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The usual results of section 7 consultation, if jeopardy is found, are modification and not cancellation of proposed action.

The Central Arizona Project (CAP)—Tucson Aqueduct Phase B Alignment may affect the Tumamoc globe-berry. The preferred route of the CAP aqueduct would cross the largest known population of *Tumamoca*. Most of the 468 plants occur in the route of the canal or within the periodic inundation zone which is approximately 300 meters wide on the upslope side (Reichenbacher 1985). The degree of impact to this species from CAP construction is dependent upon the route chosen for the CAP Phase B alignment. There are two alternative routes which BR is considering that would avoid the main population entirely (Reichenbacher 1985). The BR is working with the Service to determine the status of *Tumamoca macdougalii* on the CAP route.

The known population as well as potential habitat on BLM administered lands may be impacted by the land imprinting and seeding project or by the possibility of transfer of ownership from BLM to State or private interests. In view of BLM's active transferral of lands program, adequate surveys at appropriate times of the year need to be conducted prior to transfer of land to non-Federal interests.

Proposed projections on BIA administered lands include the San Xavier Planned Community which would impact 105 plants, and the urban and agricultural development on the Papago which could possible impact 310 plants. Surveys have been conducted on both reservations. The BIA, BLM, and BR are all aware of the species on their lands and are actively planning for it. No other Federal activities are known or expected to affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Tumamoca macdougalii*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import, transport in interstate of foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate of foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commercial trade in *Tumamoca macdougalii* is not known to exist. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition will apply to *Tumamoca macdougalii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. Few collecting permit requests are expected. Requests for copies of the regulations of plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903 or FTS 235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate, and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Tumamoca macdougalii;*

(2) The location of any additional populations of *Tumamoca macdougalii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional Information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts of *Tumamoca macdougalii*.

Final promulgation of the regulation on *Tumamoca macdougalii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **"ADDRESSES"** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment as defined under the authority of 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).

Literature Cited

Reichenbacher, F.W. 1984. Rare plants of the Central Arizona Project Aqueduct Phase B. Final Report, Arizona Game and Fish Department, Phoenix, Arizona. 61 pp.

Reichenbacher, F.W. 1985. Field surveys of *Tumamoca macdougalii*. Draft Final Report, F.W. Reichenbacher and Associates, Tucson, Arizona. 69 pp.

Rose, J.N. 1912. *Tumamoca*, a new genus of Cucurbitaceae. Contributions from the U.S. National Herbarium 16:21.

Toolin, L.J. 1982. Status report on *Tumamoca macdougalii*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 11 pp.

Tumamoc Hill Advisory Committee. 1982. Tumamoc Hill Policy Plan. University of Arizona, Tucson, Arizona. 70 pp.

Author

The primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 [505/766–3972 or FTS 474–3972]. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Status information was provided by Dr. L.J. Toolin, Arizona Natural Heritage Program, Tucson, Arizona, and by Frank Reichenbacher, F.W. Reichenbacher and Associates, Tucson, Arizona.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order by family to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	
Cucurbitaceae—Gourd family:						
Tumamoca macdougalii	Tumamoc globe-berry	U.S.A. (AZ), Mexico (Sonora).	E		NA	NA
* *	*	*	*	*	*	

Dated: May 9, 1983.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–12092 Filed 5–17–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Northern Aplomado Falcon To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the northern aplomado falcon, *Falco fermoralis septentrionalis*, as an endangered species under provisons of the Endangered Species Act of 1973, as amended. This subspecies historically occurred in southeastern Arizona, south-central New Mexico, southern Texas, much of Mexico, and the western coast of Guatemala. It has been extirpated as a breeding species from the United States, and at present is known to nest only in portions of eastern Mexico. This falcon is threatened by continued habitat loss and by contamination with organochlorine pesticides. No critical habitat has been proposed. This proposal, if finalized, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Falco femoralis septentrionalis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 19, 1985. Public hearing requests must be received by July 5, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Langowski, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The northern aplomado falcon is perhaps one of our most colorful birds of prey. Adults are characterized by rufous underparts, a gray dorsum, along and banded tail, long legs, and a distinctive black and white facial pattern. *Falco femoralis septentrionalis* (family Falconidae) was first described by Todd in 1916 from a specimen taken in 1887 near Ft. Huachuca, Arizona. This subspecies is the largest form of *Falco femoralis* and weighs about 250–400 grams (Hector, 1981). Aplomados are intermediate in size between American kestrels (*Falco sparverius*) and peregrine falcons (*Falco peregrinus*). The northern aplomado falcon does not seem to be migratory, since most collected adults were taken in winter months in the United States (Hector, 1981). Hector (1980, 1981, 1982, 1983) summarized the literature dealing with the northern aplomado falcon and reported on the historic and recent distributions of the species, its habitat, diet, and behavior. Kiff *et al.* (1978) documented eggshell thinning and pesticide contamination in the subspecies.

Egg laying has been recorded between the months of January and September; eggs are usually laid in April or May. Aplomado falcons feed on birds, insects, rodents, small snakes, and lizards (Hector, 1981). In eastern Mexico, the majority of prey items are insects; however, birds make up over 90 percent of the dietary biomass (Hector, 1981).

Typical northern aplomado falcon habitat is open rangeland and tropical savanna containing scattered mesquites (*Prosopis juliflora*), yuccas (*Yucca elata* and *Yucca treculeana*), oaks (*Quercus oleoides*), acacias (*Acacia farnesiana*), or palms (*Sabal mexicana*). In central Mexico, the falcon has also been found in open pine woodland (*Pinus montezumae*). The most recent reported United States nesting occurred in yucca/mesquite grassland near Deming, New Mexico, in 1952. In the same year, a second nest was found in northern Chihuahua, Mexico; this is the most recent documented nesting attempt for northern Mexico. The essential components of northern aplomado falcon habitat are open terrain with scattered trees, relatively low ground cover, an abundance of small to medium-sized birds, and a supply of nesting platforms (stick nests or large bromeliads) (Hector, 1983).

The historic breeding range of the northern aplomado falcon, as represented by museum specimens or eggs, included southeastern Arizona, southern New Mexico, and southern Texas in the United States, the States of Tamaulipas, Chiapas, Campeche, Tabasco, Chihuahua, Coahuila, Sinaloa, Jalisco, Guerrero, Veracruz, Yucatan, and San Luis Potosi in Mexico, and the western coast of Guatemala. It is now extirpated as a breeding species from the United States and is no longer known to nest on the central plateau of Mexico. The subspecies now nests regularly only in portions of northern and central Veracruz, northern Chiapas, western Campeche, and eastern

Tabasco, mostly in palm and oak savanna (Hector, 1981).

Considered together, the habitat preferences of the subspecies and the timing of its decline in the United States implicate habitat degradation due to brush encroachment as the main factor responsible for the disappearance of the subspecies from the United States. Secondarily, overcollecting of the falcons and their eggs may have temporarily reduced their numbers in some parts of the United States. However, collecting pressure, by itself, could not account for the continued absence of the aplomado falcon north of Mexico. Currently, the most serious threat to this falcon is the continued use of DDT and other persistent insecticides within the ranges of the falcon and some of its migratory prey species.

Falco femoralis septentrionalis was first considered by the Service in 1973 as a possible candidate for endangered status (USDI, 1973); however, more information was needed to support such a determination. Additional information is now available to the Service to support a determination of endangered (Kiff *et al.*, 1978; Hector, 1980, 1981, 1982, 1983). The northern aplomado falcon is presently listed by the State of New Mexico as endangered (New Mexico State Game Commission, 1979), by the State of Arizona as extirpated from that State (Arizona Game and Fish Commission, 1982), and by the State of Texas as a protected nongame species (Texas Parks and Wildlife Code 127.70.12.001–.008). A 1983 status report for this subspecies was prepared by Dean P. Hector of the University of California at Los Angles, under contract with the Service. Upon evaluation of that report, the Service has concluded that the status of this species most closely fits endangered as defined in Section 3 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Falco femoralis septentrionalis was included in category 2 of the December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 2 includes those taxa that are thought to possibly warrant listing, but for which more information is needed to determine biological status and to support listing. That information is now available for this subspecies in the current status report (Hector, 1983).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; revision published October 1, 1984; 49 FR 38900–38912) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the northern aplomado falcon (*Falco femoralis septentrionalis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The northern aplomado falcon has suffered severe population declines in the United States (Hector, 1981). These declines probably resulted primarily from brush encroachment on open rangelands, which eliminated the open country with scattered trees preferred by this species and provided better concealment for prey species. Brush encroachment involves the proliferation in open savanna or grassland of woody vegetation, such as mesquite and creosote bush, and has been fostered by severe overgrazing, suppression of range fires, and other vegetative disturbances (Humphrey, 1958). Such encroachment has been well documented for southern Arizona (Hastings and Turner, 1965), for south-central New Mexico (Buffington and Herbel, 1967), and for the southern Texas coastal plains (Johnston, 1973). It is likely that brush encroachment has also been a factor in the decline of the falcon on the central plateau of Mexico, although little data is available on such habitat degradation. Brush encroachment is probably still a factor limiting the distribution of the northern aplomado falcon. In addition, the clearing of lands throughout its range for agriculture has also contributed to the decline of the falcon by reducing prey species and by eliminating nesting sites. Although deforestation of eastern Mexico is no doubt creating additional habitat for the species in tropical portions of its range, continued habitat degradation in central Mexico may be adversely affecting the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The collection of northern aplomado falcons for scientific purposes has been minimal for the past 50 years. In addition, the species has rarely been used for falconry purposes. Falconry is not known to have had much effect on the aplomado falcon due to the difficulty of obtaining the species in the United States.

Some overcollecting of northern aplomado falcons and their eggs may have occurred in the early 1900s and may have contributed to the decline of the species in the United States, but collecting is not likely to be a significant factor now and cannot account for the continued absence of the aplomado north of north-central Mexico. At least one falcon has been found shot in eastern Mexico (Hector, pers. comm.). The frequency with which this occurs is unknown.

C. *Disease or predation.* Nothing is known about the effect of disease or predation on population productivity. One parasite, a botfly, has been reported (Hector, 1982). This fly infests young aplomado falcons; however, it is not known under what conditions this insect could cause high mortality rates among nestlings. It is very unlikely that botfly parasitism has played a role in past declines of the aplomado. No instances of animal predation on northern aplomado falcons have been documented.

D. *The inadequacy of existing regulatory mechanism.* The Migratory Bird Treaty Act (16 U.S.C. 701–711) establishes provisions regulating the taking, killing, possessing, transporting, and importing of migratory birds, including all subspecies of *Falco femoralis*. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) includes all members of the family Falconidae, including *Falco femoralis*, on Appendix II that are not on Appendix I. CITES provides for regulation of import and export of its listed species.

In Texas, *Falco femoralis septentrionalis* is classified by the State as a protected nongame species (Texas Parks and Wildlife code 127.70.12.001–.008). In Arizona, it is included in Group 1 of the State list of threatened native wildlife, which comprises those species that are known to be extirpated from Arizona, but that still exist elsewhere (Arizona Game and Fish Commission, 1982). In New Mexico the species is listed as endangered, Group 1, meaning that its survival in the State is in jeopardy (New Mexico State Game Commission, 1979).

These classifications call attention to the plight of this subspecies in the United States. They also provide minimal protection by regulating taking and exploitation of the aplomado; however, they do not provide any protection to the habitat of the subspecies. The northern aplomado falcon is not subject to damaging levels of direct exploitation. Instead, the species is senitive to habitat degradation and chemical contamination, and needs the type of active management and protective measures provided for in the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* The most important threat to the present survival of the northern aplomado falcon is the continued use of persistent organochlorine pesticides within the range of this falcon and some of its migratory prey species. Recent data strongly suggest that such pesticide use is causing extreme eggshell thinning in some populations of northern aplomado falcons (Kiff *et al.*, 1978). Levels of DDE and DDT in membranes of 20 clutches of aplomado eggs collected in Veracruz (1957–1966) averaged 390 parts per million. In a more recent sample (1977) collected along a 500-mile transect from northern Veracruz to western Campeche DDE (DDT not reported) residue levels averaged 297 parts per million for 7 samples of eggshell fragments (Kiff *et al.*, 1978). The eggshell thickness index for eggs in these 1957–66 and 1977 samples averaged 25 and 24 percent less, respectively, than pre-DDT eggs from the same populations. Eggshell thinning of greater than 20 percent below pre-DDT levels is likely to result in nesting failure. In 1977, two nestings in Veracruz were observed to have failed due to eggshell breakage during incubation (Hector, 1981). On the average, eggs of the northern aplomado falcon collected in eastern Mexico are proportionately thinner than eggs collected from peregrine falcon populations that declined due to pesticide contamination (Peakall and Kiff, 1979).

The aplomado falcon has undergone severe losses in range and numbers in the past, and remaining populations are threatened by reproductive failure due to pesticide contamination. Experiences with the endangered peregrine falcon show that pesticide contamination can lead to severe, rapid population declines, and to the eventual extirpation of some populations of the affected species. The levels of pesticide contamination and eggshell thinning found in the eastern Mexican populations of the northern aplomado falcon exceed those found to have been the cause of nesting failure in populations of the peregrine falcon in the 1960's and 1970's.

The proposed action has been arrived at through the careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this species. Based on this evaluation, the proposed action is to determine the northern aplomado falcon to be endangered throughout its historic range. The above factors make it apparent that this subspecies is in danger of extinction throughout all or a significant portion of its range and, consequently, that the appropriate status for this subspecies is endangered, as defined in section 3 of the Act. Therefore, either no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the northern aplomado falcon at this time. Because there are no known active nesting areas left in the United States, no benefit would be derived from a designation of critical habitat. Critical habitat is not designated in areas outside U.S. jurisdication (50 CFR 424.12(h); see revision of October 1, 1984, 49 FR 38900–38912).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and the prohibitions against taking and harm are discussed in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7 requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The effects of this rule on Federal activities are expected to be minimal, since the northern aplomado falcon does not presently nest and is rarely found in the United States.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation of survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

The northern aplomado falcon is already covered under the provisions of the Migratory Bird Treaty Act (16 U.S.C. 701–711), which regulates the taking, killing, possession, transport, and import of subject species. It is also included on Appendix II (as a member of the family Falconidae) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which controls the import and export of listed species. International trade of this species or its products is minimal. If this species is listed under the Endangered Species Act, the Service will review it to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for

other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, government agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relelvant data concerning any threat (or the lack thereof) to the northern aplomado falcon;

(2) The location of any additional populations of this bird and the reasons why any habitat of the falcon should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the past or present distribution of this bird in the U.S. and Mexico (the central highlands, in particular); and

(4) Current or planned activities in the current range of the falcon and their possible impacts on the northern aplomado falcon.

Final promulgation of the regulations on this falcon will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

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 conjunction 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).

Literature Cited

Arizona Game and Fish Commission. 1982. Threatened native wildlife in Arizona. Arizona Game and Fish Department Publ. 12 pp.

Buffington, L.C., and C.H. Herbel. 1967. Vegetation changes on a semidesert grassland range from 1858 to 1963. Ecological monographs 35(2):139–164.

Hastings, J.R., and R.M. Turner. 1965. The changing mile: an ecological study of vegetation change with time in the lower mile of an arid and semiarid region. University of Arizona Press, Tucson. 317 pp.

Hector, D.P. 1980. Our rare falcon of the desert grassland. Birding 12(3):92–102.

Hector, D.P. 1981. The habitat, diet, and foraging behavior of the Aplomado Falcon, *Falco femoralis* (Temminck). Oklahoma State University, Cooperative Wildlife Research Unit. Unpublished Master's Thesis.

Hector, D.P. 1982. Botfly (Diptera, Muscidae) parasitism of nestling aplomado falcons. Condor 84:443–444.

Hector, D.P. 1983. Status report on *Falco femoralis septentrionalis*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 51 pp.

Humphrey, R.R. 1958. The desert grassland: A history of vegetational change and an analysis of causes. Botanical Review 24(4):193–252.

Johnston, M.C. 1973. Past and present grasslands of southern Texas and northeastern Mexico. Ecology 44(3):456–466.

Kiff, L.F., D.B. Peakall, and D.P. Hector. 1978. Eggshell thinning and organochlorine residues in the bat and aplomado falcons in Mexico. Proceedings of the 17th International Ornithological Congress. pp. 949–952.

New Mexico State Game Commission. 1979. Regulation No. 599. New Mexico Department of Game and Fish, Santa Fe.

Peakall, D.B., and L.F. Kiff. 1979. Eggshell thinning and DDE levels among peregrine falcons (*Falco peregrinus*): a global perspective. Ibis 121:200–204.

Todd, W.E.C. 1916. Preliminary diagnosis of fifteen apparently new neotropical birds. Proceedings of the Biological Society of Washington 29:95–98.

U.S. Department of the Interior. 1973. Threatened wildlife of the United States. U.S. Bureau of Sport Fisheries and Wildlife Resource Publication 114:1–289.

Authors

The editors of this proposed rule are S.E. Stefferud and Dave Langowski, Endangered Species Staff, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read 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.*).

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Birds," to the List of Endangered and Threatened Wildlife:

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Birds:							
Falcon, northern aplomado	*Falco femoralis septentrionalis*	U.S.A. (AZ, NM, TX), Mexico, Guatemala	Entire	E		NA	NA

Dated: April 29, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-12091 Filed 5-17-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Consideration of Additional Area as Critical Habitat in Ash Meadows

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of request for further comments.

SUMMARY: The Service gives notice of a request for further comments concerning the possible designation of additional areas to those designated in today's **Federal Register** as Critical Habitat for the Ash Meadows gumplant and the Amargosa niterwort.

DATE: Further comments should be submitted by July 19, 1985.

ADDRESSES: Comments should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE., Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (530/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

In today's **Federal Register**, the Service issues a final rule to list seven species of plants and one species of insect as endangered or threatened species. As explained in the final rule, the State of California has recommended that additional areas be designated as critical habitat for two of the listed plant species, the Amargosa niterwort and the Ash Meadows gumplant, in California. An area in Nevada is also being considered for addition to the critical habitat of the Ash Meadows gumplant, which was found in this area after publication of the proposed rule. Readers should refer to the Rules and Regulations section of today's **Federal Register** for further details regarding the additional areas for critical habitats for these species for which comments are requested. The Service opens a sixty-day comment period on these possible additions to critical habitat, and will determine whether they should be added to the existing critical habitat following the closing of the comment period.

List of Subjects in 50 CFR Part 17

Endangered and threatened, Wildlife, fish, Marine Mammals, Plants (Agriculture).

Dated: May 9, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-12035 Filed 5-17-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 29

Mineral Rights Reserved and Excepted

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Fish and Wildlife Service (Service) proposes to revise the existing regulations in 50 CFR 29.32 which govern the exercise of mineral rights which have been reserved or excepted in the conveyance of lands to the Service for inclusion in the National Wildlife Refuge System (System). Recent events have indicated a need for additional regulations governing the procedures to be followed by persons conducting mineral operations, particularly oil and gas exploration and/or development, on System lands where the mineral rights are not vested in the Federal Government. The proposed rulemaking is intended to protect System resources to the maximum extent possible without infringing upon the valid existing rights of subsurface owners or their designated representatives.

DATE: Comments must be submitted on or before July 5, 1985.

ADDRESS: Written comments should be addressed to Associated Director, Wildlife Resources, U.S. Fish and Wildlife Service, Room 3252, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Room 2343, 18th and C Streets NW., Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: The purpose of the revised rule will be to provide more clear and comprehensive guidance on the procedures to be followed by persons conducting mineral exploration and/or development on System lands where the minerals are not vested in the Federal Government. These procedures are anticipated to include the submission of a plan of operation which will contain sufficient detail upon which to base the issuance of a Special Use Permit containing reasonable stipulations designed to protect wildlife and other surface resources. The regulations are also expected to provide clarification on, among other things, the requirements for documenting a legal right to the minerals, filing an appropriate surety bond, ensuring the safe handling of contaminants, restoring the surface area and providing compensation and/or mitigation for damages. This action will be taken under authority of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd).

The impetus of this proposed action is the need to establish clearly understood rules for private industry, System personnel and the public clarifying the procedures of the Service which will result in reasonable stipulations on oil and gas operations conducted on System lands. Such operations have been occurring on lands of the System virtually since its inception.

Current plans call for publishing the proposed rule by September 1985, with the final rule to be published in March 1986. An analysis of the environmental impacts of the proposed rulemaking will be prepared in compliance with the National Environmental Policy Act and will be made available for public review.

The policy of the Department of the Interior is, whenever practicable, to

afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments and suggestions regarding the proposed action to the location identified in the Address section. Comment are particularly desired regarding suggested content of the regulations and potential environmental and economic consequences of the proposed action.

List of Subjects in 50 CFR Part 29

Public lands, Mineral resources, Wildlife refuges.

Dated: May 14, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-12057 Filed 5-17-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 97
Monday, May 20, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations; committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Public Assistance Payments by County
Form: Agency—NA; OMB—0608–0037
Type of request: Extension of a current approved collection
Burden: 26 respondents; 156 reporting hours
Needs and uses: The data is needed to produce county estimates of state-administered public assistance payments, and used to prepare estimates of personal income for states and counties.
Affected Public: State or local governments
Frequency: Annually
Respondent's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 14, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–12086 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Digital Computer Systems Parameters
Form No.: Agency—ITA-6031P; OMB—0625-0038
Type of request: Revision of a currently approved collection
Burden: 3,400 respondents; 8,200 reporting hours
Needs and uses: Form ITA 6031P and supporting documentation are used to provide licensing personnel with information needed for issuance of an export license to export computer systems to the Soviet Union, Eastern Europe, and the People's Republic of China.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly, on occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785

Copies of the above infomation collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 14, 1985.

Edward Michals,

Department Clearance Officer.

[FR Doc. 85–12087 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 6–85]

Proposed Foreign-Trade Zone—Salem, NJ; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Salem Port Authority, a municipal corporation, requesting authority to establish a general-purpose foreign-trade zone in Salem, New Jersey, within the Philadelphia Consolidated Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 30, 1985. The applicant is authorized to make this proposal under Title 12, Chapter 13 of the New Jersey Statutes Annotated.

The proposed foreign-trade zone would involve the 120-acre Port of Salem complex in Salem, on the Salem River within 2 miles of the Delaware River. The site has a number of warehouse and industrial facilities. The City of Salem Port Authority will operate the zone.

The application contains evidence of the need for zone services in the Salem area. Several firms have indicated an interest in using zone procedures for storage and manufacturing of products, such as food products and apparel. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, MA 02110; and Lt. Colonel Ralph V. Locurcio, District Engineer, U.S. Army Engineer District Philadelphia, 2nd & Chestnut Street, Philadelphia, PA 19106.

As part of its investigation, the examiners committee will hold a public hearing on June 17, 1985, beginning at 9:30 A.M., the Old Courthouse Building, First Floor, Broadway and Market, Salem.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by June 6. Instead of an oral presentation, written statements may be submitted in

accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 17, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, Room 1218F, New Federal Bldg., 844 King Street, Wilmington, DE 19801

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: May 13, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-12080 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 9-85]

Proposed Foreign-Trade Zones—Lummi Indian Reservation, Whatcom County, WA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lummi Indian Business Council on behalf of the Lummi Indian Tribe requesting authority to establish a general-purpose foreign-trade zone on the Lummi Indian Reservation in Whatcom County, Washington, adjacent to the Bellingham Customs Port of entry. The application was submitted by the Tribe as a municipal corporation pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally field on May 10, 1985.

The proposed foreign-trade zone will involve two parcels totalling 123 acres at Kwina Road and Haxton Way within the Reservation, which is located on a peninsula between Lummi and Bellingham Bays on Puget Sound. There are two existing commercial structures on site totalling 12,000 square feet. The zone will be operated by the Tribe's Council as part of its economic development program. The application indicates that several companies involved in international trade have expressed interest in locating their operations at the proposed site if it is granted zone status. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Robert Hardy, Director, U.S. Customs Service, Pacific Region, 2039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174; and Colonel Roger F. Yankoupe, District Engineer, U.S. Army Engineer District Seattle, P.O. Box C-3755, Seattle, WA 98124.

As part of its investigation, the examiners committee will hold a public hearing on June 19, 1985, beginning at 9:00 A.M., in the Lummi Neighborhood Facility, Kwina Road, Lummi Indian Reservation.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by June 14. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 19, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director, U.S. Customs Service, Cornwall and Magnolia Streets, Room 101, Bellingham, WA 98225

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: May 13, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-12081 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 10-85]

Proposed Foreign-Trade Zones—Whatcom County, WA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Bellingham of Whatcom County, Washington, requesting authority to establish general-purpose foreign-trade zones at sites in the Bellingham, Blaine and Sumas Customs port of entry areas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 10, 1985. The applicant is authorized to make this proposal under Sections 24.46.020 and 53.08.030 of the Revised Code of Washington.

The proposed zone in the Bellingham port of entry area involves 300 acres within the Airport Industrial Development Area at the Bellingham International Airport, and a nearby 60-acre parcel located to the west of Guide Meridian Road and north of Bakerview Road within the proposed Cordata Industrial Park. The Airport site is controlled by the Port Authority and will be operated by Maust Corporation. The Cordata site is owned and operated by the Trillium Corporation.

The proposed zone in the Blaine port of entry area is a 26.5-acre industrial parcel adjacent to Blaine Municipal Airport at Boblett and Odell Streets in Blaine. The site will be leased by Maust Corporation, which will operate the zone.

The proposed zone in the Sumas port of entry area involves a 23-acre site within the Sumas Green Industrial Park at 3rd and Johnson Streets in Sumas. The facility is owned and operated by Sumas Associates.

The application indicates that there is a need for zone services in Whatcom County, and that the Port of Bellingham wishes to sponsor a zone program as part of the County's economic development efforts. A number of firms have indicated an interest in using zone procedures for warehouse/distribution and processing of products, such as fish, fishing supplies, electronic components and equipment, windows and jewelry. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Robert Hardy, District Director, U.S. Customs Service, Pacific Region, 2039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174; and Colonel Roger F. Yankoupe, District Engineer, U.S. Army Engineer District Seattle, P.O. Box C-3755, Seattle, WA 98124.

As part of its investigation, the examiners committee will hold a public hearing on June 19, 1985, beginning at 2:00 P.M., in the Hearing Room of the Port of Bellingham Administrative Offices, 625 Cornwall Street, Bellingham, WA.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by June 14. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 19, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director, U.S. Customs Service, Cornwall and Magnolia Streets, Room 101, Bellingham, WA 98225.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: May 13, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–12082 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

California Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 85–051. Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: Electron Microprobe Analyzer System, Model Superprobe 733. Manufacturer: JEOL, Inc., Japan. Intended use: See notice at 50 FR 1281.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument has a eucentric goniometer stage and a secondary electron image resolution of 7.0 nanometers. The National Bureau of Standards advises in its memorandum dated April 2, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff

[FR Doc. 85–12084 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-DS-M

Centers for Disease Control; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 85–022. Applicant: Centers for Disease Control, Atlanta, GA 30333. Instrument: Electrical Analyzer Instrument, Model # 2485–011. Manufacturer: Clinicon, Inc., The Netherlands. Intended Use: See notice at 50 FR 4995.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of (1) measuring enzymatic rate reactions from kinetic reactions on the walls of cuvettes (k–ELISA) and (2) batch analysis of at least 100 samples at a time. The National Institutes of Health advises in its memorandum dated April 2, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–12085 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-DS-M

Department of Interior; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 85–098. Applicant: Department of Interior, Denver, CO 80225. Instrument: Time-Domain Electromagnetic Prospecting System, Model EM 37–3. Manufacturer: Geonics Limited, Canada. Intended Use: See notice at 50 FR 9476.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides time-domain Electromagnetic measurements of vertical and horizontal components of the transient field with a turnoff time proportional to the transmitted current and the lenght of the transmitter loop perimeter. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–12083 Filed 5–17–85; 8:45 am]

BILLING CODE 3510-DS-M

New Mexico Institute of Mining & Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials

Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 85-038. Applicant: New Mexico Institute of Mining & Technology, Socorro, NM 87801. Instrument: SO_2 Remote Sensor Correlation Spectrometer. Manufacturer: Barringer Research Ltd., Canada. Intended use: See notice at 49 FR 50419.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) sensitivities of 2.5 parts per million per meter for both sulfur dioxide and nitrogen dioxide and (2) a dynamic range of 1 to 1000 parts per million per meter for in situ measurements of the concentration of these gases in the atmosphere. The Environmental Protection Agency advises in its memorandum dated March 26, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-12086 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-402]

Final Determination of Sales at Less Than Fair Value: Certain Dried Heavy Salted Codfish From Canada

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain dried heavy salted codfish from Canada is being, or is likely to be, sold in the United States at less than fair value. We have also determined that codfish is being sold in third countries at less than the cost of production. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: May 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Karen Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1756 or 377-3003.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain dried heavy salted codfish (codfish) from Canada is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). Granville Gates has been excluded from this determination since we have found their weighted-average margin to be *de minimis*.

The weighted-average margin of all sales compared is 16.22 percent. Margins were found on approximately 60 percent of the sales compared. The margins ranged from 0.03 percent to 79 percent. The weighted-average margin for each company are shown in the "Suspension of Liquidation" section of this notice.

Case History

On July 19, 1984, we received a petition filed by Codfish Corp., on behalf of the U.S. industry producing dried heavy salted codfish. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of codfish from Canada are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 8, 1984 (49 FR 32437). On September 4, 1984 (49 FR 35870), the ITC determined that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Canada of certain dried heavy salted codfish.

The petitioner alleged that several Canadian companies produce dried heavy salted codfish for export to the United States. We found that Canadian Saltfish Corporation (CSC), National Sea Products (NSP), R.I. Smith Co., Sable Fish Packers, San Souci, Granville Gates, and United Maritime Fishermen (UMF), accounted for over 60 percent of imports to the United States during the period of investigation.

Since the respondents produced and exported more than 60 percent of the dried salted codfish shipped from Canada to the United States during the period of investigation, we limited our investigation to them.

On October 30, 1984, counsel for the petitioner, Codfish Corporation, further alleged that sales of codfish are being made at prices below the cost of production, and petitioner requested that the due date for the preliminary determination be postponed for 25 days in order to allow sufficient time for the cost of production investigation. On November 30, 1984, we announced the postponement of the preliminary antidumping duty determination for 25 days, or not later than January 22, 1985 (49 FR 47078).

On November 29, 1984, we received a letter from National Sea Products, Ltd. (NSP) stating that it purchased its codfish drying plant on April 28, 1984, and that all cost data was removed by the previous owner. United Maritime Fishermen (UMF) informed us by letter December 31, 1984, that, because it was a cooperative and therefore did not engage in production, it could not supply cost of production information. We received inadequate cost responses from all other exporters included in this investigation except CSC, whose cost data was then used as "best information available" in our preliminary determination. The deficiencies in the cost responses of all respondents except UMF were corrected prior to verification.

We published a preliminary determination of sales at less than fair value on January 29, 1985 (49 FR 47078). Although our notice of the preliminary determination provided interested parties with an opportunity to request a public hearing, no hearing was requested. On February 7, 1985, counsel representing respondents requested a 30 day postponement of the date for the Department's final determination. On March 7, 1985 we announced the postponement of the final antidumping

duty determination for 30 days or not later than May 14, 1985. (50 FR 9306).

Scope of Investigation

The products covered by this investigation are currently provided for in item 111.22 of the *Tariff Schedules of the United States, Annotated* (TSUSA). The term "certain dried heavy salted codfish" covers dried heavy salted codfish, which may be whole, or processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof but not otherwise processed, not in airtight containers.

We investigated sales of certain dried heavy salted codfish by these respondents during the period from February 1, 1984 to July 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

Comparisons were made on the basis of size, quality, and drieth groupings which conform to industry-wide standards.

United States Price

As provided in section 772 of the Act, we used the purchase price of certain dried heavy salted codfish to represent the United States price for sales by the Canadian producers because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the f.o.b., c.&f., or c.i.f. price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance, quantity discounts, discounts for early or cash payments, and brokerage and handling.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on sales to third country markets or constructed value. There is no viable market for dried heavy salted codfish in the home market. The petitioner alleged that sales to third countries were at prices below the cost of producing certain dried heavy salted codfish. We examined production costs which included all appropriate costs for materials, labor and general expenses. Cost data was submitted by all companies included in the investigation except UMF. For UMF we used the best information available, as required by section 776(b) of the Act. The best information available is the highest weighted-average margin for an individual respondent.

We found virtually all sales were at prices below the cost of production for Canadian Saltfish Corporation. Accordingly, we disregarded third country prices and used constructed value in accordance with section 773 of the Act in making our comparisons.

Constructed value was calculated by adding the cost of materials, fabrication, general expenses, profit, and U.S. packing. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs, since the actual general expenses were less than the statutory minimum. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses, since the actual profit was below the statutory minimum.

For all other companies we used sales to third country markets as the basis for foreign market value. We calculated third country prices on the basis of c.i.f. or c.&f. prices with deductions where appropriate for inland freight, ocean freight, and marine insurance. We made adjustments for differences in credit expenses between the two markets. Adjustments were also made for difference in commission in one market and indirect selling expenses in the other market in accordance with § 353.15 of our regulations (19 CFR 353.15). We made adjustments where appropriate, for differences in merchandise in accordance with § 353.16 of our regulations (19 CFR 356.16).

Verification

In accordance with section 776 (a) of the Act, we verified data used in making this determination by using standard verification procedures which included on-site inspection of producers facilities and examination of company records and selected original source documentation containing relevant information.

Petitioner's Comments

Comment 1: Petitioner argues that if the Department could not verify the actual rate of interest paid by CSC on loans from the government, the Department should use the Canadian prime rate as "best information available".

DOC Response: We used actual verified interest rates paid by CSC in the calculation of credit costs.

Comment 2: Both NSP and Sans Souci produce dried salted codfish and purchase it from unrelated third parties. Petitioner argues that in calculating cost of production and constructed value the Department should use the actual costs of NSP and Sans Souci and not the price paid for finished product to third parties.

DOC Response: For determining the cost of production the Department used the weighted-average costs of the purchased and processed products, since this represented the actual cost incurred by the sellers.

Comment 3: Petitioner argues that if the higher yields from drying claimed by a number of the respondents which conflict with the industry standard cannot be verified, the industry standard should be used to determine cost.

DOC Response: The Department used the producers' actual experience when such yields could be verified. For those producers which did not provide actual experience for the whole process, or any part of the process, we used industry standard yields from a study published by the Canadian Fisheries.

Comment 4: Petitioner questions whether imputed labor and management costs attributable to services provided by owners and family members should be added to constructed value.

DOC Response: During verification the Department obtained the actual salaries and benefits paid to family members. Since actual salaries were paid in all cases, there was no reason for the Department to adjust expenses.

Comment 5: Petitioner argues that the adjustments for old inventory clearance sales, non-commercial sales and small quantity sales should be made under the "differences in circumstances of sale" provision (19 CFR 353.15).

DOC Response: See DOC Response to Respondents' Comment 1, 2 and 3.

Comment 6: Petitioner argues that two of the respondents third country sales constitute less than 5 percent of the volume of U.S. sales; therefore, they are inadequate as a basis for comparison.

DOC Response: In one instance, the Department used third country sales where the sales volume was below 5 percent of the volume of U.S. sales. The other respondents' third country sales exceed 5 percent of U.S. sales volume. As neither the statute nor the regulations state a minimum quantity of third country sales required in order to determine foreign market value, we feel this comparison is appropriate.

Comment 7: Petitioner argues that the scope of investigation should be modified to include certain dried heavy salted codfish in polybags which enters under TSUSA number 112.36, for codfish packed in airtight containers.

DOC Response: The notice of initiation in this investigation limited the

scope of the investigation to codfish is not in airtight containers.

We can clarify but not change the scope of the investigation. Since we cannot determine whether individual shipments in polybags are in airtight containers, we will instruct the U.S. Customs Service to make that determination. If the polybags are airtight containers, the shipment will not be within the scope of this determination. Imports that are not in airtight containers are within the scope.

Respondent's Comments

Comment 1: Respondents state that old inventory clearance sales at the end of the prime selling season should be excluded from our fair value comparison because they were not in the "ordinary course of trade".

DOC Response: Since CSC has demonstrated that the price for one sale of large fish of marginal quality was reduced to avoid loss of product, we have determined that this one sale of old inventory, marginal quality, large fish was not in the ordinary course of trade, and we accordingly did not consider that sale in our comparisons.

We have no documentation showing that additional sales of large fish were for marginal quality merchandise, and we have not excluded them from our fair value comparisons.

Comment 2: Respondents state a non-commercial sale to the Canadian International Development Agency for food aid should be excluded from our fair value comparison because it was not in the "ordinary course of trade."

DOC Response: Since this sale was made at less than the cost of production, the issue is moot.

Comment 3: Respondents state that sales of unusually small quantities to a nontraditional market should be excluded from our fair value comparison because they were not in the "ordinary course of trade."

DOC Response: While the small sales may have been to a "non-traditional" point of delivery, we do not exclude sales based on destination or point of delivery within the relevant market.

Comment 4: Respondents state that any cost of production and constructed value calculation for cullage (commercial, utility or bonacara) fish should be based on the actual cost of producing cullage fish rather than standard or choice fish.

DOC Response: The Department used the actual costs of cullage.

Comment 5: Respondents argue that, in calculating constructed value, the Department should use the same figures businessmen actually used in setting their prices. They argue that if the Department uses actual cost, we may be using figures different from those used by the businessmen, and may be imposing duties even though the sellers were unaware that the sales were made at prices below the cost of production.

DOC Response: The Department uses the actual cost of the producer obtained from the producer's records, adjusted for statutory requirements if necessary, to calculate the constructed value. The basis relied upon by a company to establish its prices may vary from company to company and, in fact, prices may not be based on costs at all. Accordingly the basis is used by the producer to set its prices is not the determining factor for deciding if sales are below the cost of producing the merchandise or for developing "constructed value."

Comment 6: Respondents state that profit made by CSC is passed through to the producers whose product it sells. Therefore, we should not apply the statutory 8 percent minimum profit. They further argue that this profit is passed through to producers in the form of higher prices.

DOC Response: Based on the record, respondent's position is not supportable. For the period of investigation, CSC did not reflect a profit. Additionally, CSC did not provide information showing that any of CSC's profit was passed back to suppliers for the period of investigation, or that such a payment had a direct, quantifiable impact on prices paid to the suppliers. Moreover, the disposition by a producer of its profits is not a basis for deciding if the statutory minimum profit of 8 percent should be included in the constructed value.

Comment 7: The respondents state that the Department should use the transfer price at which NSP transfers saltbulk cod to its subsidiary Canso Sea Products (CSP), not NSP actual costs of producting saltbulk, for determining the cost of production of NSP. Respondents state we should use this method because NSP's books did not adequately reflect the cost of producing saltbulk and because the transfer price is the same price paid for comparable quality saltbulk sold by NSP to unrelated purchasers.

DOC Response: The Department used the actual costs incurred by NSP for producing saltbulk. During verification the Department reviewed NSP's accounting system and adjusted for deficiencies in this system. The charge at which the saltbulk, an intermediate product, was transferred to CSP or the price paid to NSP for saltbulk by unrelated third parties is not relevant to the cost of production of dried salted codfish.

Continuation of Suspension of Liquidation: We are directing the United States Customs Service to continue to suspend liquidation of all entries of codfish from Canada, which are entered, or withdrawn from warehouse, for consumption, on or after January 29, 1985, the date on which the Department published its preliminary determination in the **Federal Register** (49 FR 47078). The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash amounts established in our preliminary determination of January 29, 1985, remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. With respect to entries or withdrawals made on or after the publication of this notice, the bond or cash deposit amounts required are shown below. Granville Gates has been excluded from this determination since we have found their weighted average margin to be *de minimis*.

Producer/exporter	Weighted-average margin percentage
Canadian Saltfish Corporation	20.75
Granville Gates[1]	[2] 0.02
National Sea Products	1.27
R.I. Smith Co	1.49
Sable Fish Packers, Ltd.	10.95
Sans Souci	3.40
United Maritime Fishermen	20.75
All other manufacturers/producers/ and exporters	16.30

[1] Company excluded from this determination.
[2] *De minimis* excluded.

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain dried heavy salted codfish from Canada entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc 85-12129 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determination on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to welded carbon steel rectangular tubing, round tubing and stainless steel round tubing in various metric sizes.

EFFECTIVE DATE: Comments must be submitted no later than May 30, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that "* * * the U.S. shall accept exports of pipes and tubes in addition to those permitted under section 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department "* * * shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for acceptance under short supply provisions for the following products:

1. Welded rectangular steel tubing conforming to DIN specification 2395 PT 3 or ASTM specification A-513 in the following metric sizes:

A. 50 mm x 40 mm x 2 mm
B. 40 mm x 40 mm x 3 mm
C. 50 mm x 30 mm x 2.5 mm
D. 40 mm x 40 mm x 2 mm
E. 30 mm x 10 mm x 1.5 mm
F. 40 mm x 30 mm x 3 mm
G. 60 mm x 40 mm x 3 mm
H. 40 mm x 30 mm x 2 mm
I. 55 mm x 40 mm x 2.5 mm
J. 30 mm x 30 mm x 2 mm.

2. Round steel tubing conforming to specification SAE J356 in the following metric sizes:

A. 15 mm x 1.5 mm
B. 22 mm x 1.5 mm.

3. Stainless round tubing conforming to specification AISI 321 for the following metric size:

A. 18 mm x 1.5 mm.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than 10 days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-12127 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determination on Aluminum-Killed Cold-Rolled Steel Sheet; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to aluminum-killed cold-rolled steel sheet.

EFFECTIVE DATE: Comment must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides "If the U.S. . . .determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods or other relevant factors) an additional tonnage shall be allowed for such product. . ."

We have received a short supply request for the following products:

Aluminum-killed cold-rolled sheet, in coils, conforming to AISI standard C 1001. The dimensions of the steel in question are 578 mm in width, and .148 mm±6 microns in thickness. Weight per coil may range from 1,500 to 2,000 kgs.

This product is used in the manufacture of aperture masks for television screens.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the

business proprietary portion of the submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration

[FR Doc. 85-12128 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

General Performance Review Board

AGENCY: National Bureau of Standards.

ACTION: Appointment of Member to General Performance Review Board.

SUMMARY: In a notice published in the **Federal Register** on February 15, 1985 (50 FR 6372), the National Bureau of Standards (NBS) announced the membership, terms, and purpose of the General Performance Review Board (CPRB).

This notice announces a change in the membership of the GPRB through the appointment of Dr. George A. Sinnott, Associate Director for Technical Evaluation, National Engineering Laboratory, NBS, in place of Dr. James R. Wright who has resigned from the Board. Dr. Sinnott's appointment is effective immediately and his term of membership is to December 31, 1985.

Persons desiring any further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Services, National Bureau of Standards, Gaithersburg, Maryland, 20899, (301) 921-3555.

Dated: May 14, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-12037 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere;

May 15, 1885.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby give that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, June 3-4, 1985. 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. on June 3 and will commence at 8:30 a.m. and end at 3:30 p.m. on June 4.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments 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 the 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 such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, June 3, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC 20235

9:00 a.m.-12:30 p.m. Plenary—Room 416

9:00 a.m.-9:15 a.m.
- Introductory Remarks

9:15 a.m.-10:30 a.m.
- Guest Speakers:

Jim Drewry, Professional Staff Member, Senate Committee on Commerce, Science, and Transportation

Topic: Priority Oceanic and Atmospheric Issues

John P. Hall, Jr., Associate Director, Office of Cabinet Affairs, The White House

Topic: The President's Private Sector Survey on Cost Control (Grace Commission Report)

10:30 a.m.-12:30 p.m.
- Discussion of Future Agenda

12:30 p.m.-1:30 p.m. Lunch

1:30 p.m.-5:00 p.m. Panel Meetings

1:30 p.m.-5:00 p.m.
- Coastal Zone/Consistency Room 416

Topic: Work Session

Speakers: None

1:30 p.m.-3:30 p.m.
- Atmospheric Affairs Room B-100

Topic: Acid Rain

Speaker: David Hawkins, Natural Resources Defense Council

5:00 p.m. Adjourn

Tuesday, June 4, 1985

2001 Wisconsin Avenue NW., Page Building #1, Rooms 416 and B-100, Washington, D.C.

8:30 a.m.-10:30 a.m. Plenary—Room 416
- Report of Shipbuilding Panel

10:30 a.m.-12:30 p.m. Panel meeting
- Exclusove Economic Zone Room 416

Topic: Elements of a National Plan

Speakers:

R. Gary Magnuson Director, Coastal States Organization

Margaret E. Courain, Deputy Assistant Administrator, Information Services, National Environmental Satellite, Data, and Information Service

Tudor Davies, Director, Office of Marine and Estuary Protection, Environmental Protection Agency

12:30 p.m.-1:30 p.m. Lunch

1:30 p.m.-3:30 p.m. Plenary—Room 416
- Panel Reports
- Other Business

3:30 p.m. Adjourn

The public is welcome at the sessions and will be admitted to the extent that 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 of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings 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., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7881.

Dated: May 15, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-12066 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Intent to Grant Exclusive Patent License; R&D Sprayers

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to R&D Sprayers having a place of business in Opelousas, Louisiana, an exclusive right

to manufacture, use, and sell products embodied in the invention entitled "Portable, Self-Powered Adjustable Herbicide Dispensing System," U.S. Patent Application SN 6-676-,147. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-12124 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-DS-M

Intent To Grant Exclusive Patent License; Food and Energy Breakthru, Inc., et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Food & Energy Breakthru, Inc. of Madison, Wisconsin, Birks Agricultural Products of St. Paul, Minnesota, Interox America of Houston, Texas, and Southwest Bio-Energy Co., of Clovis, New Mexico, partial exclusive licenses to manufacture, use, and sell products embodied in the invention entitled "Alkaline Peroxide Treatment of Non-Woody Lignocellulosic," U.S. Patent Application SN 6-566,380. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed licenses may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed licenses must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-12050 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Super Absorbent Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Super Absorbent Co. having a place of business in Lumberton, North Carolina, an exclusive right to manufacture, use, and sell products embodied in the invention entitled "Anticlostridial Agents" U.S. Patent Application SN 6-611,042. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-12051 Filed 5-17-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Proposed Addition; Correction

This corrects FR Doc. 85-8843 appearing at page 14411 in the issue for Friday, April 12, 1985 as indicated below:

Class 3990

Pallet, Material Handling: 3990-00-892-4394 (Requirements for DLA Mechanicsburg, Pennsylvania; Memphis, Tennesse; Richmond, Virginia; and Columbus, Ohio depots only)

Because of this change, the time for receipt of comments on the proposed addition of this pallet is extended until June 19, 1985.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-12089 Filed 5-17-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Personal Excellence and National Security Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Personal Excellence and National Security Task Force will meet June 10-11, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All session will be closed to the public.

The purpose of this meeting is to examine Navy personal policies and programs. The entire agenda for the meeting will consist of discussions of key issues regarding future U.S. and Soviet naval manpower requirements, the national security implications of the dwindling quantity of quality youth in the U.S. and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: May 15, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-12078 Filed 5-17-85; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Prepare a Supplemental Final Environmental Impact Statement Modernization and Expansion of Logistics Support Systems (MELSS) at Naval Weapons Station, Earle, Colts Neck, NJ

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, Title 40 CFR, and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Navy announces its intention to prepare a Supplemental Final Environmental Impact Station (SFEIS) for the proposed modernization and expansion of logistic support systems at Naval Weapons Station, Earle, Colts Neck, New Jersey.

On July 5, 1978 and April 18, 1980 respectively, the Navy filed Draft and Final Environmental Impact Statements with the Environmental Protection Agency on the proposed expansion of support systems for additional Auxiliary Oil and Explosive Ships (AOE's) to be homeported at Naval Weapons Station, Earle.

At the time of the filing of the Final Statement, it was envisioned that the proposal would require acquisition of approximately 300 acres of land to site a ship fuel replenishment system, construction of a pile-supported pier and 7,000 LF of connecting trestle; and associated dredging of 11.3 million cubic yards of sediments. Applicable U.S. Army Corps of Engineers dredging permits were not issued for the construction and dredging as the project was placed in an unprogrammed status following a reassessment of the requirements for additional ordnance handling capability at the Naval Weapons Station, Earle. Following a reevaluation of the project, the Navy announced a decision to transfer two AOEs to the Naval Weapons Station, Earle on July 12, 1983 under an interim homeporting plan which requires the AOEs to be lightened (by virtue of a reduced cargo fuel load) before they are berthed at the existing piers.

Since the time the DEIS/FEIS was published, and the above interim decision, the Navy has proposed some changes to the original program scope which involve reductions in dredging (to approximately 8.5 million cubic yards), reduction in pier and trestle construction (pile-supported pier with approximately 1,900 LF of trestle), and reduction in land acquisition (to 25 acres).

The Supplemental Final Environmental Impact Statement will update the previous environmental documents and provide an analysis of the impacts associated with the reduced scope.

The Navy has retained an unaffiliated consulting firm to prepare the SFEIS. Work is expected to commence in June 1985, and publication of the completed document for public review is planned for October 1985.

Local and regional concerns over the Navy's proposal will be carefully considered in the preparation of the Scope of Work under which the SFEIS will be developed. Comments and concerns should be forwarded to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77L, ATTN: Code 09P, U.S. Naval Base, Philadelphia, PA 19112.

Additionally, to effectuate the scoping process, the Navy will conduct a public meeting to solicit comments/concerns to be considered in the SFEIS.

Details of the meeting are as follows:

Date: June 7, 1985
Time: 3:00 p.m.–6:00 p.m.; 7:00 p.m.–11:00 p.m.
Place: Auditorium, Middletown Township High School, North 63 Tindall Road, Middletown Township, NJ
Phone: (201) 671–3850

The meeting will be conducted by Commander T.W. Bone, CEC, USN, assigned to the staff of the Commanding Officer, Northern Division, Naval Facilities Engineering Command. The meeting will be informal. Attendees will speak in the order that they register. Statements will be limited to five minutes. Written statements will be accepted at the meeting or they may be mailed to the address of Northern Division, Naval Facilities Engineering Command noted in a preceding paragraph. Comments will be received until June 18, 1985.

If further information or assistance is required in regard to the Notice of Intent, please contact Ms. Kim DePaul at (215) 897–6257.

Dated: May 14, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–12075 Filed 5–17–85; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Aircraft Modernization Requirements Panel will meet on June 4, 1985, at the Lockheed-California Company, Burbank, California. The meeting will commence at 9:00 A.M. and terminate at 5:00 P.M. on June 4, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the procedures used to develop program plans and cost estimates for modernizing aircraft in order to develop alternative approaches and recommend an implementation plan. The agenda will include technical briefings on the current procedures used to develop program plans and cost estimates for modernizing aircraft. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 14, 1985.

William F. Ross, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–12079 Filed 5–17–85; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Aircraft Modernization Requirements Panel will meet on June 6, 1985, at the Boeing Corporation, Wichita, Kansas. The meeting will commence at 9:00 A.M. and terminate at 5:00 P.M. on June 6, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the procedures used to develop program plans and cost estimates for modernizing aircraft in order to develop alternative approaches and recommend an implementation plan. The agenda will include technical briefings on the current procedures used to develop program plans and cost estimates for

modernizing aircraft. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing what the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 14, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–12077 Filed 5–17–85; 8:45]

BILLING CODE 3810-AE-M

Secretary of the Navy's Advisory Board on Education and Training (SABET); Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training will meet at Naval Station, Long Beach, California, on 8 and 9 June 1985. Sessions of the meeting will commence at 7:30 a.m. and terminate at 5:00 p.m. on 8 June and commence at 7:30 a.m. and terminate at 11:30 p.m. on 9 June. All sessions will be open to the public.

The purose of SABET is to advise the Secretary of the Navy on policy concerning all facets of education and training for Navy and Marine Corps personnel. The specific purpose of this meeting is to review training strategies of the Naval Reserves and their interface with the regular Navy.

The agenda for Saturday includes observation of Shipboard Naval Reserve training aboard the U.S.S. *Lang* followed by a tour of the Ship Intermediate Maintenance Activity. The Board will meet with Reservists to discuss the training and instruction provided.

Viewing of training on the Shipboard Simulator Sunday morning will be followed by a working session of the Board. This session will include a final report from the Training Technology Implementation committee, a report on Navy Remediation Initiatives, an update on the Financial Assistance committee recommendations, and an overview of Navy training feedback initiatives.

For further information concerning this meeting, contact Mrs. Carol Osborn (Code 00A1), Professional Assistant to the Principal Civilian Advisor on Education and Training, NAS, Pensacola, Florida 32508, Telephone (904) 452–4394.

Dated: May 14, 1985.

W. Brad Garvais,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 85–12076 Filed 5–17–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Announcement of Availability of Environmental Assessment, Remedial Actions at the Former Lakeview Mining Company Mill Site, Lakeview; Lake County, OR

AGENCY: Department of Energy.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (DOE/EA–0271) on the remedial actions at the former uranium mill site located north of Lakeview, Lake County, Oregon. The environmental assessment (EA) is being made available for public review; the public review period will close 30 days after publication of this notice. Following completion of the public review period, DOE will make its determination whether to prepare an Environmental Impact Statement.

SUPPLEMENTARY INFORMATION:

Background:

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95–604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of UMTRCA, including the former mill site at Lakeview, Oregon (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive or former mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulgated on January 5, 1983, and became effective on March 7, 1983. The DOE has proposed a plan of remedial action that will satisfy the EPA standards.

Under UMTRCA, the DOE and the State of Oregon entered into a cooperative agreement effective June 29, 1984, for remedial action at the Lakeview site. Under the agreement, the State of Oregon must concur with the remedial action plan to be developed for the site. The DOE and State of Oregon will share the costs of remedial action. All remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC). In conformance with the UMTRCA, the required NRC concurrence with the selection and performance of remedial actions and the licensing of the long-term maintenance and surveillance of disposal sites will be for the purpose of ensuring compliance with the standards set by the EPA.

Project Description

The Lakeview site is located approximately one mile north of the northern city limits of Lakeview, Oregon. The former Lakeview Mill was built by the Lakeview Mining Company in 1958 and operated for three years until 1961. Between 1960 and 1968 the property had five owners.

In 1968 the Lakeview site was obtained by Atlantic Richfield Company, which initiated a cleanup operation in 1974 on the site under a plan approved by the Oregon State Health Division. By 1977 the mill buildings and their immediate surroundings had been decontaminated to meet the then existing requirements of the Oregon Regulations for the Control of Radiation. The property was sold on March 8, 1978, to Precision Pine Company, the current owner, who uses the site and structures as a lumber mill and stockpile for sawdust and scrap waste.

The designated site covers 258 acres. This includes the active sawmill area, the tailings (30 acres) and the evaporation ponds (approximately 64 acres). The tailings have been stabilized with an earthen cover 18 to 24 inches thick. The pile is almost square with a very flat surface, although the stabilization cover has pockets that trap moisture. This cover is supporting a vigorous growth of vegetation. The average depth of the tailings, including cover, is 6.6 feet.

Proposed Action

The proposed action (Alternative 1 of the EA) is to relocate the tailings and other contaminated materials to the Collins Ranch site located approximately six miles northwest of the existing site. The tailings and other contaminated materials at the Lakeview site would be excavated and transported to the Collins Ranch site, along with contaminated materials from the vicinity properties. The tailings and other materials would be placed in an embankment partially below grade and compacted. The tailings and other materials would be consolidated into a gently contoured embankment nearly level on top (3 percent slope) and would have 5:1 side slopes (20 percent). A one-foot thick cover would be constructed over the pile to inhibit radon emanation and water infiltration. A layer of graded rock (two feet thick) would be added to protect the site from erosional forces, penetration by plants and animals, and inadvertent human intrusion. A rock-soil matrix would cover the two-foot thick rock layer to promote revegetation. This design will ensure compliance with the EPA standards.

Two alternatives to the proposed action were analyzed in the EA. These were: no action, and relocation of the wastes to the Flynn Ranch site approximately 28 road miles northeast of the existing tailings site. Stabilization of the tailings at the existing site was determined not to be feasible because of nearby fault zones and geothermal activity.

Based on the analyses in the Environmental Assessment (EA), DOE believes that the proposed action will not significantly affect the quality of the human environment, within the meaning of section 102(2)(c) of the National Environmental Policy Act, and that therefore preparation of an Environmental Impact Statement is not required. The Department will consider all comments provided on the EA during the 30-day public review period before making a final determination on the need to prepare an EIS.

Single copies of the EA are available from: John G. Themelis, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue NE., Suite 1700, Albuquerque, New Mexico 87108, (505) 844-3941.

Comments

Comments on the EA may be sent to John G. Themelis at the above address. To ensure consideration, comments should be received within 30 days of this notice.

FOR FURTHER INFORMATION CONTACT: Robert J. Stern, Director, Office of Environmental Compliance, PE-25, Office of the Assistant Secretary for Policy, Safety, and Environment, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-4600.

Issued at Washington, D.C., May 14, 1985.

William A. Vaughn,

Acting Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 85-12144 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-843, to the Max-Planck Institute, Heidelberg, the Federal Republic of Germany, one gram of uranium, enriched to 98.2% in U-235, for use as an accelerator target for basic research on fission isomers.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 14, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-12142 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Australia; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-AU-125, to the Australian Atomic Energy Commission, Lucas Height, N.S.W., Australia, 300 milligrams of plutonium-240, with 0.04% plutonium-242, for use in the measurement of spontaneous fission neutron spectrums of plutonium-240.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 14, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-12143 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Japan Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the retransfer: RTD/EU(JA)-75, from

Nuclear Fuel Industries, Ltd., Japan to Belgonucleaire, Belgium, 10 fuel rods containing 4,800 grams of uranium, enriched to approximately 5.5% in U-235, for irradiation testing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arranagment will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 14, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-12140 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; European Atomic Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Use of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract No. S-EU-838, to Brandhurst Co., Ltd., England, 300,000 curies of tritium, for use in the production of tritium light sources.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

The subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 14, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-12141 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER82-412-002 et al.]

Electric Rate and Corporate Regulation Filings; Kansas Gas and Electric Co. et al.

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric Company

[Docket No. ER82-412-002]

May 13, 1985.

Take notice that on April 30, 1985, Kansas Gas and Electric Company (KEPCo) submitted for filing a refund compliance report pursuant to a letter order dated April 3, 1985.

The refund report includes interest from the date payment was received through April 26, 1985.

Comment date: May 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Lockhart Power Company

[Docket No. ER85-482-000]

May 13, 1985.

Take notice that on May 2, 1985, Lockhart Power Company (Lockhart) tendered for filing proposed changes in its FERC Electric Rate Schedule Resale which Lockhart proposed to make effective for service rendered on and after July 1, 1985.

Lockhart states that the proposed tariff revision would put into effect a cost-of-service tariff under which Lockhart's rates to its sole wholesale customer, the City of Union, South Carolina, would be automatically adjusted to reflect changes in Lockhart's cost-of-service. Both demand and energy charges would be adjusted monthly to reflect changes in cost of purchased power from Lockhart's principal supplier, Duke Power Company. Demand and energy rates would be modified annually as of May 1 each year to reflect changes in all other costs, based on Lockhart's Form 1 data for the preceding calendar year.

Lockhart states that the proposed tariff would result in an immediate decrease in rates to Union as of July 1, 1985.

Copies of the filing have been served upon the City of Union and the South Carolina Public Service Commission.

Comment date: May 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Power & Light Company

[Docket ER85-479-000]

May 13, 1985.

Take notice that on May 1, 1985, Pennsylvania Power & Light Company (PP&L) tendered for filing proposed changes to certain Power Supply Agreements, as supplemented, presently on file with the Commission as Rate Schedule FERC Nos. 50, 51, 58, 63 and 88. The Supplements to the Power Supply agreements redefine PP&L's supply obligations to the Boroughs of Ephrata, Lansdale, Lehighton, Schuylkill Haven and Weatherly. Currently, with the exception of the Borough of Lansdale which is scheduled to begin taking wholesale service from the Company on June 1, 1985, all of the Boroughs receive their entire supply of electric energy for their respective municipal electric systems from PP&L. On July 1, 1985, these Boroughs will receive a portion of their electric energy requirements from the New York Power Authority (NYPA). The Supplements to the Power Supply Agreements establish rates for the delivery of NYPA hydroelectric energy allocated to the Boroughs.

PP&L states that to the extent that this filing does not comply with Section 35.13(c)(1), 18 C.F.R. § 35.13(c)(1), PP&L respectfully requests that the Commission waive the requirements of such section for good cause shown.

Copies of PP&L's filing have been served upon the Boroughs of Ephrata, Lansdale, Lehighton, Schuylkill Haven and Weatherly and the Pennsylvania Public Utility Commisson.

Comment date: May 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Indiana

[Docket No. ER85-480-000]

May 13, 1985.

Take notice that on May 2, 1985, Public Service Company of Indiana, Inc., (PSCI) tendered for filing pursuant to the Service Agreement dated July 1, 1980, between Public Service Company of Indiana, Inc., and Henry County Rural Electric Membership Corporation, a Notice of Termination to become effective for certain delivery points on the dates as follows:

Dublin—Termination date January 21, 1985.

Markleville Road—Termination date January 31, 1985.

PSCI requests a waiver of the Commission's notice requirements to permit the effective dates as proposed above.

Copies of the filing were served upon Henry County Rural Electric Membership Corporation and the Public Service Commission of Indiana.

Comment date: May 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER85-481-000]

May 13, 1985

Take notice that on May 2, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreement with the State of California Department of Water Resources for Firm Transmission Service (Rate Schedule FERC No. 113).

Edison requests waiver of the Commission's prior notice requirement and an effective date of January 1, 1985, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Utah Power & Light Company

[Docket No. ER85-486-000]

May 10, 1985

Take notice that on May 6, 1985, Utah Power & Light Company (Utah) submitted for filing with the Commission a Transmission Service Agreement, an Interconnection Agreement, and an Interconnected Operation Agreement between the Company and the City of Provo, Utah (Provo). The contracts were executed on December 20, 1984 and service is expected to commence on approximately June 1, 1985. Copies were served upon the City of Provo, Utah, Mother Earth Industries, Inc., and the Utah Public Service Commission.

Utah states that the agreements with Provo will provide for the wheeling of cogeneration power from Mother Earth Industries, Inc. to the City of Provo and for any necessary interconnections in order to facilitate the transmission of this cogeneration power and energy.

Due to the fact that the effective date for commencement of service was not determined until May 3, 1985, the Company requests that the Notice Requirements be waived and that the contracts be made effective as of the date service is actually commenced.

Comment date: May 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12045 Filed 5-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8939-000, et al.]

Hydroelectric Applications (Enviro Hydro, Inc., et al.); Notices of Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 8939-000.

c. Date Filed: February 7, 1985.

d. Applicant: Enviro Hydro, Inc.,

e. Name of Project: Nelder Power Project.

f. Location: On Nelder Creek in Madera County, California; within Sierra National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. H.L. "Pete" Childers, President, Enviro Hydro, Inc. 9200 Shanely Lane, Auburn, CA 95603.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high, 40-foot-long diversion dam at elevation 3,039 feet; (2) a 24-inch-diameter, 4,000-foot-long low pressure conduit; (3) a 20-inch-diameter, 7,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 900 kW; and (5) a 1-mile-long, 12.5-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested an 18-month permit to conduct feasibility studies and prepare a license application at a cost of $15,000. No new roads would be constructed to conduct these studies. The estimated 2.8 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 8986-000.

c. Date Filed: March 1, 1985.

d. Applicant: Madera-Chowchilla Power Authority.

e. Name of Project: Hidden Dam.

f. Location: On Fresno River, in Madera County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert L. Stanfield, General Manager, Madera-Chowchilla Power Authority, 12152 Road 28¼, Medera, CA 93637.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' existing Hidden Dam and Hensley Lake and would consists of: (1) modification of the existing outlet conduit; (2) a powerhouse with a total installed capacity of 2,000 kW; (3) a 500-foot-long, 12-kV transmission line connecting the project to an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $25,000. No new roads would be constructed to conduct these studies.

The estimated 3.06 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 8987-000.

c. Date Filed: March 1, 1985.

d. Applicant: Madera-Chowchilla Power Authority.

e. Name of Project: Buchanan Dam.

f. Location: On Chowchilla River, in Madera County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert L. Stanfield, General Manager, Madera-Chowchilla Power Authority, 12152 Road 28¼, Medera, CA 93627.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' existing Buchanan Dam and would consist of: (1) a 66–inch-diameter penstock encased in the invert portion of the existing outlet conduit; (2) a powerhouse with a total installed capacity of 1,900 kW; and (3) a 1,000-foot-long, 12-kV transmission line connecting the project to an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $25,000. No new roads would be constructed to conduct these studies.

The estimated 2.74 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9013–000.

c. Date Filed: March 11, 1985.

d. Applicant: Bonanza King Hydro Limited.

e. Name of Project: Bonanza II Hydroelectric Project.

f. Location: On Eagle Creek, near Trinity Center, within Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy C. McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 110-foot-long diversion dam at elevation 3,800 feet; (2) a 48-inch-diameter, 4,600-foot-long diversion pipeline; (3) a 36-inch-diameter, 1,600-foot-long penstock; (4) a powerhouse with a total installed capacity of 2,800 kW operating under a head of 590 feet; and (5) a 1.3-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 8.0 million kWh to be sold to PG&E.

This project is located immediately upstream of the Eagle Creek Project No. 8507 for which a preliminary permit was issued on March 14, 1985. The applicant states that the construction and operation of Project No. 9013 will not interfere with the construction and operation of Project No. 8507.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9034–000.

c. Date Filed: March 19, 1985.

d. Applicant: Jason M. Hines.

e. Name of Project: North Village.

f. Location: Contoocook River in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jason M. Hines, 84 Amherst Street, Amherst, NH 03031.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: an existing 13-foot-high, 230-foot-long concrete and stone gravity dam owned by the Town of Peterborough; (2) an existing reservoir with a surface area of 6.5 acres and a storage capacity of 35 acre-feet at water surface elevation 702.6 feet msl; (3) a proposed 8-foot-wide, 9-foot-deep, 60-foot-long canal; (4) a proposed powerhouse containing a generating unit with a rated capacity of 110 kW; and (5) a proposed 250-foot-long transmission line tying into the existing Public Service Company of New Hampshire System. The Applicant estimates a 600,000 kWh average annual energy production.

k. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,850.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9036–000.

c. Date Filed: March 20, 1985.

d. Applicant: Birch Power Company, Inc.

e. Name of Project: Neeley

f. Location: Southwest of American Falls, Idaho, in Power County, on the Snake River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ted S. Sorenson, Sorenson Engineering, P.A., 550 Linden Drive, Idaho Falls, ID 83401.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 55-foot-high, 1,100-foot-long embankment dam; (2) a reservoir with a normal maximum surface elevation of 4242 m.s.l., an area of 580 acres and a storage capacity of 9,000 acre-feet; (3) a 3.5-mile-long transmission line; and (4) a powerhouse containing two generating units with a total rated capacity of 4,200 kW. Applicant estimates the average annual power production to be 220,800 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $130,000. No new roads would be constructed during the fesibility study. Core drillings at the proposed dam site would be performed adjacent to existing roads.

k. Purpose of Project: The project power is to be sold to the Utah Power and Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, & D2.

7. a. Type of Application: Preliminary Permit.

b. Project No.: 9037–000.

c. Date Filed: March 20, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Columbia Mill.

f. Location: Housatonic River in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 15-foot-high, 110-foot-long concrete gravity dam owned by Kimberly Clark

Corporation; (2) an existing reservoir with a surface are of 270,000 square feet and a storage capacity of 1,550,000 cubic feet at water surface elevation 912 feet msl; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 420 kW; (4) a proposed 100-foot-long transmission line tying into the existing Western Massachusetts Electric Company System. The Applicant estimates a 1.8 million kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $17,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 9038–000.

c. Date Filed: March 21, 1985.

d. Applicant: Eden Valley Hydro Limited.

e. Name of Project: Scott Mountain Hydroelectric Project.

f. Location: On North Fork Coffee Creek, near Trinity Center, within Shasta-Trinity National Forest, in Trinity County, California

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy C. McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 110-foot-long diversion dam at elevation of 3,950 feet; (2) a 72-inch-diameter, 5,000-foot-long diversion pipeline; (3) a 48-inch-diameter, 900-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,900 kW operating under a head of 430 feet; and (5) a 6.5-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 17.0 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9039–000.

c. Date Filed: March 21, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Mill Dam.

f. Location: Housatonic River in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 10-foot-high, 150-foot-long concrete gravity dam owned by Kimberly Clark Corporation; (2) an existing reservoir with a surface area of 1.4 million square feet and a storage capacity of 10-million cubic feet at water surface elevation 949 feet msl; (3) an existing 8-foot-wide, 1,400-foot-long canal; (4) a proposed powerhouse containing a generating unit with a rated capacity of 360 kW; and (5) a proposed 250-foot-long transmission line tying into the existing Western Massachusetts Electric Company system. The Applicant estimates a 1.6 million kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $17,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8945–000.

c. Date Filed: February 11, 1985.

d. Applicant: Richard D. Ely.

e. Name of Project: Natchaug River #1.

f. Location: On the Natchaug River in Tolland and Windham Counties, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, P.O. Box 474, Storrs, Connecticut 06268–0474.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed run-of-river project would consist of two independent developments and would utilize one existing U.S. Army Corps of Engineers' dam and a Connecticut State dam.

Site 1 Development would utilize the Corps' Mansfield Hollow Dam and outlet works and would consist of a new powerhouse at the downstream end of the existing outlet works with three new turbine generator units with a total installed capacity of 234 kW. Interconnection to distribution lines is available at the site.

Site 2 Development would consist of: (1) an existing 12-foot-high and 90-foot-long stone dam about 400 feet downstream from the Site 1 Development, with a spillway crest elevation of 198.7 feet msl, owned by the Connecticut Department of Environmental Protection; (2) a small impoundment; (3) an existing 200-foot-long headrace; (4) a new 200-foot-long penstock; (5) a new powerhouse with 3 turbine generator units with a total installed capacity of 234 kW; (6) an existing 15-foot-long tailrace; and (7) other appurtenances. Interconnection to distribution lines is available at the site.

Applicant estimates a total average annual generation of 2,000,000 kWh.

k. Purpose of Project: Project energy would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9059–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Wiley Creek Hydroelectric.

f. Location: Foster, Oregon, in Linn County, on Wiley Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc. 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 7-foot-high, 40-foot-long diversion dam at elevation 735 feet; (2) a 7-foot-deep, 17-foot-wide, 14,400-foot-long canal; (3) a 108-inch-diameter, 1,100-foot-long

pipeline; (4) a powerhouse containing one or more generating units with a total rated capacity of 3,690 kW, and (5) a 5,000-foot-long transmission line. The average annual power generation is estimated to be 16,731 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Co.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, & D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9060–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: North Boulder Creek Hydroelectric.

f. Location: Sandy, Oregon, Clackamas County on North Boulder Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 30-foot-long diversion dam at elevation 1,720 feet; (2) a 36-inch-diameter, 4,000-foot-long pipeline; (3) a powerhouse containing one generating unit with a rated capacity of 3,100 kW, and (4) a 200-foot-long transmission line. The average annual energy production is estimated to be 15,330 MWh.

The preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Portland General Electric Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9084–000.

c. Date Filed: April 2, 1985.

d. Applicant: Canton Associates.

e. Name of Project: Mississippi River Lock & Dam No. 20.

f. Location: On the Mississippi River in Lewis County, Missouri and Adams County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, 8 Peabody Terrace #32, Cambridge, MA 02138.

i. Comment Date: July 8, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the juridiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) two proposed penstocks which would be 25 feet long and 3 meters in diameter each; (2) a proposed powerhouse containing two generating units rated at 15 MW each; (3) a proposed 500-foot-long tailrace; (4) a proposed 150-foot-long, 69-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project is 79 GWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of the Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

14 a. Type of Application: Exemption (5MW or less).

b. Project No.: 8975–000.

c. Date Filed: February 25, 1985.

d. Applicant: Mr. Rick Bosetti.

e. Name of Project: Silver Springs Power Project.

f. Location: On Silver Springs in Shasta County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act (16 U.S.C. 2705, and 2708 *as amended*).

h. Contact Person: Mr. Rick Bosetti, 1471 Arroyo Manor Drive, Redding, CA 96003.

i. Comment Date: June 27, 1985.

j. Description of Project: The proposed project would consist of: (1) 3 perforated collector pipes at elevation 2,000 feet; (2) a 24-inch-diameter, 800-foot-long pipe; (3) a 21 to 18-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 600 kW to operate under a head of 555 feet; and (5) a 12-kV, 1.3-mile-long transmission line would connect the powerhouse with an existing Pacific Gas and Electric Company (PG&E) line south of the project.

k. Purpose of Project: The estimated annual generation of 4.0 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C & D3a.

15 a. Type of Application: Exemption (5 MW or less).

b. Project No.: P–8841–000.

c. Date Filed: December 27, 1984.

d. Applicants: Wilbur W. Krueger and Malcolm M. Preston.

e. Name of Project: Otter Creek Hydro.

f. Location: On Otter Creek in Lewis County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Malcolm M. Preston, P.O. Box 970, Potsdam, NY 13676.

i. Comment Date: June 28, 1985.

j. Description of Project: The proposed project would consist of: (1) the rehabilitation of the existing, approximately 175-foot-long, stone and masonry dam; (2) the replacement of the gated spillway with stop-logs or slide gates; (3) a 2.5-acre reservoir with a gross storage capacity of 35 acre-feet; (4) a proposed new 30-foot by 30-foot powerhouse immediately downstream of the dam, which may require demolition to portions of the existing concrete powerhouse; (5) the proposed powerhouse will contain two generating units with a total installed generating capacity of 507 kW; (6) the proposed excavation of rock in the 100-foot-long tailrace; (7) a new 15-foot-wide, 200-foot-long crushed stone access road; (8) an approximately 100-foot-long, 480 volt transmission line; and (9) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 1.8 GWh. The project will be interconnected with Niagara Mohawk Power Corp. facilities.

The Applicant estimates that the upstream water level currently has a surface elevation of 854.6 ft. m.s.l. due to the failure of the plug at the old powerhouse intake. The surface elevation of the original impoundment is estimated to have been 860.2 ft. m.s.l.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee

priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8958–000.

c. Date Filed: February 14, 1985.

d. Applicant: Geoffrey Shadroui.

e. Name of Project: Ripley's.

f. Location: Otter Creek in Rutland County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Avenue, Barre, VT 05641.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 3-foot-high, 175-foot-long concrete and stone dam owned by Joseph P. Carrara & Sons, Inc.; (2) an existing reservoir with a surface area of 4 acres and a storage capacity of 6 acre-feet at elevation 515 feet msl; (3) an existing 10-foot-high, 20-foot-wide, 1,200-foot-long canal; (4) an existing powerhouse containing a proposed generating unit with a rated capacity of 350 kW; (5) an existing 40-foot-wide, 50-foot-long tailrace; and (6) a proposed 340-foot-long transmission line tying into the existing central Vermont Public Service Corporation System. The Applicant estimates a 1,200,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with the application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9063–000.

c. Date Filed: March 26, 1985.

d. Applicant: Fluid Energy Systems, Inc.

e. Name of Project: West Walker River Water Power Project.

f. Location: On West Walker River, within Toiyabe National Forest, in Mono County, California.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–835(r).

h. Contact Person: K. Thomas Miller, President, Fluid Energy Systems, Inc., 2210 Wilshire Blvd., #699, Santa Monica, CA 90403.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would contain three facilities known as the Upper, Middle and Lower Facility. The Upper Facility would consist of: (1) a 40-foot-high, 200-foot-long concrete diversion dam at elevation 7,120 feet creating a reservoir with a storage capacity of 69 acre-feet; (2) a 5,000-foot-long, 60-inch-diameter conduit; (3) a powerhouse containing 2 generating units with a total rated capacity of 6.48 MW operating under a head of 300 feet; and (4) a 7,000-foot-long, 12-kV transmission line. The Middle Facility would consist of: (1) a 40-foot-high, 300-foot-long concrete diversion dam at elevation 6,740 feet creating a reservoir with a storage capacity of 1,600 acre-feet; (2) a 10,000-foot-long, 60-inch-diameter conduit; (3) a powerhouse containing a single generating unit with a rated capacity of 1.94 MW operating under a head of 80 feet; and (4) a 9,000-foot-long, 12-kV transmission line. The Lower Facility would consist of: (1) a 80-foot-high, 250-foot-long concrete diversion dam at elevation 6,640 feet; (2) a 26,000-foot-long, 72-inch-diameter conduit; (3) a powerhouse containing three generating units with a total rated capacity of 14.3 MW operating under a head of 570 feet; and (4) a 100-foot-long, 12-kV transmission line. The Applicant estimates that the average annual energy production from the three facilities would be 139 million kWh.

k. Purpose of Project: Project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9062–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Lake Branch Hydroelectric.

f. Location: Dee, Oregon, in Hood River County, on the Lake Branch of the Hood River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 30-foot-long diversion dam at elevation 1,500 feet; (2) a 68-inch-diameter, 9,000-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 1,580 kW; and (4) an 8,550-foot-long transmission line. The average annual energy production is estimated to be 8,996 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9061–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Hills Creek Hydroelectric.

f. Location: Oakridge, Oregon, Lane County, on Hills Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 30-foot-long diversion dam at elevation 2,000 feet; (2) a 96-inch-diameter, 8,250-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 6,600 kW; and (4) a 22,000-foot-long transmission line. The average annual energy production is estimated to be 32,893 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

20 a. Type of Application: New Major License (over 5 MW).

b. Project No.: 2381–001.

c. Date Filed: December 31, 1984.

d. Applicant: Utah Power & Light Company.

e. Name of Project: Ashton-St. Anthony.

f. Location: On Henry's Fork of the Snake River in Fremont County, Idaho.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Jody L. Williams, 1407 West North Temple Street, Salt Lake City, UT 84110.

i. Comment Date: July 15, 1985.

j. Description of Project: The run-of-river Ashton-St. Anthony Project as currently licensed consists of: (1) the Ashton Development comprising: (a) a 65-foot-high 252-foot-long earth and rock-fill dam having an 82-foot-long reinforced-concrete spillway with crest elevation 5,146.6 feet MSL surmounted by six 10-foot-high radial gates; (b) a reservoir having a surface area of 404 acres, a gross storage capacity of 9,800 acre-feet and a usable storage capacity of 3,988 acre-feet at normal water surface elevation 5,156.6 feet MSL; (c) a reinforced-concrete powerhouse located at the right bank and having integral intakes controlled by vertical slide gates and containing a generating unit rated at 1,800 kW and two generating units each rated at 2,000 kW; (d) a tailrace; (e) a 133-foot-long 46,000-volt transmission line; and (f) a 2,160-foot-long access road. (2) the St. Anthony Development comprising: (a) a 9.5-foot-high 863-foot-long concrete diversion dam having a 206-foot-long spillway with crest elevation 4,949.0 feet MSL surmounted by 2.5-foot-high flashboards and having an 81.5-foot-long wasteway with crest elevation 4,947.0 feet MSL surmounted by 4.5-foot-high flashboards; (b) a 41-foot-wide reinforced-concrete canal intake structure; (c) a 35-foot-wide 1,350-foot-long power and irrigation canal; (d) an irrigation canal headworks structure; (e) a 16-foot-wide 145-foot-long screened and lined wooden-box flume having an overflow spillway and an ice chute; (f) a reinforced-concrete powerhouse containing a generating unit rated at 500 kW; (g) a tailrace; and (h) a 150-foot-long 24,000-volt underground transmission line.

Water is available for generation at the St. Anthony Development only when irrigation needs are satisfied. The average annual energy production at the Ashton Development is 36,000,000 kWh and at the St. Anthony Development is 3,922,000-kWh. The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration date of December 31, 1987, UP&L's estimated net investment in the project would amount to $2,000,000; estimated severance damages would amount to $19,100,000.

Proposed redevelopment and improvements at the Ashton Development would cost $3,389,570 and would consist of: (1) removal of the No. 1 generating unit rated at 1,800 kW operated at a flow of 567 cfs; (2) installation within the existing powerhouse of a new generating unit rated at 3,400 kW operated at a flow of 1,000 cfs; (3) construction of: (a) 15 goose nesting structures; (b) 5.7 miles of fencing; (c) 10 raptor perches; and (d) 11 nesting platforms; (4) land treatment measures; and (5) miscellaneous recreational facilities. The average annual energy production at the Ashton Development would be increased to 46,000,000 kWh. At the St. Anthony Development diversion dam a new fishway would be constructed at a cost of $20,000.

The Project would be operated in the future as it has been operated in the past.

k. Purpose of Project: Project energy is utilized within UP&L's interconnected system for eventual delivery to its customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

21 a. Type of Application: Conduit Exemption.

b. Project No.: 9045–000.

c. Date Filed: March 25, 1985.

d. Applicant: Glenn-Colusa Irrigation District.

e. Name of Project: Mile 41.1 Hydroelectric Project.

f. Location: On the Applicant's irrigation canal system, which gets its water from the Sacramento River, in Colusa County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert D. Clarke, Manager and Secretary, Glenn-Colusa Irrigation District, 344 East Laurel Street, Willows, CA 95988.

i. Comment Date: June 21, 1985.

j. Description of Project: The proposed project, at Lateral 41.1 off of the Applicant's Glenn-Colusa Main Canal, would consist of a powerhouse containing two generating units with combined rated capacity of 93 kW operating under a head of 9 feet. The powerhouse will be connected to an existing Pacific Gas and Electric Company's (PG&E) 12-kV line at the site.

k. Purpose of Project: The project's estimated annual energy of 200,000 kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3b.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 8658–000.

c. Date Filed: October 12, 1984.

d. Applicant: Robert Polish.

e. Name of Project: Rock Creek.

f. Location: On Rock Creek, near the town of Deerlodge, in Powell County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–825(r).

h. Contact Person: Ted Doney, Attorney at Law, P.O. Box 1185, Helena, MT 59624.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing 30-foot-high Rock Creek dam at elevation 5,844 feet; (2) a 3,500-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 2.6 MW and an average annual generation of 20 GWh; and (4) a 4-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $35,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project Power would be sold to Montana power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23. a. Type of Application: Preliminary Permit.

b. Project No.: 9069–000.

c. Date Filed: March 29, 1985.

d. Applicant: Clearwater Hydro Company.

e. Name of Project: Panhandle Hydroelectric Project #2.

f. Location: Near Bonners Ferry, Idaho, in Boundary County, on Ball Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard Gresham, Clearwater Hydro Company, P.O. Box 158, Clipper Mills, CA 95930.

i. Comment Date: July 15, 1985.

j. Description of Project: The project would consist of: (1) a 7-foot-high, 25-foot-long diversion dam; (2) a 24-inch-diameter, 15,000-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 2,600 kW; and (4) a 3,000-foot-long transmission line.

The average annual energy production is estimated to be 13,650 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $16,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Washington Water Power via Northern Light Utility pursuant to PURPA.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

24. a. Type of Application: License (Major).

b. Project No.: 3581-001.

c. Date Filed: February 28, 1984.

d. Applicant: Joseph M. Keating.

e. Name of Project: El Portal Power Project.

f. Location: On the Merced River, within the Sierra National Forest, in Mariposa County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) a 200-foot-long, 10-foot-high concrete diversion dam at elevation 2,110 feet with a 140-foot-long, 8-foot-high pelican gate; (2) a 15-foot-high, 175-foot-long concrete intake structure within the north bank of the stream; (3) a 10.5-foot to 16-foot-diameter, approximately 21,000-foot-long tunnel/penstock; (4) a powerhouse containing three generating units with total rated capacity of 22.1 MW, to operate under a head of 490 feet; (5) a 1,500-foot-long, 70-kV transmission line will connect the powerhouse with an existing Pacific Gas and Electric Company (PG&E) line southwest of the project; and (6) appertenant facilities.

The construction cost of the project is estimated by the Applicant to be $30,000,000.

k. Purpose of Project: The estimated annual generation of 70 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

25. a. Type of Application: Exemption from Licensing (5 MW or less).

b. Project No.: 6092-005.

c. Date Filed: November 16, 1984.

d. Applicant: Western Hydro Electric, Inc.

e. Name of Project: Butter Creek Hydroelectric.

f. Location: On Butter Creek in Lewis County, Washington, within Gifford Pinchot National Forest.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Donald J. White, Western Hydro Electric, Inc., 4702 Hillside Drive, Provo UT 84601.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) a 36-foot-long, 10-foot-wide, 10-foot-high reinforced concrete side-stream intake box at elevation 1,960 feet; (2) a 45-inch-diameter, 7,300-foot-long pipeline; (3) a 45-inch-diameter, 3,600-foot-long penstock; (4) a 75-foot-long, 60-foot-wide powerhouse at elevation 1,260 feet containing a generating unit rated at 2,785 kW producing an average annual output of 10.6 GWh; (5) a 4,000-foot-long transmission line; and (6) an access road.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

26. a. Type of Application: Preliminary Permit.

b. Project No.: 9064-000.

c. Date Filed: March 28, 1985.

d. Applicant: Robert Jay Yeadon.

e. Name of Project: Long Ravine.

f. Location: On Long Ravine, a tributary of the West Branch Feather River, near Stirling City, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert Jay Yeadon, 2786 Alder Drive, Camino, CA 95709, (916) 644-6744.

i. Comment Date: July 12, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (Alternative 1), (1) a 6-foot-high, 20-foot-long diversion structure located at the mouth of Pacific Gas and Electric Company's (PG&E) Hendricks Tunnel on Long Ravin; (2) a 60-inch-diameter, 2,700-foot-long penstock; (3) a powerhouse containing two turbine-generator units with a total installed capacity of 1,000 kW and producing an estimated average annual generation of 3.0 GWh; and (4) a tailrace discharging above PG&E's Long Ravine Diversion Dam; or (Alternative 2), (5) pressurization of Hendricks Tunnel; (6) same as (2); (7) same as (3) except 1,200 kW and 3.5 GWh; and (8) same as (4). A 2,600-foot-long, 12-kV transmission line would connect the proposals to an existing PG&E line. Project power would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks an 18-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $40,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. The Hendricks Tunnel and Long Ravine Diversion Dam are facilities of PG&E's DeSabla-Centerville Project No. 803.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $68,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption

application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Features Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption,or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydrpelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydrelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filling is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Reservation Act, the National Environmental Policy Act, Pub. L. No. 8829, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12046 Filed 5-17-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of April 12 Through April 19, 1985

During the week of April 12 through April 19, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions omitted from earlier lists have been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 12 through Apr. 19, 1985]

Date	Name and location of applicant	Case no.	Type of submission
Apr. 16, 1985	Oasis Petroleum Corp. Tamp, FL	HEZ-0243	Interlocutory order. If Granted: The Office of Hearings and Appeals would strike all portions of the submission filed by Research Fuels, Inc. on March 19, 1985 that do not pertain to Oasis Petroleum Corporation's discussion of the Richard Heinzelmann deposition.
Apr. 17, 1985	County Fuel Company, Inc., Towson, MD	HEE-0144	Price exception. If granted: County Fuel Company, Inc. would receive retroactive exception relief from 10 C.F.R. § 212.93(a)(1).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 12 through Apr. 19, 1985]

Date	Name and location of applicant	Case no.	Type of submission
Do	Dwight Sours, Ashland, OH	HEE-0145	Exception to the reporting requirements. If granted: Dwight Sours would not be required to file Form EIA-782B, the "Monthly Reseller/Retailer's Monthly Petroleum Products Sales Report".
Apr. 18, 1985	Research Fuels, Inc., Dallas TX	HER-0101	Request for modification/rescission. If granted: The February 12, 1985 Supplement Order issued by the Office of Hearings and Appeals would be modified to require Lucky Stores, Inc. to furnish Research Fuels, Inc. and the Office of Hearings and Appeals with a copy of the deposition of Richard Heinzelmann and exhibits thereto.
Do	W.F. Lawless, Augusta, GA	HFA-0287	Appeal of an information request denial. If granted: The February 8, 1985 Information Request Denial issued by the Savannah River Operations Office would be rescinded, and W.F. Lawless would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 12 to Apr. 19, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/15/85	APCO Oil Company/Artesian Service.	RF83-15
6/1/82	Enserch Exploration/Gulf Oil Corp	RF138-1
7/20/83	BTA Oil Producers/Gulf Oil Corp	RF137-1
6/1/82	Crystal Oil Co/Gulf Oil Corp	RF136-1
5/2/82	Crystal Oil Co/Crystal Oil Company	RF136-1
7/15/82	Coastal Corp/Independent Refining Corp.	RF135-1
7/15/85	Summit Transportation/Independent Refining Corporation.	RF134-1
5/3/82	Union Texas Petroleum/Independent Refining Corporation.	RF127-2
10/29/82	Quintana Petroleum/Texas Utilities Fuel Company.	RF133-1
4/6/82	Beta Development/Caribou Four Corners Inc.	RF132-1
7/20/82	Benson-Montin-Greer Drilling/Plateau, Inc.	RF131-1
4/19/82	McFarland Energy/Chevron, USA, Inc.	RF130-2
4/19/82	McFarland Energy/Kern Oil & Refining Company.	RF130-1
7/21/85	Mabee Petroleum Co/Cities Service Company.	RF129-1
7/21/85	James M. Forgotson/Cities Service Company.	RF128-1
7/21/82	Union Texas Petroleum/Cities Service Company.	RF127-1
4/16/85	Kiesel Co/Catholic Cemeteries	RF126-3
4/16/85	Kiesel Co/Veterans Administration	RF126-4
4/17/85	Richards/Minnesota	RF126-4
4/17/85	Richards/Minnesota	RF70-26
4/17/85	Kiesel Co/Jay's Texaco	RF126-5
4/16/85	Union Texas Pet Corp/Enterprise Products.	RF140-1
4/16/85	Aminoil/Orland LP-Gas, Inc	RF136-1
5/5/83	Alkek/Adams/Celebron Oil & Gas Co.	RF6-69
5/2/83	Alkek/Adams/Goldking Refining, Ltd.	RF6-70
5/4/83	Alkek/Adams/Wyoming Refining Company.	RF6-71
4/19/85	APCO/Breda Oil Company	RF83-16
4/19/85	Vickers Energy/Illinois	RQ1-194
4/19/85	Union Texas Pet Corp/F.L.N. Cordolet.	RF140-2
4/15/85-4/19/85	Gulf Refund Applications	RF40-3015 and RF40-3016

[FR Doc. 85-12145 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of April 19 Through April 26, 1985

During the Week of April 19 through April 26, 1985, the applications for refund listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 13, 1985.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 19 to Apr. 26, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/22/85	Little America Refining Co./Wolf Oil Company.	RF112-8
4/22/85	APCO/Claude Collins Oil Company	RF83-17
4/22/85	Aminoil, USA/Orland L.P. Gas, Co., Inc.	RF139-2
4/22/85	Nielsen Oil & Propane, Inc./Highway Oil, Inc.	RF141-2
4/22/85	Nielsen Oil & Propane, Inc./Gass' N Shop.	RF141-1
4/23/85	Little America Refining/Harrington & Company.	RF112-9
4/24/85	Nielsen Oil & Propane/Casey's General Stores, Inc.	RF141-3
4/24/85	Peoples Energy Corp./Empire, Inc	RF142-1
4/24/85	Kansas Nebraska Natural Gasoline Co./Empire, Inc.	RF113-5
4/24/85	Arapaho Petroleum/Empire, Inc	RF119-2
4/24/85	Eagle Petroleum Company/Empire, Inc.	RF121-2
4/24/85	Handel's, Inc./Dairy Mart Convenience Stores, Inc.	RF79-15
4/19/85	Point Landing/Andino Chemical Shipping Company.	RF122-5
4/25/85	APCO Oil/Saco Petroleum, Inc	RF83-19
4/25/85	APCO Oil/Hupp Oil Company	RF83-18
4/25/85	National Helium Corp./Nevada	RQ3-195
4/24/85	Tenneco Oil/Northern Petroleum, Inc.	RF7-126
4/26/85	Nielsen Oil & Propane, Inc./Neska Oil Corporation.	RF141-4
4/26/85	Kiesel Co./Dept. of Army and Air Force.	RF127-6
4/26/85	Aminoil, USA/Small's LP Gas Co	RF139-3
4/22/85-4/26/85	Gulf Refund Applications	RF40-3016 to RF40-3019

[FR Doc. 85-12146 Filed 5-17-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $82,500 to members of the public. This money is being paid into an escrow account following the settlement of an enforcement proceeding involving Appalachian Flying Service, Inc. of Blountville, Tennessee.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., 20585. All comments should conspicuously display a reference to Case Number HEF-0028.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Appalachian Flying Service, Inc. (Appalachian) of Blountville, Tennessee and the DOE. The Consent Order settled possible pricing violations in Appalachian's sales of aviation gasoline and aviation jet fuel to customers during the period November 1, 1973 through April 30, 1977.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute

the contents of the escrow account funded by Appalachian pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Appalachian who establish that they were injured by Appalachian's alleged overcharges. Such customers will receive refunds proportionate to the volume of aviation gasoline and aviation jet fuel they purchased from Appalachian. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 10, 1985.

Name of Firm: Appalachian Flying Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0028.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Appalachian Flying Service, Inc. (Appalachian) of Blountville, Tennessee.

I. Backgound

Appalachian is a "retailer" of "aviation gasoline" and "aviation jet fuel," as these terms were defined in 10 CFR 212.31. An ERA audit of Appalachian's operations during the period November 1, 1973 through April 30, 1977 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Proposed Remedial Order (PRO) issued to Appalachian on March 1, 1982, the ERA alleged that during the audit period Appalachian overcharged its customers by $153,569.79 in sales of aviation gasoline and aviation jet fuel. In order to settle all claims and disputes between Appalachian and the DOE regarding Appalachian's compliance with the DOE price regulations in sales of aviation gasoline and aviation jet fuel during the audit period, Appalachian entered into a Consent Order with the DOE on July 6, 1983.[1]

Under the terms of the Consent Order, Appalachian agreed to remit $82,500 to the DOE for Deposit in an interest-bearing escrow account pending distribution by the DOE.[2] The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Appalachian does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan for distribution of funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to idenfity readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Appalachian consent order fund, and we will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers of Appalachian who were injured by the alleged price violations. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of the overcharges allegedly made by Appalachian during the consent order period.

As in many prior special refund cases, we propose to adopt a volumetric refund presumption. Under this proposal, we presume that the alleged overcharges were dispersed equally in all sales of aviation gasoline and aviation jet fuel made by Appalachian during the consent order period. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. In the present case, the audit records do not identify any purchasers of petroleum products

[1] Although the Consent Order states that the audit period ended on April 20, 1977, the ERA audit files and the PRO cover the period November 1, 1973 through April 30, 1977. It therefore appears that the date stated in the Consent Order (April 20, 1977) is a typographical error. Accordingly, we will treat the consent order period as coterminous with the audit period set forth in the ERA audit files and the PRO.

[2] As of March 31, 1985, Appalachian has paid $20,833.28 to the DOE escrow account.

from Appalachian or list any alleged overcharge amounts by customer. The information available is therefore insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We therefore propose to use the volumetric method to allocate the consent order fund.[3] To determine the volumetric factor, the consent order fund ($82,500) will be divided by the total volume of aviation gasoline and aviation jet fuel sold by Appalachian during the consent order period (2,257,275 gallons), resulting in a per gallon refund amount of $0.03655.[4] The interest which has accured on the money since the deposit of the fund into the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Appalachian's customers, all of whom were end-users or ultimate consumers of aviation gasoline or aviation jet fuel, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not require to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. We have therefore concluded that purchasers of aviation gasoline and aviation jet fuel from Appalachian need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims.[5] We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also 10 CFR 205.286(b).*

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decisions in the **Federal Register**. If appropriate, we will also publicize this proceeding in local newpapers in the area where Appalachian conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Appalachian Flying Service, Inc. pursuant to a Consent Order executed on July 6, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-12139 Filed 5-13-85; 8:45 am]

BILLING CODE 6450-01-M

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Appalachian's pricing practices during the consent order period. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[4] In the event that Appalachian does not remit the entire consent order fund to the DOE before the deadline for filing refund applications has passed, we will reduce the volumetric refund amount accordingly.

[5] Under the volumetric refund level set forth in this Proposed Decision, an applicant must have purchased at least 410 gallons of aviation gasoline and/or aviation jet fuel during the consent order period in order to be eligible for a refund above the minimum amount of $15.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $52,885.52 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Armour Oil Company. The funds will be available to customers who purchased petroleum products from Armour during the period May 1, 1974 through January 28, 1981.

DATE AND ADDRESS: Applications for refund of a portion of the Armour consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Armour Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0031.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Armour Oil Company which settled possible pricing and allocation violations with respect to the firm's sales of petroleum products during the period May 1, 1974 through January 28, 1981. Under the terms of the Consent Order, $52,885.52 has been remitted by Armour and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Armour consent order fund. The Proposed Decision and Order discussing the distribution of the Armour consent order fund was issued on March 11, 1985, 50 FR 10846 (March 18, 1985).

As the Armour Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased petroleum products from Armour during the period May 1, 1974 through January 28, 1981. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: May 9, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 9, 1985.

Name of Firm: Armour Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0031.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Armour Oil Company (Armour) of San Diego, California.

I. Background

Armour Oil Company is a "reseller-retailer" of petroleum products, as that term was defined in 10 CFR 212.31. An ERA audit of Armour's operations during the period May 1974 through December 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Notice of Probable Violation (NOPV) issued to Armour on March 25, 1981, the ERA alleged that during the audit period Armour overcharged its customers by $5,683,410.00. In order to settle all claims and disputes between Armour and the DOE regarding Armour's compliance with the DOE price and allocation regulations in sales of gasoline, diesel fuel, fuel oil, and kerosene (hereinafter referred to as refined products) during the period May 1, 1974 through January 28, 1981 (the consent order period), the firm entered into a Consent Order with the DOE on November 10, 1982.[1] Armour thereby agreed to refund a total of $475,000 to customers who were allegedly overcharged by the firm's pricing practices in sales of refined products during the consent order period. Under the terms of the Consent Order, the firm agreed to refund $379,235.66 directly to specified customers through cash or credit memoranda and $52,968.55 to the U.S. Treasury.[2] The remaining $42,795.79 was designated for payment to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE.[3] Armour paid the amount owed, in full, and it now awaits distribution in this proceeding. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Armour does not admit that it committed any such violations.

On March 11, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order funds. 50 FR 10846 (March 18, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on the information contained in a payment schedule prepared by the ERA in accordance with the Consent Order. We observed that this approach was warranted based on our experience in prior Subpart V cases where all or most of the purchasers of the firm's products were identified by the ERA and specific alleged overcharge amounts for individual customers were calculated in the ERA audit files. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). We therefore proposed to establish a claims procedure whereby these identified purchasers could apply for a refund.

A copy of the PD&O was published in the **Federal Register** on March 18, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those purchasers whose names and addresses we obtained from the payment schedule. Those firms are listed in the Appendix to this Decision and Order. Comments were filed on behalf of EZ Serve and the States of New Mexico, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. EZ Serve's comments will be addressed in Part III below. All of the comments submitted by the States discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. These comments, however, are premature. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of refined products from Armour should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[4]

II. Jurisdiction

The procedural regulations of the DOE set forth general guideline by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vikers*). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the Armour consent order fund.

III. Determination of Injury

All of the customers of Armour listed in the Appendix are resellers (retailers or wholesalers) or refiners of petroleum

[1] Armour and the DOE entered into a separate Consent Order regarding sales of crude oil. Distribution procedures for funds obtained pursuant to that Consent Order have already been established by the DOE. *See A. Johnson & Co., Inc.*, 12 DOE ¶ 85,102 (1984). In the present proceeding, we are only considering distribution procedures for funds obtained pursuant to the Consent Order covering refined products. Accordingly, only those customers who purchased refined products from Armour will be eligible to apply for a refund in this proceeding.

[2] The $52,968.55 paid to the U.S. Treasury was attributable to alleged overcharges in sales made to company-owned subsidiaries of Armour located in San Diego and Chula Vista. (In the PD&O, we erroneously stated the location of Chula Vista; it is located in California).

[3] The DOE subsequently directed Armour to add the amount designated for direct payment to EZ Serve, one of the customers allegedly overcharged by Armour. Consequently, an additional $10,089.73 was included in the consent order amount, for a total of $52,885.52 to be distributed in the present proceeding.

[4] In addition, it is not clear that any of the commenting States except New Mexico has a legitimate interest in this proceeding, since all of the sales involved were made in the western United States.

products. In the PD&O, we proposed that these firms and any other reseller or refiner claimants be required to demonstrate that they did not pass on to their customers price increases implemented by Armour. Since we have received no comments on our proposal, we will adopt the showing of injury requirement set forth in the PD&O. In order to qualify for a refund, a reseller or refiner must show that at the time it purchased refined products from Armour market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, the reseller or refiner must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. [5] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In the PD&O, we noted that the Consent Order also covers Armour's compliance with the DOE allocation regulations. We will adopt our proposal that reseller and refiner claimants may therefore establish eligibility by showing that they were injured by Armour's allocation practices. [6] *See Office of Enforcement* 9 DOE ¶ 82,551 at 85,268–69 (1982).

In the PD&O, as in many prior refund cases, we proposed to adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.
>
> 10 CFR 205.282(e)

As we pointed out in the PD&O, the presumption that claimants seeking smaller refunds were injured by the pricing and allocation practices settled in the Armour Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must comply and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and to use its limited resources more efficiently. Finally, these small claimants did purchase covered products from Armour and were in the chain of distribution where the alleged violations occurred. Therefore, they bore some impact of the alleged violations, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to anlayze detailed proof of what happened downstream of that initial impact.

In the PD&O, we proposed that refiner, reseller or refiner claimants not be required to submit any additional evidence of injury beyond purchase volumes if their refund claim is below a threshold level of $5,000. [7] We have received comments on the proposed threshold level from EZ Serve, a customer of Armour that was identified by the ERA as an allegedly overcharged party. EZ Serve argues that a threshold amount of $5,000 is too low, given the difficulty and expense of compiling the data necessary to make a detailed showing of injury. EZ Serve recommends that the threshold level be increased to $10,000.

We are not persuaded by EZ Serve's arguments. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond purchase volumes is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the cost to the government of compiling and analyzing information sufficient to show injury not exeed the amount of the refund to be gained. However, we must also consider the purpose of a special refund proceeding, which is to enable the DOE to effect refunds to "injured persons." 10 CFR 205.280; *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,208 (1984). As in prior refund decisions, we find that a proof of injury requirement for firms whose refund claims exceed $5,000 is neither unfair nor unduly burdensome, given those firm's generally larger size, their presumably greater sophistication and accounting capabilities, and the DOE's preexisting recordkeeping requirements under 10 CFR 210.92. *See Vickers* at 85,396. It would be contrary to the objectives of the Subpart V regulations to distribute large refunds without requiring a detailed showing of injury by the claimants. Were we to do so, customers who were not affected adversely by Armour's alleged pricing violations could receive substantial refunds, while customers who actually experienced injury might not be compensated at all. *See Collins Oil Company*, 12 DOE ¶ ——— Case No. HEF–0051 (April 3, 1985). In the present case, we believe that a proof of injury requirement for resellers above a threshold level of $5,000 best accomplishes the foregoing purposes. [8] *See Texas Oil & Gas Corp.*,

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[5] Some of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers of motor gasoline. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, firms who were subject to the retailer price rule will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979.

[6] In prior cases, we have required allocation claimants to (i) show that they contemporaneously notified appropriate DOE personnel of the alleged allocation violations and (ii) make a reasonable demonstration that they incurred injury as a result of the alleged violations. *See, e.g., Standard Oil Co., (Indiana)/Anchor Distributors, Inc.*, 12 DOE ¶ 85,030 (1984).

[7] Resellers and refiners who made only spot purchases from Armour will be presumed to have suffered no injury. They will therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise discretion as to where and when they made the purchase(s) on which their refund claim is based.

[8] Any reseller whose potential refund amount is above the threshold level may elect to apply for a refund based on the threshold amount.

12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IV. Calculation of Refund Amounts

In the PD&O, we proposed that the maximum refund for each of the firms listed in the Appendix be equivalent to the refund amount designated for it in the payment schedule prepared in accordance with the Consent Order. Those potential refund amounts are set forth in the Appendix. Although we recognize that our records do not provide conclusive evidence as to the identity of all eligible parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this informatioin in the present case. As we noted in the PD&O, the ERA audit was at an advanced stage, and the allegedly overcharged parties were very well-defined, as evidenced by the detailed payment schedule prepared in accordance with the Consent Order. Accordingly, the information provided in the ERA audit file and set forth in the payment schedule can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* Since we have received no comments regarding this issue, we will adopt our proposed method of calculation.[9] Successful refund applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

In addition, we will adopt our proposal to establish a minimim amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are souht for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b.

V. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Armour consent order fund. Accordingly, we shall now accept applications for refunds from the customers listed in the Appendix and any other Armour customer who claims that it was injured by Armour's pricing and allocation practices during the consent order period. In order to receive a refund, each applicant will be required to report the monthly volume of Armour refined products which it purchased during the consent order period. Resellers and refiners who request refunds in excess of the $5,000 threshold amount must submit evidence to establish that they did not pass on the alleged overcharges to their customers. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the owners indicating that they do not claim a refund. Applicants should also report whether they, or any affiliates or subsidiaries, have any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** Each application must be in writing, signed by the applicant, and specify that it pertains to the Armour Consent Order Fund, Case No. HEF-0031. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Armour Oil Company pursuant to the Consent Order executed on November 10, 1982 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: May 9, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

ARMOUR OIL COMPANY—APPENDIX

Identified customers	Potential refund
Kerr-McGee Chemical Co., Kerr-McGee Center, Oklahoma City, OK	$3,123.93
Caribou Four Corners, P.O. Box 457, Afton, WY 83110	2,992.87
Giant Industries, Inc., 5107 North 7th Street, Phoenix, AZ 85014	533.09
USA Petroleum Corporation, 1633 26th Street, Santa Monica, CA 90404	889.43
Newhall Refining, 1000 Santa Monica Blvd., Suite 200, Los Angeles, CA 90067	32.05
Frankb Oil Co	322.13
Olympian Oil Company, 39 S. Linden Avenue, S. San Francisco, CA 94080	111.16
Digas Company of Delaware, c/o Tesoro Petroleum Corporation, 8700 Tesoro Drive, San Antonio, TX 78286	12,307.55
Powerine Oil Company, 12354 Lakeland Road, Santa Fe Springs, CA 90670	4,942.36
Simmons Oil Corporation, P.O. Box 4520, Scottsdale, AZ 85258	715.41
Golden Gate Petroleum, P.O. Box 8820, Emeryville, CA 94662	10,031.80
Southland Corporation, 2444 Moore Park Place, Suite 316, San Jose, CA 95128	6,809.41
EZ Serve, Inc., P.O. Box 3579, Abilene, TX 79604	10,069.73
Venture Trading Company, 9701 Wilshire Blvd., Beverly Hills, CA 90212	204.60

[FR Doc. 85-12138 Filed 5-17-85; 8:45 am]

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[9] Those customers who were entitled to receive a direct refund from Armour pursuant to the Consent Order will not be eligible for a refund in the present proceeding unless they can show that they did not receive a refund from Armour. In the event that any claims are successfully made by firms not listed in the Appendix, we may have to adjust the maximum refund amounts set forth in the Appendix. Accordingly, we do not intend to issue final determinations on any refund claims in this proceeding until the deadline for applications has passed.

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2453/T482; FRL-2800-3]

Mefluidide; Renewal of Temporary Tolerances

Correction

In FR Doc. 85-6702 appearing on page 12077 in the issue of Wednesday, March 27, 1985, make the following correction: In the second column, in the third paragraph under **"SUPPLEMENTARY INFORMATION"**, in the seventh line, "7183-EUP-22" should read "7182-EUP-22".

BILLING CODE 1505-01-M

[PP 2G2719/T484; FRL-2804-5]

NOR-Am Chemical Co.; Extension of Temporary Tolerances

Correction

In FR Doc. 85-7087 beginning on page 12080 in the issue of Wednesday, March 27, 1985, make the following correction: on page 12080, in the second column, in the **SUMMARY**, in the fourth line, "1,2,3,4,5-tetrazine" should read "1,2,4,5-tetrazine".

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 857; Revocation of FCA Order No. 810]

Authority Delegations; Officer To Act as Deputy Governor, Administration

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration has issued Order No. 857 authorizing certain officers of the Farm Credit Administration to act as Deputy Governor, Administration, in the event of the Deputy Governor, Administration is not able to perform the duties of the office. The text of the Order is as follows:

1. The Deputy Governor, Administration, shall, subject to the jurisdiction and control of the Governor of the Farm Credit Administration, execute and perform all power, authority, and duties relative to Farm Credit Administration budget, human resources activities, congressional and public affairs programs, economic analysis, management information activities, information processing, information resources, internal administrative support services, and to all matters incidental thereto, and to administration of all provisions of law pertinent thereto.

2. In the event the Deputy Governor, Administration, Farm Credit Administration, is absent or is not able to perform the duties of his office for any other reasons, the officer who is highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties of the Deputy Governor, Administration, pertaining to the functions of his office:

(a) Associate Deputy Governor.

(b) Director, Records and Projects Division.

(c) Director, Human Resources Division.

(d) Director, Congressional and Public Affairs Division.

(e) Director, Information Processing Division.

(f) Director, Economic Analysis Division.

(g) Director, Administrative Division.

(h) Director, Management Information Division.

3. This Order shall be effective on May 13, 1985, and revokes Farm Credit Administration Order No. 810, dated July 21, 1978 (43 FR 36515).

Larry H. Bacon,

Acting Governor, Farm Credit Administration.

[FR Doc. 85-12101 Filed 5-17-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Better Broadcasting Corp. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Better Broadcasting Corp.; Pueblo, Colorado.	BPH-831229AF	85-119
B. MarTec Broadcasting Corp.; Pueblo, Colorado.	BPH-840103AL	
C. Southern Colorado Broadcasting, a Limited Partnership; Pueblo, Colorado.	BPH-840423IJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-12113 Filed 5-17-85; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 82-165]

World Administrative Radio Conference; Planning of the HF Band Allocated to the Broadcasting Service

In the matter of an inquiry relating to preparations for the 1984/1987 World Administrative Radio Conference of the International Telecommunication Union for the planning of the HF band allocated to the broadcasting service; request for future international (high frequency) broadcast requirements.

Adopted: May 9, 1985.

Released: May 13, 1985.

By the Chief, Mass Media Bureau.

1. In 1979, the World Administrative Radio Conference (WARC 79) allocated additional frequency bands for high frequency (HF) broadcasting, and it decided that all high frequency broadcasting bands should be subject to planning by a World Administrative Radio Conference to be held in two sessions. The First Session was to establish the technical parameters and planning principles, as well as a planning method to be used for planning the HF bands allocated to the broadcasting service. The Second Session was to carry out planning according to the principles and method established at the First Session. In addition, it was to review and, where necessary, revise the relevant provisions of the Radio Regulations relating to broadcasting in the HF bands. The First Session was held in early 1984; the Second Session is scheduled for early 1987.

2. As part of its preparation for this Conference, the Commission on March 25, 1982, issued a *Notice of Inquiry* (47 FR 15408 published April 9, 1982) designed to: (1) Acquaint the public with the issues expected to arise at the First Session of the Conference; (2) solicit comments regarding these issues; and (3) develop draft proposals to be coordinated with the National Telecommunications and Information Administration (NTIA) and the Department of State.

3. After reviewing the record, the Commission on April 27, 1983, adopted a *First Report* which set forth its proposals in response to technical issues expected to arise at the First Session of the Conference. Also, certain non-

technical matters on the conference agenda were inextricably linked to overall U.S. foreign policy, and on these, the Commission made only general suggestions.

4. The First Session of the Conference was held in Geneva, Switzerland, from January 10 to February 11, 1984, and the participating Administrations were able to reach agreement on technical critieria which reflect a general acceptance of the proposals put forth by the United States, namely:

—No maximum power restriction
—The number of frequencies required to broadcast the same program to the same zone was not limited to one, but was to be decided by an analytical technique for determining the number of frequencies needed to achieve a certain reliability
—CIRAF (target or reception) zones may be divided into four quadrants to define more precisely the service area of a broadcasting requirement
—Because of the large number of assumptions required, no single value could be determined regarding the theoretical capacity of any given HF broadcasting frequency band
—A radio frequency protection ration of 27 dB was set as a value to be achieved, if feasible
—Channel spacing was set at 10 kHz with interleaving permitted on the 5 kHz mid-channels

5. Likewise, the Conference adopted planning criteria which also were in general in accord with U.S. objectives. These included:

—Adoption of nine planning principles governing the HF broadcasting bands that assure flexibility of planning to accommodate new HF broadcasting requirements or modifications to existing requirements or modifications to existing requirements
—Agreement of a framework for seasonal planning (planning method), using automated computer techniques, to be considered by the Second Session

6. Finally, at the First Session, a resolution regarding the establishment of a requirement file was adopted. It called upon Administrations to submit to the International Frequency Registration Board ("IFRB") by August 1, 1985, their broadcasting requirements that are expected to be operational before August 1, 1988. Based on these submissions, the IFRB is to compile the requirements and publish the compilation as a Conference document for consideration by the Second Session. In addition, these requirements will be used by the IFRB for intersessional tests of the planning method.

7. By virtue of its authority to license private international broadcasting stations, the Commission is responsible for determining non-government requirements. Existing licensees, permittees, and applicants have been contacted in this regard, and they are in the process of preparing the necessary information regarding their requirements. The purpose of this document is to solicit any additional requirement information that is relevant to the Commission's Conference preparations. Individuals or groups which have not yet filed applications, but expect to seek approval for stations that would be operational before August 1, 1988, should respond indicating the specific nature of their anticipated requirements.[1] In addition, we welcome any comments interested parties may wish to offer on the subject of future requirements. Comments should be directed to the Federal Communications Commission, Washington, DC. 20554.

8. In order to meet the August 1, 1985, IFRB deadline, all requirement and other data must be submitted to the Commission by May 31, 1985.

9. Additional information regarding this matter can be obtained from Charles H. Breig or Thomas Polzin of the Mass Bureau at (202) 254–3394.

10. This action is taken pursuant to authority found in sections 4(i), 5(d)(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.

Federal Communciations Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85–11977 Filed 5–17–85; 8:45 am]

BILLING CODE 6712–01–M

Allocations Subgroup of Radio Advisory Committee; Resumption of Meeting

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting on Friday May 31, 1985, at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street N.W. Washington, D.C.

The Subgroup will give consideration to the development of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band. In particular, these relate to identifying specific broadcast requirements and the means of addressing these requirements through use of the spectrum to become available through expansion of the AM band.

The Allocations Subgroup meeting, a continuing one, will be resumed after the May 31, 1985, session at such time and place as is decided at that session.

All meetings of the Allocations Subgroup are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call the Subgroup Chairman, Jonathan David, at (202) 632–7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–12116 Filed 5–17–85; 8:45 am]

BILLING CODE 6712–01–M

Family Broadcasting Co. Inc. and John H. Leland; Hearing designation Order

In re Applications of Family Broadcasting Company, Inc. and John H. Leland; for construction permit for New Television Station Pittsburg, Kansas; MM Docket No. 85–121, File No. BPCT–840601KE, File No. BPCT–840720KI.

Adopted: April 22, 1985.
Released: May 13, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 14, Pittsburg, Kansas.

2. The effective radiated visual power, antenna heights 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, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, 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 preference should accrue to either of the applicants.

3. No determination has been reached that the tower height and location

[1] In this connection, interested parties should note that the IFRB has provided the Commission with a specific form to use in listing each broadcast requirement. The form requires specific information as to transmitter location (coordinates), proposed frequency (optional), time of day of transmission, target area (reception area), transmitter output power, antenna type, and transmission equipment availability and limitations. Information about the use of this form can be obtained from the contact persons listed below.

proposed by each of the applicants[1] would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. There is the potential for a television station operating on Channel 69 to cause objectionable interference to existing land mobile radio facilities operating in the 460–470 MHz band. Section 73.687(i)(1) of the Commission's Rules imposes upon the television station permittee the obligation to take adequate measures to identify and substantially eliminate such interference. This obligation may require the expenditure of substantial resources by the winning applicant for whatever corrective measures may be necessary. *See, e.g., Jack Straw Memorial Foundation,* 35 F.C.C. 2d 397, *recon. denied,* 37b F.C.C. 2d 544 (1972); *Sudbrink Broadcasting of Georgia,* 65 F.C.C. 2d 691 (1977). Therefore, a grant of any of these applications will be subject to an appropriate condition.

5. The proposed antenna for Family Broadcasting Company, Inc. (Family) is to be mounted on the tower of AM station KSEK, Pittsburg, Kansas. Consequently, any grant of a construction permit to Family will be conditioned to ensure that KSEK's radiation pattern is not adversely affected by the construction of the proposed station.

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 whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better 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.

8. It is further ordered, That in the event of a grant of either of the applications, the construction permit shall contain the following condition:

During equipment tests, authorized by § 73.1610 of the Commission's Rules, the permittee shall take adequate measures to identify and substantially eliminate objectionable interference which may be caused to existing land mobile radio facilities in the 460 to 470 MHz band. Documentation that objectionable interference will not be caused to existing land mobile radio facilities shall be submitted along with the application for license. Program tests shall not be commenced under § 73.1620(a) of the Rules and may not be started after specific authority is granted by the Commission.

9. It is further ordered, That, in the event of a grant of the application of Family Broadcasting Company, Inc., the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM station KSEK, Pittsburg, Kansas, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

10. It is further ordered, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

11. 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.

12. 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. 85–12114 Filed 5–17–85; 8:45 am]

BILLING CODE 4712-01-M

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Family Broadcasting Company, Inc.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Collection in Assistance Without OMB Approval Number.

Title: Training and Education State and Regional Work Plans Worksheet.

Abstract: it is proposed that this form, Attachment C to the State Comprehensive Cooperative Agreement, be used as a worksheet in developing State Training Plans.

Type of Respondents: State or Local Governments, Federal Agencies or Employees.

Number of respondents: 58.

Burden hours: 580.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 10, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–12047 Filed 5–17–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

American Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 June 10, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *American Bancorp, Inc.*, Hamden, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Hamden, Connecticut.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *George Mason Bankshares, Inc.*, Fairfax, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The George Mason Bank, Fairfax, Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ameritrust Inc.*, Dubuque, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of American Trust & Savings Bank, Dubuque, Iowa.

Board of Governors of the Federal Reserve System, May 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-12041 Filed 5-17-85; 8:45 am]

BILLING CODE 6210-01

Citicorp; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Citicorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through its wholly-owned subsidiary, Citicorp Securities, Inc. ("CSI"), in the activities of underwriting and dealing in, to a limited extent, the following securities (hereinafter "ineligible securities"):

(1) Municipal revenue bonds, including certain industrial development bonds;

(2) mortgage-related securities (obligations secured by or representing an interest in residential real estate); and

(3) consumer receivable-related securities (obligations secured by or representing an interest in loans or receivables of a type generally made to or due from consumers) ("CRRs").

CSI currently underwrites and deals in securities that national and state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (principally U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR § 225.25(b)(16)).

Citicorp also proposes that CSI arrange private placements and provide certain investment advisory services or brokerage services to its customers as activities that should be considered incidental to the proposed underwriting and dealing activities.

The activities would be conducted in the United States through offices of CSI located in New York, Houston, San Francisco, Miami and Chicago.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible for bank holding companies under the Bank Holding Company Act. Citicorp's application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagal Act prohibits the affiliation of a member bank such as Citibank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. In applicant's opinion, it would not be "engaged principally" in these activities on the basis of a test that would limit the volume of CSI's underwriting and dealing in ineligible securities.

This application represents a substantial modification of an earlier application under which Citicorp proposed that CSI underwrite and deal in corporate debt securities as well as the securities covered by this application. In that application, Citicorp proposed to limit CSI's underwriting and dealing activities to 20 percent of CSI's total underwriting and dealing of eligible and ineligible securities, including CSI's underwriting and dealing in U.S. government securities. On February 25, 1985, Citicorp withdrew the application before the Board had reached a final decision whether to seek public comment on the the proposal. In connection with the withdrawal, the Board issued a statement that its preliminary analysis indicated the proposal was inconsistent with the Glass-Steagall Act and that Congress is the appropriate forum for proposals, such as that submitted by Citicorp, that would dramatically alter the framework established by Congress in the Glass-Steagall Act for the conduct of the commercial banking and investment banking businesses. The Board urged prompt Congressional consideration of legislation that would authorize bank holding companies to underwrite and deal in municipal revenue bonds, commercial paper and 1–4 family residential mortgage-related securities, as well as to sponsor, control and distribute the securities of mutual funds.

Citicorp's amended application eliminates corporate debt securities from the proposal and substantially reduces the volume of underwriting and dealing activities proposed by CSI. Under the proposed test, CSI will limit its underwriting of municipal revenue bonds (including industrial development bonds) in any calendar year to 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year and its underwriting of mortgage-related securities and CRRs to 3 percent of the total amount of all such securities underwritten domestically by all firms during the previous calendar year. CSI will limit its dealing activities so that at no time will CSI hold for dealing municipal revenue bonds (including industrial development bonds) in excess of 3 percent of the total amount of such securities underwriter domestically by all firms during the previous calendar year or hold for dealing mortgage-related securities and CRRs in excess of 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.[1]

[1] In addition, as a further limit on CSI's activities, CSI would limit its underwriting of ineligible securities during the first year so as to not exceed 5 percent of the gross sales price of all eligible and ineligible securities underwritten by CSI. CSI would limit its dealing in ineligible securities during the first year so as not to exceed 5 percent of the gross sales price of all eligible and ineligible securities underwritten by CSI. During the second year the percentage limitation would be 7 percent; thereafter, the precentage limitation would be 10 percent.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "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 interest, or unsound banking practices."

While the Board has decided to publish Citicorp's amended proposal for comment, the Board does not thereby take any position on the issues raised by the proposal under the Glass-Steagall Act or the Bank Holding Company Act. Publication of the proposal has been ordered by the Board solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act.

The Board requests the written views of interested persons with respect to:

(1) Whether for purposes of the Glass-Steagall Act the proposed activities would constitute CSI being "engaged principally in the issue, flotation, underwriting, public sale, or distribution * * *" of ineligible securities within the meaning of section 20 of the Glass-Steagall Act; and

(2) whether for purposes of section 4(c)(8) of the Bank Holding Company Act the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

In this connection, the Board is seeking comments specifically addressed to the following matters:

Glass-Steagall Act

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of tests proposed by Citicorp, which are based on a percentage of the affiliate's total business activities and of the total underwriting volume of the particular type of securities involved by firms domestically. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in underwriting or dealing in ineligible securities on a substantial and regular or non-incidental basis and without regard to the volume of other activities conducted by the affiliate.

Bank Holding Company Act

A. *Closely Related to Banking Issue.* Comment is requested concerning whether underwriting and dealing in each of the proposed types of "investment securities" is closely related to banking on the basis that: (1) Banks have generally in fact provided the proposed services; (2) banks generally provide services that are so similar to the proposed services as to equip them particularly well to provide the proposed services; or 3) banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form.

Thee guidelines for determining whether an activity is closely related to banking are set out in *National Courier Association* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling bank. Board Statement regarding Regulation Y, 49 FR 813 (1984).

B. *Proper Incident to Banking Issue.* Comment is requested on whether the proposal would be a proper incident to banking, that is, whether the performance of the activity may reasonably be expected to produce public benefits that outweight possible adverse effects. The board also requests comment on whether the proposal may result in the abuses or hazards that the United States Supreme Court has identified as motivating Congress in enacting the Glass-Steagall Act.[2] These include conflicts of interest, such as the distribution of a company's securities for the purpose of repaying extensions of credit to the company by an affiliate of the underwriter, unsound banking practices, such as the imprudent investment of a bank's funds in securities underwritten by an affiliate or in imprudent extensions of credit to customers of the affiliated underwriter, damage to the bank's reputation or the confidence of its customers in the bank, or adverse effects on the impartiality of an affiliate bank in he credit-granting process or the conduct of its fiduciary activities (including the provision of investment advice to customers) as a result of a "salesman's stake" in the securities underwritten or dealt in by an affiliate.

Comment is requested on whether conditions should be established to ameliorate any possible adverse effects, including appropriate capital or other financial requirements, or limitations on transactions between CSI and its bank affiliates; the use of a name or logo that would be associated with the Applicant or its subsidiary banks; lending by any CSI affiliate (bank or nonbank) to a person for the purpose of purchasing securities from CSI, or to an entity the securities of which are underwritten or dealt in by CSI or for the benefit of which such securities are issued; the purchase by a CSI affiliate, for its own account or as a fiduciary, of securities underwritten or dealt in by CSI; the offering or marketing of CSI's services by its bank affiliates; the access of CSI to information from its bank affiliates; common personnel or other interlocking relationships between CSI and its bank affiliates; or the maintenance of common offices with CSI affiliate.

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issue presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be permitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR § 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Any views of requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 22, 1985.

[2] These possible adverse effects are discussed by the United States Supreme Court in *Investment Company Institute* v. *Camp*, 401 U.S. 617, 630–633 (1971), and *Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System*, 104 S.Ct. 2979, 2984–2985 (1984).

Board of Governors of the Federal Reserve System, May 14, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-12042 Filed 5-17-85; 8:45 am]

BILLING CODE 6210-01-M

Corestates Financial Corp. et al.; Notice of 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 outweight 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 June 7, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Corestates Financial Corp.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary Signal Financial Corporation, Pittsburgh, Pennsylvania, in the previously approved activities of making, acquiring and servicing of loans and extensions of credit and credit-related insurance activities associated therewith; and to expand the geographic service area to these activities to throughout the United States.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Burns Bancorporation, Inc.*, St. Paul, Minnesota; to engage *de novo* directly in the activity of leasing real and personal property.

Board of Governors of the Federal Reserve System, May 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-12043 Filed 5-17-85; 8:45 am]

BILLING CODE 6210-01-M

Forsyth 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 June 7, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Forsyth Bancshares, Inc.*, Cumming, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Forsyth County Bank, Cumming, Georgia.

2. *Sun Banks, Inc.*, Orlando, Florida and *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Sun Bank/Martin County, N.A., Stuart, Florida.

B Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Darman Financial of Wisconsin, Incorporated*, Fennimore, Wisconsin; to become a bank holding company by acquiring 97.3 percent of the voting shares of The First State Bank, Fennimore, Wisconsin.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Adino Company*, Onida, South Dakota; to become a bank holding company by acquiring 98.9 percent the voting shares of The Onida Bank, South Dakota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Amcorp Financial, Inc.*, Ardmore, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of American National Bank, Ardmore, Oklahoma.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coble Bankshares, Inc.*, Waco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Consolidated Bank-Hewitt, Hewitt, Texas.

Board of Governors of the Federal Reserve System, May 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-12044 Filed 5-17-85; 8:45 am]

BILLING CODE 6210-01-M

Oak Hill Financial, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than May 29, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Oak Hill Financial, Inc.*, Oak Hill, Ohio; to acquire at least 95 percent of the voting shares of Miami Valley Bank of Southwest Ohio, Franklin, Ohio (the successor by merger of Miami Valley Building and Loans Association of Franklin, Franklin, Ohio).

Board of Governors of the Federal Reserve System, May 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-12231 Filed 5-17-85; 8:59 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Chapter AH (Office of the Assistant Secretary for Personnel Administration), Chapter AHC (Office of the Deputy Assistant Secretary for Equal Employment Opportunity), and Chapter AHP (Office of Personnel) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services are amended. Chapter AH, Office of the Assistant Secretary for Personnel Administration as last amended at 49 FR 44022 (November 1, 1984), Chapter AHC, Office of the Deputy Assistant Secretary for Equal Employment Opportunity as last amended at 47 FR 25774 (June 15, 1982) and Chapter AHP, Office of Personnel as last amended at 49 FR 44022 (November 1, 1984) are deleted in their entirety and replaced with a new Chapter AH, Office of the Assistant Secretary for Personnel Administration. This change in the Office of the Assistant Secretary for Personnel Administration streamlines the Office, more clearly assigns responsibilities and reduces the span of control of the Assistant Secretary for Personnel Administration, resulting in greater efficiency and effectiveness in carrying out assigned responsibilities. The changes are as follows:

1. Delete Chapter AH (Office of the Assistant Secretary for Personnel Administration), Chapter AHC (Office of the Deputy Assistant Secretary for Equal Employment Opportunity) and Chapter AHP (Office of Personnel) in their entirety and replace Chapter AH with the following:

Section AH.00 Mission. The Assistant Secretary for Personnel Administration (ASPER) is responsible for administering a responsible, service-oriented personnel system having as its principal objective supporting the Department's missions and programs. The Assistant Secretary provides leadership and direction in the development of policies and procedures related to recruitment, motivation, utilization and training, and career development of departmental officials and employees, consistent with sound personnel management and administration, and with laws, rules, regulations and sound practices related to Federal equal employment opportunity programs.

Section AH.10 Organization. The Assistant Secretary for Personnel Administration reports directly to the Secretary and supervises the following offices:

Immediate Office of the Assistant Secretary
Office of Human Resource Information Management
Office of Personnel Operations
Office of Human Resource Programs
Office of Human Relations
Office of Special Initiatives

The Assistant Secretary also provides administrative support for the Departmental Grant Appeals Board, which is organizationally assigned to his office.

Section AH.20 Functions. A. Immediate Office of the Assistant Secretary. Provides executive direction, leadership, and guidance to all ASPER components. Oversees the development and implementation of Department-wide policies and programs covering recruitment, training, and education, upward mobility, exective development, equal employment opportunity, employee relations, and employee compensation and benefits. The Assistant Secretary also serves as the Director for Equal Employment Opportunity for the Department.

B. The Office of Human Resource Information Management (OHRIM). Responsible for: maintenance and enhancement of the existing personnel/payroll system; the design, development, and implementation of new automated systems necessary to support Departmental Human Resource Information and Personnel/Payroll needs; serving as the Department Data Administrator for Human Resource Information; identification and analysis of Departmental Human Resource data; establishing policy for retention and access to Human Resource data; and liaison with both internal and external sources for Human Resource Information Systems. The Office consists of an immediate office, two staff offices and four divisions: Information Management Staff, Program Management and Reports Staff, Systems Design and Analysis Division, Systems Engineering and Maintenance Division, Systems Integrity Division, and Commissioned Officers Systems Division.

1. Information Management Staff. Collects and disseminates ADP information for the Office of the Director and the personnel community; sponsors and coordinates ADP efforts with other agencies and the private sector to improve overall office effectiveness; markets Human Resource information products to HHS and interagency managers and users; provides educational coordination, instruction, and evaluation for the Office and its customers; assists in the analysis and prototyping of state-of-the-art technology, methods, and equipment; analyzes ergonomic and Human Resource impacts of personnel automation.

Manages strategic information programs for the Office by establishing and maintaining a forecasting system; manages the electronic network for HHS and the interagency personnel automation community; develops model expert and decision support systems in support of Office goals; provides modeling, simulation, and statistical support for the Office; provides direction on Human Resource management initiatives, including the Management Self-Improvement System, from a measurement and return on investment perspective.

2. Program Management and Reports Staff. Provides management services for the Office which include: operating and maintaining a project management system; providing a focal point for

accepting, recording, priority setting, accounting for projects and other administrative requests from other ASPER offices; developing and maintaining annual procurement plans and providing liaison with the Department's procurement office; providing a focal point for ad hoc reports; reviewing performance management objectives to ensure that they are in concert with Office and ASPER objectives. Provides for contractual administration on all ASPER ADP equipment, its maintenance, lease renewal, inventory accountability and costs; and provides budget consolidation and expenditure accounting for ADP.

3. Systems Design and Analysis Division. Provides ADP expertise and guidance to ASPER; serves as a representative to internal and external Human Resource organizations; performs systems analysis and design for changes, enhancements, and new requirements to the Department's Human Resource Information systems, including personnel and compensation; determines feasibility, benefits and impacts; including estimates of staff, hardware, software, telecommunications and user interface; conducts developmental prototype systems; develops test criteria, including identification of performance measures, systems interfaces, audits, security, and evaluation criteria.

Identifies, validates, and establishes Departmental reporting processes; provides design and analysis support to user requested reporting requirements; serves as initial contact for ADP hardware, software, and services vendors; provides technical assistance in the development of hardware, software, telecommunications and ADP service acquisitions, including cost benefit analyses, requirements statements, and performance criteria; and participates in the evaluation and selection of vendors and equipment.

4. Systems Engineering and Maintenance Division. Responsible for maintaining and enhancing the Department's automated personnel and payroll system and subsystems. Functions include: providing data base administration of the Department's Human Resource data base through data definition, development of data structures, imposition of security measures, data base maintenance and control of user access and use of data; and participation in the development of OHRIM goals, objectives, priorities, schedules.

Develops detailed system and/or subsystem specifications, program specifications, program modules, files, data bases, libraries and documentation necessary to support system maintenance and development activities; participates in the development of test criteria and test methodology necessary to conduct system/subsystem and program level tests needed to insure the integrity of the Department's automated personnel and payroll system; develops and implements methods for reduction in hardware, software and personnel costs while maintaining the highest system integrity and employing state-of-the-art data processing techniques where appropriate.

5. Systems Integrity Division. Performs acceptance testing and quality assurance factors for all new systems/subsystems, major enhancements and systems changes for the Human Resource Information Systems; utilizes the quality assurance system to review and analyze on-going operations to determine possible problem areas; serves as ASPER ADP Systems Security Officer, including physical security, system back-up, file access security, access codes, adherence to Privacy and Freedom of Information Act requirements; ensures adherence to security standards and serves as liaison with the Internal Controls Officer; serves as ASPER Financial Systems Coordinator ensuring the integrity of the payroll systems; focal point of interaction with the Office of the Inspector General and the General Accounting Office and responsible for Section 4 reviews under the Federal Managers Financial Integrity Act.

Participates in the development of test criteria with the Design and Analysis, Systems Engineering and Maintenance, and the Commissioned Officer Systems Divisions; builds and maintains a regression library to be used in the standard test system; in conjunction with the other OHRIM Divisions, develops, publishes and maintains the ASPER ADP Systems Standards; ensures adherence to ASPER published ADP standards and procedures; controls and maintains system documentation, including all documentation of a change or development cycle; schedules and carries out the implementation of new systems and systems changes into the production operation; develops and conducts user/customer training in the use of Human Resource systems.

6. Commissioned Officer Systems Division. Provides complete support for the Commissioned Officer personnel/payroll systems including identification of systems requirements, systems development and systems maintenance; assists in the development of the civilian personnel/payroll system by providing technical expertise in field systems maintenance; controls and processes all Commissioned Corps master transaction and related files; writes, tests, de-bugs documents; maintains, controls production processing of all computer programs required to operate the Commissioned Corps personnel/payroll system.

Prepares contract work statements for enhancements to the Commissioned Corps system; participates in interagency groups on matters concerning Uniformed Services payroll systems; conducts orientation and training sessions on proposed Commissioned Officers personnel/payroll systems changes and new procedures; produces and certifies vouchers, pay schedules, certificates and related documents to produce Treasury 224 repoorts, distribute Treasury Trust Fund Accounts, process cancelled checks, perform payroll reconciliations, disburse funds for garnishments, and make payments for bonds, allotments and Electronic Funds Transfers.

C. The Office of Personnel Operations. Directs and manages the personnel and payroll operations which are performed centrally at the Department level and those which are performed at the Operating Division level for the Office of the Secretary, the Office of Human Development Services and the Office of Community Services. Provides training, career development and counseling service to HHS managers and employees who work in the Southwest area of the District of Columbia. Maintains liaison with the Regional Personnel Offices in order to provide technical assistance, to encourage efficiencies and to advise the Assistant Secretary on resource allocations and significant staff changes. Provides policy, direction and guidance to HHS officials and serves as HHS liaison to central management agencies on executive personnel issues, on training and career developement issues and on the management of Federal advisory committees.

1. Division of Personnel and Payroll Operations. Provides secondary personnel policy for the Office of the Secretary, the Office of Human Development Service and the Office of Community Services. Also provides to managers in those organizations advice and assistance in their personnel management activities including work force planning, recruitment, selection, position management, performance management, incentive awards, employee relations and labor management relations.

Provides personnel administrative services for the Headquarters components of those organizaitons as well as for the non-clerical staff of the Office of the Inspector General in the field. Personnel administrative services include the exercise of appointing authority, position classification, awards authorization, training authorization and personnel action procesing and recordkeeping. Administers the Department's centralized payroll system, performs payroll accounting functions, and maintains records related to pay and leave.

2. Division of Executive Personnel and Career Development. Provides staff support to the Secretary in the management of the Senior Executive Service, other executive resources, non-career appointments under Schedule C, and Federal advisory committees throughout the Department. Provides policy, requirements and guidance to HHS officials and serves as HHS liaison to central management agencies on executive personnel matters, on executive and career development policies and programs and on the management of Federal advisory committees. Executive and career development programs include SES Candidate Development Programs, the Presidential Management Intern Program, the HHS Management Intern Program, the Women's Executive Leadership Program, and the Women's Management Training Initiative. Administers the SES Candidate Development Program and other selected programs on a Department-wide basis. Operates a training center, arranges academic courses, workshops, seminars and self-instructional exercises to meet the needs of HHS employees and managers in the Southwest area of the District of Columbia. Provides advisory and facilitative services to HHS managers who are interested in organizational development and productivity improvement.

3. Technical Services Center. Provides direction, technical assistance, standard operating procedures, manuals and training to persons who are users or customers of the personnel and payroll computer systems in use Department-wide. Diagnoses problems encountered in the processing of personnel and payroll transactions. Prepares management reports on personnel and payroll caseloads, error rates, unit costs, production interruptions, etc.

Devises solutions to systemic problems and inefficiencies by modifying operating procedures, by requesting specific design and programming changes to the automated systems, or by other means. Contributes to the development of user requirements for system changes by evaluating the impact of proposed changes on systems' users and customers. Maintains up-to-date instructions and manuals for TDCS operators, time-keepers, designated agents, payroll liaison persons and other persons who input data or who use output from the personnel and payroll systems.

4. Employee Information and Assistance Center. Provides a variety of services to employees in the Southwest area of the District of Columbia. Includes the Southwest Employee Counseling Services Unit which provides confidential referrals for those employees needing professional help for substance abuse, emotional or personal problems which are affecting their job performance. Provides information and counseling to employees about career planning, retirement and employee benefits. Conducts orientation sessions for new employees and exit interviews for employees who are leaving the Department. Prepares responses to written inquiries about employment opportunities within HHS and provides information to the public about open vacancy announcements and application procedures.

D. The Office of Human Resources Progams. Provides leadership and coordination in the development, interpretation and assessment of Departmental human resource programs and policies. Plans and develops programs and provides technical advice to Operating Divisions and Regional Offices. Coordinates the development and issuance of all personnel program issuances. Serves as focal point of liaison with OPM, EEOC, GAO, MSPB, and the Department of Labor.

1. Division of Program Coordination. Provides direction for the development and issuance of human resource program regulations and instructions throughout the Department. Manages the system for communicating program information. Provides technical advice and assistance on human resource program legislative or regulatory matters. Formulates regulations and instructions and serves as the central HHS reference point for inquiries on employee conduct and discipline, nonbargaining unit employee grievances, and the Privacy and Information Acts as those Acts pertain to human resource records.

Develops internal control policies for the personnel function. Coordinates the development and approval of all Department issuances in the Personnel Manual System, including those pertaining to general personnel provisions; employment; employee performance and utilization; position classification, pay, and allowances; attendance and leave; personnel relations and services; insurance and annuities; the Senior Executive Service; and miscellaneous programs.

2. Division of Pay and Performance Programs. Formulates and oversees the implementation of Department-wide programs, policies, regulations, and procedures pertaining to salary and wage administration, employee benefits, position management, classification, incentive awards and performance management, including pay for performance. Serves as the central HHS reference point for inquiries, guidance and interpretation for these functional areas. Maintains liaison with the Office of Personnel Management and other departments and agencies with respect to these areas. Conducts job analyses of occupations or families of positions in order to develop and publish model performance standards, model rating schedules, and classification guides.

3. Division of Employment Program. Formulates and oversees the implementation of Department-wide programs, policies, regulations, and procedures pertaining to recruitment, staffing, and examining; special employment program; and organizational development. Directs and coordinates efforts to expand applicant pools and otherwise to increase appropriately the selection, training and placement of employees from specified target groups. Develops policies designed to prepare managers to create work environments free of prohibited discrimination. Directs or facilitates special programs (professional development seminars, exhibits, commemorations, etc.) which enhance management and employee knowledge of the benefits of a pluralistic work force. Carries out work force adjustment and forecasting studies and employment policy analysis. Serves as the central HHS point of contact for inquiries, guidance and interpretation for these functions. Maintains liaison with the Office of Personnel Management and other departments and agencies with respect to these matters.

4. Division of Program Assessment. Responsible for both onsite and remote monitoring of the Department's human resource program. Conducts personnel management and administrative reviews and studies to determine quality of human resource programs and to assess compliance with OPMA and Department

program directions. Develops system to analyze and assess policies and statistical trends affecting human resource program and the personnel function throughout the Department. Serves as the cental HHS point of contact for guidance in human resource program assessment.

E. The Office of Human Relations (OHS). Provides leadership in assuring the integrity, effectiveness, and impartiality of the operation of the Department's discrimination complaints, grievances, and merit systems investigations, and in improving productivity in participation in the formulation and implementation of personnel policies, practices and matters affecting their working conditions by assuring management use of and compliance with the Federal Labor Relations program (5 U.S.C. 71). Provides staff support and counsel to the Operating Divisions, Regional Offices, the ASPER, the Under Secretary, and the Secretary on the operation of these processes. Establishes, implements, and directs programs for discrimination complaint intake, investigation and adjudications; for grievance reconsiderations; and for disposition of complaints involving alleged prohibited personnel practices and merit systems violations. Provides leadership in the identification and implementation of methods of resolving management-employee conflcts. Conducts reviews and other assessments of existing conflict resolution processes to identify opportunities for improvement of human relations within the Department; recommends changes to, or modifications of, existing processes where appropriate.

1. Management Information/ Operations Support Staff. Develops and maintains a Department-wide case management information system for the processing of discrimination complaints, agency grievance reconsiderations, merit systems investigations, labor-management relations matters, and cases under jurisdiction of the Civil Rights Reviewing Authority.

Provides centralized planning, analysis, and evaluation of OHR production and management control systems. Provides internal management of resource planning and utilization. Develops and maintains a system for receipt and control of all cases under OHR jurisdiction.

2. Coordination, Liaison, and Advisory Services Staff. Develops guidance regarding the Department's operation of the discrimination complaint process of the agency grievance reconsideration process, of merit systems and prohibited personnel practice investigations, of appropriate labor-management relations matters, and of the Civil Rights Reviewing Authority; develops and coordinates the implementation of methods for reducing conflict in Departmental workplaces; recommends techniques for reducing complaint and grievance rates; reviews compliant and grievance data to identify opportunities for improvement of human relations within the Department.

Monitors and disseminates administrative and judicial case law concerning employment discrimination, merit systems matters, prohibited personnel practices, and labor-management relations matters; develops, coordinates, and provides guidance on discrimination complaint hearings, appeals, remands, class complaints, and attorney's fees; conducts, participates in and oversees Departmental training with respect to discrimination complaint counseling and investigation, conciliation and mediation, and management representation, including negotiation and third-party litigation; coordinates liaison with the Office of Human Resource Programs, OGC, EEOC, OPM, FLRA, and DOJ on all matters within the jurisdiction of OHR.

Reviews proposed OPDIV and STAFFDIV issuances covering the processing of complaints of discrimination and the handling of appropriate labor-management relations matters; develops and maintains systems for communicating guidance on matters under OHR jurisdiction; coordinates the activities of OHR components.

3. Investigations Division. Receives all individual complaints of discrimination, identifies issues acceptable for processing; investigates and makes reommendations for disposition of complaints involving alleged prohibited personnel practices and merit systems violations; develops and maintains capability for investigation of discrimintion complaints through use of contract investigations, through invetigations conducted by other Federal agencies on a reimbursable basis, and through use of in-house staff.

Participates in initiatives, such as use of mediation techniques, directed toward expeditious and amicable resolution of discrimination complaints; where appropriate, conducts analysis of complaint file and recommends issuance of proposed dispositon; participates in development of other innovative methods of alternative dispute resolution.

4. Analysis and Adjudications Division. Drafts all final Departmental decisions on compliants of discrimination; negotiates and coordinates settlements with OGC and, where appropriate, with OPDIV and STAFFDIVS; recommends corrective and remedial actions.

Provides legal assistance and guidance to ASPER in connection with discrimination complaints adjudications; prepares proposed dispositions of complaints presenting conflicts of interest concerning OPDIV and STAFFDIV officials; receives and impartially examines requests for reconsideration of decisions issued under the Department's formal grievance system; carries out responsibilities under Civil Rights Reviewing Authority.

5. Labor-Management and Employee Relations Division. Formulates and oversees the implementation of Department-wide policies, regulations, delegations and procedures pertaining to labor-management and employee relations; serves as the central HHS reference point for inquiries, guidance, research and interpretation of labor-management and employee relations issues; acts as HHS representative with the Office of Personnel Management, the Federal Labor Relations Authority, management officials in Federal, state, local, and private sector organizations and labor unions and other employee organizations at the international and national levels.

Administers HHS national consultation program with appropriate unions under 5 USC 7113; administers HHS labor agreement approval process as required by 5 USC 7114; coordinates HHS dues withholding program as required by 5 USC 7115; coordinates HHS level duty to bargain obligation including developing and arguing compelling need and Agency Head negotiability determination as required by 5 USC 7117.

Participates in development and implementing of cooperative labor-management employee relations programs throughout HHS to achieve HHS management and OHR objectives; identifies information and coordinates indexing and dissemination through OHR management information systems; act as representative for HHS in third party processes involving Department-wide labor-management and employee relations issues; provides leadership in developing and maintaining effective and innovative management representation by labor-management and empoyee relations professionals Department-wide.

F. The Office of Special Initiatives. Provides leadership and direction to

research and demonstration projects and programs falling within the ASPER's functional scope. Provides technical assistance and management support to the ASPER and to agency and interagency task forces and special study projects and policy research efforts sponsored by the ASPER. Performs the full range of Department protocol support services for the Secretary, and serves as the Department incentive awards office.

Reparesents the Assistant Secretary and provides resource management services in all budgetary, financial and ceiling control matters to ensure the efficiency of OS Headquarters and field personnel administration resourcs. Assista the Assistant Secretary in the formulation of plans and objectives and the control and evaluation of ASPER's organizational performance at the Headquartes and in the field. Provides administrative support to the Assistant Secretary in such areas as correspondence control, space allocation, property and acquisition management, internal controls and organizational staffing.

Dated: May 13, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-12131 Filed 5-17-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85M-0196]

Allergan Pharmaceuticals, Inc.; Premarket Approval of Allergan Heat Disinfection Unit, Model No. ALS-IV

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Pharmaceuticals, Inc., Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Allergan Heat Disinfection Unit, Model No. ALS-IV. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 19, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On November 2, 1984, Allergan Pharmaceuticals, Inc., Irvine, CA 92715, submitted to CDRH an application for premarket approval of the Allergan Heat Disinfection Unit, Model No. ALS-IV. The heat disinfection unit is indicated for use in conjunction with saline solution in the heat disinfection of soft (hydrophilic) contact lenses. On February 8, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed the application and recommended approval of it. On April 12, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and accessories for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition ot the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and accessories for use with such lenses are now regulated as class III device (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, the sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or accessories for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 19, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C 360(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelgated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 13, 1985.

John C. Villforth,

Director, Center for Devises and Radiological Health.

[FR Doc. 85-12033 Filed 5-17-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0195]

DePuy®, Inc., Premarket Approval of the Rotating Platform of the New Jersey Total Knee System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by DePuy®, Inc., Warsaw, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Rotating Platform of the New Jersey Total Knee System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 19, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On August 16, 1983, DePuy®, Inc., Warsaw, IN 46580, submitted to CDRH an application for premarket approval of the Rotating Platform of the New Jersey Total Knee System. The device is a patello-femoro-tibial, semi-constrained knee prosthesis with a polymer/metal/polymer, moving meniscal bearing. The device is indicated for cemented use in cases of osteorthritis, rheumatoid arthritis, and for revision of failed knee prostheses. The Rotating Platform of the New Jersey Total Knee System is indicated for patients who are 41 years of age or older. On July 11, 1984, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 12, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Carl A. Larson (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of reivew to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 19, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 13, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-12032 Filed 5-17-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0194]

DePuy®, Inc.; Approval of Supplemental Premarket Approval Application for the Sliding Meniscal Bearing of the New Jersey Total Knee System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by DePuy®, Inc., Warsaw, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Sliding Meniscal Bearing of the New Jersey Total Knee System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by June 19, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On April 12, 1985, CDRH approved an application for premarket approval of the Rotating Platform of the New Jersey Total Knee System (Docket No. 85M-0195). The application was submitted by DePuy®, Inc., Warsaw IN 46580. Elsewhere in this issue of the **Federal Register,** CDRH is announcing the approval of the application. On August 16, 1983, DePuy®, Inc., submitted to CDRH a supplemental application for premarket approval of the Sliding Meniscal Bearing of the New Jersey Total Knee System. The device is a patello-femoro-tibial, semi-constrained knee prosthesis with a polymer/metal/polymer, moving meniscal bearing. The device is indicated for cemented use in cases of osteoarthritis and rheumatoid arthritis. The Sliding Meniscal Bearing of the New Jersey Total Knee System is indicated for patients who are 41 years of age or older. On July 11, 1984, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On April 12, 1985, CDRH approved the supplemental application by a letter to

the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Carl A. Larson (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this supplemental application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petition shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 19, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 13, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–12031 Filed 5–17–85; 8:45 am]

BILLING CODE 4160-01-M

Crufomate Liquid (Ruelene Wormer Drench); Withdrawal of Approval of NADA

Correction

In FR Doc. 85–10765 appearing on page 19247 in the issue of Tuesday, May 7, 1985, make the following correction: In the second column, **SUPPLEMENTARY INFORMATION,** seventh line, "1986" should read "1965".

BILLING CODE 1505-01-M

[Docket No. 85N–0128; DESI 8943]

Oral Acetazolamide; Drugs for Human Use; Request for Revised Labeling

Correction

In FR Doc. 85–9176, beginning on page 15229 in the issue of Wednesday, April 17, 1985, make the following correction: On page 15230, in the first column, in the second line of the last paragraph, "100 mg." should have read "1000 mg."

BILLING CODE 1505-01

Health Care Financing Administration

Medicaid Program; Notice of Hearing to Reconsider Disapproval of Two Pennsylvania State Plan Amendments

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 25, 1985, in Philadelphia, Pennsylvania to reconsider our decision to disapprove Pennsylvania State Plan Amendments 84–11 and 84–18.

Closing date: Requests to participate in the hearing as a party must be received by June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove portions of two Pennsylvania State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Pennsylvania's proposed copayment provisions violate section 1905(a) of the Social Security Act.

Pennsylvania's plan would require the Medicaid agency to reimburse the Medicaid recipient for copayments paid in excess of $90.00 in a 6-month period. HCFA has determined this provision would violate section 1905(a) of the Act which prohibits direct payment of funds by the State to a Medicaid recipient.

The notice of Pennsylvania announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendments read as follows:

Mr. Brian T. Baxter,

Executive Deputy Secretary, Department of Public Welfare, Commonwealth of Pennsylvania, P.O. Box 2675, Harrisburg, Pennsylvania 17105

Dear Mr. Baxter: This is to advise you that your request for reconsideration of the decision to disapprove portions of Pennsylvania State Plan Amendments 84–11 and 84–18 was received on April 15, 1985. You have requested a reconsideration of whether these plan amendments, which set forth the Commonwealth's proposed copayment provisions, conform to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on June 25, 1985, at 10 a.m., in

Room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis,

Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 14, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–12070 Filed 5–17–85; 8:45 am]

BILLING CODE 4120–03–M

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Washington State Plan Amendment

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 25, 1985 in Seattle, Washington, to reconsider our decision to disapprove Washington State Plan Amendment 84–20.

DATE: Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligiblity, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Washington State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Washington's amendment which provides for the use of the State's community property laws to determine ownership of income for purposes of determining financial eligibility under the Medicaid program violates sections 1902(a)(10)(A)(ii), 1902(a)(10)(C)(i)(III), 1902(a)(17) and regulations at 42 CFR 435.721 and 435.723.

Sections 1902(a)(10)(A)(ii) and 1902(a)(17)of the Act and regulation at 42 CFR 435.721 and 435.723 prescribe financial eligibility criteria under Medicaid. The requirements at 435.721(d) relating to optional categorically needy groups provide that States like Washington which provide Medicaid eligibility to all SSI recipients and to State supplement recipients, ". . . must use the SSI deductions from income and resources and budgeting methods set forth in 20 CFR Part 416. . . ."

Regulations at 20 CFR Part 416 specify the methodology which States must apply in determining what is income and how it affects eligibility, as well as how spousal income affects eligibility, i.e., deeming of income. The SSI methodology applies uniform nationwide rules without regard to State law concerning community property. Therefore, HCFA has determined that the Washington proposal to use its community property rules in determining Medicaid eligibility violates the requirements at 42 CFR 435.721(d).

In addition, regulations at 42 CFR 435.723 prescribe the financial responsibility of spouses in determining Medicaid eligibility. 42 CFR 435.723 (c) and (d) impose time limits for counting spousal income as the income of the applicant/recipient where the spouses cease to live together. Under the Washington proposal spousal income is subject to the community property rule as long as the individuals are married, regardless of whether they live together or separately. Thus, HCFA has determined Washington State Plan Amendment 84–20 violates the requirements at 42 CFR 435.723.

Also, section 1902(a)(10)(C)(i)(III) relating to medically need eligibility of aged, blind and disabled individuals requires that in determining income and resource eligibility the methodology to be employed shall be the same methodology which would be employed under SSI. Washington proposes to use its community property rules in determining Medicaid financial eligibility rather than the SSI methodology. Therefore, HCFA has determined the proposed plan amendment violates section 1902(a)(10)(C)(i)(III) of the Act.

The notice to Washington announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Gerald J. Reilly,

Director, Division of Medical Assistance, Department of Social and Health Services, Mail Stop LK–11, Olympia, Washington

Dear Mr. Reilly: This is to advise you that your request for reconsideration of the decision to disapprove Washington State Plan Amendment 84–20 was received on April 18, 1985. You have requested a reconsideration of whether this plan amendment, which provides for the use of the State's community property laws to determine ownership of income for purposes of determining financial eligibility under the Medicaid program conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on June 25, 1985 at 10 a.m., in Room 470–472, 2901 Third Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 14, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–12071 Filed 5–17–85; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Clinical Trials Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, June 25–28, 1985 at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public on June 25, 1985, from 1:00 p.m. to approximately 1:30 p.m. to discuss adminstrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 25 from approximately 1:30 p.m. to recess, and from 8:00 a.m. on June 26 to adjournment on June 28, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy. Therefore, this meeting is concerned with matters exempt from mandatory disclosure under section 552b(c)(4) and 552b(c)(6) of Title 5, U.S. Code.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, NHLBI, National Institutes of Health, Bethesda, Maryland, 20205, Building 31, Room 4A–21, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members. Dr. Norman S. Braveman, Contracts, Clinical Trials and Training Reveiw Section, Division of Extramural Affairs, NHLBI, Westwood Building, Bethesda, Maryland 20205, Room 550B, phone (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, 13.838, Division of Lung Diseases, and 13.839 Division of Blood Diseases and Resources National Institutes of Health)

Dated: May 2, 1985.

[FR Doc. 85–12060 Filed 5–17–85; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Electroconvulsive Therapy; Meeting

Notice is hereby given of the Consensus Development Conference on "Electroconvulsive Therapy" by the National Institute of Mental Health and the NIH Office of Medial Applications of Research. The conference will be held June 10–12, 1985 in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

Electroconvulsive Therapy (ECT) is a treatment for severe mental illness—primarily severe depressions—in which electricity applied to the scalp passes through the brain, producing a generalized convulsion.

Although ECT has been in use for more than 45 years, it remains a controversial procedure. Issues of concern for the practitioner, patient and public have been raised about whether, when, how and for whom to use ECT, and about possible long-term effects. Recently, scientists have intensified reserch efforts to better understand ECT. Studies have focused on clarifying mechanisms of action; determining optimum mode of administration; establishing the extent of adverse effects, particularly on brain functioning and memory; and evaluating effectiveness in a variety of mental disorders. These endeavors have produced a substantial data base relevant to the issues of concern regarding the effectiveness and safety of ECT.

In an effort to resolve concerns about ECT, this conference has been scheduled. Following one and a half days of presentations by experts in the relevant fields, a consensus panel consisting of prepresentatives from psychiatry, psychology, neurology, epidemiology and the public will consider the scientific evidence and formulate a consensus statemet responding to these key questions:

- What is the evidence that ECT is effective for patients with specific mental disorders?
- What are the risks and adverse effects of ECT?
- What factors should be considered by the physician and patient in determining if and when ECT would be an appropriate treatment?
- How should ECT be administered to maximize benefits and minimize risks?
- What are the directions for futue research?

On the third day, Consensus Panel Chairman, Robert M. Rose, M.D., Professor and Chairman, Department of Psychiatry and Behavioral Sciences, University of Texas Medical Branch, Galveston, Texas, will read the Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Ms. Michele Dillon, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468–6555.

Dated: May 10, 1985.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 85–12063 Filed 5–17–85; 8:45 am]

BILLING CODE 4140–01–M

General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), June 24–26, 1985, Linden Hill Hotel, 5400 Pooks Hill, Bethesda, MD 20814.

The meeting will be open to the public on June 25, 1985 from 8:30 a.m. to approximately 10:30 a.m. during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the CLINFO System, possible new technologies for GCRCs, and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 24, 1985, from 6:30 p.m. until recess, on June 25, 1985 from 10:30 a.m. to recess and from approximately 8:00 a.m. to adjournment on June 26, 1985 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers

Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: May 2, 1985.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 85–12061 Filed 5–17–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92–463, notice is hereby goven of meetings of the review committees of the National Institute of Child Health and Human Development for June 1985.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, Scientific Review Program, and executive secretaries, for approximatetly one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, these meetings will be closed to the public for the review, discussion, and evaluatfon of individual grant applications. These appications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee
Executive Secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496–1696
Date of Meeting: June 18–19, 1985
Place of Meeting: Londow Building, Conference Room A
Open: June 18, 1985, 9:00 a.m.–10:00 a.m.
Closed: June 18, 1985, 9:00 a.m.–adjournment
Name of Committee: Maternal and Child Health Research Committee
Executive Secretary: Dr. Jane Showacre, Room 6C03, Landow Building, Telephone: 301, 496–1696
Date of Meeting: June 25–26, 1985
Place of Meeting: Landow Building Conference Room A
Open: June 25, 1985, 9:00 a.m.–10:00 a.m.
Closed: June 25, 1985, 10:00 a.m.–5:00 p.m.; June 26, 1985, 9:00 a.m.–adjournment
Name of Committee: Mental Retardation Research Committee
Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496–1696
Date of Meeting: June 27–28, 1985
Place of Meeting: Landow Building, Conference Room A
Open: June 27, 1985, 9:00 a.m.–10:00 a.m.
Closed: June 27, 1985, 10:00 a.m.–5:00 p.m.; June 28, 1985, 9:00 a.m.–adjournment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: May 2, 1985.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 85–12062 Filed 5–17–85; 8:45 am]

BILLING CODE 4140–01–M

Vision Research Program Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Program Committee, National Eye Institute, June 27–28, 1985, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 27 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on June 27 until recess and on June 28 from 8:30 a.m. until adjourment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A–03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of the meeting and rosters of committee members.

Dr. Catherine Hemley, Review and Special Projects Officer, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A–06, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–5561, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorder of Visual Research; National Institutes of Health)

Dated: May 2, 1985.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 85–12058 Filed 5–17–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–85–798; FR–2111]

Redelegation of Authority

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

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates authority to five named attorneys in The Office of General Counsel to convey and to execute certain single family mortgage documents. It will permit more expeditious handling of these documents.

EFFECTIVE DATE: March 22, 1985.

FOR FURTHER INFORMATION CONTACT: Stuart E. Malmon, Office of General Counsel, Room 9262, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755–7080. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title I, section 2 (c)(2) and Title II, 204(g) of the

National Housing Act (12 U.S.C. 1703 and 1701(g)) empower the Secretary of Housing and Urban Development to delegate his or her authority "to convey and to execute deeds of conveyance, deeds of release, assignments and satisfactions of mortgages and any other written instrument relating to real or personal property or any interest therein" acquired by the Secretary under the National Housing Act. These responsibilities were delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, with authority to redelegate, on June 18, 1976, at 41 FR 24755.

The current Redelegation of Authority pertaining to the conveyance and execution of Title II single family documents was published on April 7, 1980, at 45 FR 23525. This new Redelegation amends the current one by updating the list of attorneys authorized to convey and to execute certain single family documents. In addition, this Redelegation expands the current Redelegation to include the authority to convey and to execute documents under Title I of the National Housing Act.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates as follows:

Section A: Authority redelegated. David E. Pinsky, Stuart E. Malmon, John P. Witsil, Harry F. Davies and Robert S. Ernst, each of whom is an attorney in the Office of the General Counsel, is each hereby designated Assistant Federal Housing Commissioner and is redelegated the authority to convey and to execute deeds of conveyance, deeds of release, assignments, satisfactions of mortgages and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the National Housing Act, 12 U.S.C. 1701 *et seq.*

Section B: Supersedure. This Redelegation of Authority supersedes all previous Redelegations of Authority which may conflict with the authority redelegated herein.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Secs. 2(c)(2) and 204(g) of the National Housing Act, 12 U.S.C. 1703 and 1701(g); 36 FR 5005 (1971); 41 FR 24755 (1976))

Dated: March 22, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-12069 Filed 5-17-85; 8:45 am]

BILLING CODE 4210-27-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by the University of Wyoming

The Commission has received a request from the University of Wyoming for permission to use the Commission's 1978 to 1983 carload waybill sample to conduct a study entitled "New Concepts for Improving Oil Recovery in CO_2 Flooding." In conducting this study, which is being performed under contract with the Department of Energy, they will examine the economic prospects for Wyoming fuel production which depend on the delivered price of competing fuels. Since transportation costs may constitute a large component of the delivered price of competing fuels, the University requires data on railroad shipments throughout the United States that include output by commodity class, shipment characteristics, rates, and density of track usage.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (49 FR 40328, September 6, 1983.)

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser, (202) 275-0907.

James H. Bayne,

Secretary.

[FR Doc. 85-12054 Filed 5-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

May 15, 1985.

The Office of Management and Budget (OMB) has been sent 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. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether Section 3504(h) of Public Law 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Oficer of your intent as early as possible.

Department of Justice Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

• New Collection

(1) Larry E. Miesse, 202/633-4312

(2) Federal Bureau of Investigation, Department of Justice
(3) Arson incident report
(4) DO–84
(5) On occasion
(6) State and local governments. This information is needed to collect nationwide arson data from fire service agencies and other affiliates to prepare annual Congressionally mandated report.
(7) 102,000 respondents
(8) 25,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) National Institute of Corrections, Bureau of Prisons, Department of Justice
(3) Literacy programs for adult offenders
(4) None
(5) One time
(6) State or local governments. This survey will collect information not currently available from state and federal prisons on literacy programs, and be used as a basis for identifying quality programs for replication.
(7) 513 respondents
(8) 513 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Bureau of Justice Assistance, Office of Justice Programs, Department of Justice
(3) Criminal justice block grants
(4) None
(5) Annually
(6) State or local governments. Information collected to comply with the requirement of the Justice Assistance Act that states and local recipients of block grant funds submit performance reports. Information will be used in a report to the President and the Congress as required by the Act.
(7) 600 respondents
(8) 600 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

• Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state
(4) N–577
(5) On occasion
(6) Individuals or households. Section 343(c) of the I&N Act provides for issuance of a special certificate of naturalization to a naturalized citizen for use only for the purpose of obtaining recognition as a United States citizen by a foreign state. Data is used to determine eligibility and issuance of certificate.
(7) 300 respondents
(8) 75 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Agency Clearance Officer.

[FR Doc. 85–12065 Filed 5–17–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85–30]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Executive Subcommittee.

DATE AND TIME: June 19, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Raymond S. Colladay, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/453–2695).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the space research and technology activities of the Space Systems and Technology Advisory Committee. The Subcommittee, Chaired by Mr. Robert L. Walquist, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

June 19, 1985.

8:30 a.m.—Chairperson's Remarks.
9:00 a.m.—Committee Reorganization Status.
10:00 a.m.—Fiscal Year 1987 New Initiatives.
12:30 p.m.—NASA Responses to Recommendations.
1:30 p.m.—Identification of Candidate Study Areas and Agenda Development.
3:00 p.m.—General Topics for Discussion.
4:00 p.m.—Summary of Meeting Results with Office of Aeronautics and Space Technology Management.
5:00 p.m.—Adjourn.

Richards L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

May 13, 1985.

[FR Doc. 85–12028 Filed 5–17–85; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on June 5, 1985, from 9:00 a.m.–10:30 p.m. in room 716; June 6, 1985, from 9:00 a.m.–5:30 p.m. in room 716; June 7, 1985, from 9:00 a.m.–5:30 p.m. in room 7:30; and June 8, 1985, from 9:00 a.m.–1:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 7, from 9:00 a.m.–4:00 p.m. to discuss policy and guideline.

The remaining sessions of this meeting on June 5, from 9:00 a.m.–10:30 p.m.; June 6, from 9:00 a.m.–5:30 p.m.; June 7, from 4:00–5:30 p.m.; and June 8, from 9:00 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Mangement Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 14, 1985.

[FR Doc. 85–12159 Filed 5–16–85; 11:14 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Iowa Electric Light and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c)(4) to the Iowa Electric Light and Power Company (the licensee), for the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The exemption would grant the licensee a schedular deferment from the provisions of Appendix R, Sections III.G.3 and III.L, fire protection of the equipment used for safe shutdown capability, from the current Cycle 8 refueling outage to the restart after the Cycle 9 refueling outage (expected in March 1987). The exemption is responsive to the licensee's application dated April 5, 1985.

The Need for the Proposed Action

Appendix R, Section III.G requires a licensee authorized to operate a nuclear power reactor to provide fire protection for equipment used for safe shutdown by means of separation and barriers or provide alternative safe shutdown capability. Section III.L requires that alternative and dedicated shutdown capability provided for specific fires shall be able to (a) achieve and maintain subcritical reactivity conditions in the reactor; (b) maintain reactor coolant inventory; (c) achieve and maintain hot shutdown; (d) achieve cold shutdown in 72 hours; and (e) maintain the cold shutdown condition thereafter. The schedular requirements of 10 CFR 50.48(c)(4) call for the implementation of modifications before startup after the earliest of the following events commencing 180 days after Commission approval:

(1) The first refueling outage;

(2) Another planned outage that lasts for at least 60 days; or

(3) An unplanned outage that lasts for at least 120 days.

In a submittal dated April 5, 1985, the licensee requested that the implementation schedule for the proposed fire protection modification at Duane Arnold Energy Center be extended to permit the licensee to modify the Alternate Shutdown System so that the DAEC can achieve and maintain hot shutdown without any need to replace control power fuses. The licensee stated that the problem of possible loss of fuses in the event of a fire was recently identified. Modification effort will involve adding automatic backup fuses to five transfer circuits. Such modifications are not possible during the current refueling outage, which is scheduled to end in May 1985. The licensee states that the modification involves considerable design effort an requires the same engineers who are presently dedicated to the installation of the present alternate shutdown capability. Additionally, the procurement of transfer switches is estimated by the licensee to take about a year.

During the interim period between the current and the next refueling outage, the licensee has proposed to write procedures to require the operators to replace blown fuses if required as a result of a fire. Additionally, the licensee has proposed to assure that the replacement fuses will be available to operators. These measures are being evaluated by the staff.

Environmental Impacts of the Proposed Action

By using reasonable interim compensatory measures, the proposed exemption will provide a degree of fire protection such that there is no significant increase in the risk to this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previoulsy considered in the Final Environmental Statement dated March 1973 for the Duane Arnold Energy Center.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated April 5, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland, this 13th day of May, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing

[FR Doc. 85–12097 Filed 5–17–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–331]

Iowa Electric Light & Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.J to Iowa Electric Light and Power Company (the licensee), for the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirements that the emergency lighting units with at least 8-hour battery power supply be provided for all areas needed for operation of the safe shutdown equipment. As a result of an internal review, the licensee found that it could

not assure a battery power source to be available after a fire for more that 90 minutes. The licensee has, therefore, requested an exemption to permit the use of Divisions I and II diesels to supply power to the fire emergency lighting system and for safe shutdown after a fire.

The Need for the Proposed Action

The proposed exemption is needed because the proposed use of the Divisions I and II diesel generators for safe shutdown facility lighting for the DAEC facility, as described in the licensee's request, represent the most practical method for meeting the intent of Appendix R. Literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide lighting in the emergency situation equivalent to that provided by Appendix R for the shutdown of the DAEC facility in the event of a fire. Consequently, the probability of the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement dated March 1973 for the Duane Arnold Energy Center.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated January 2, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland, this 13th day of May, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-12099 Filed 5-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the technical requirements of Appendix R to 10 CFR 50 to Wisconsin Electric Power Company (the licensee), for the Point Beach Nuclear Plant Units 1 and 2, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The Exemptions would allow alternatives to the following requirements of 10 CFR 50 Appendix R, Section III.G:

1. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles of fire hazards and an automatic fire suppression system in the fire area for the Point Beach Unit 1 Motor Control Center Room (fire zone 1), the Component Cooling Water Pump Room (fire zone 3), and the Point Beach Unit 2 Motor Control Center Room (fire zone 4).

2. Fire detection and a fixed fire suppression system for the Containment Spray Additive and Monitor Tank Room (fire zone 7) and an automatic fire suppression system for the Safety Injection and Containment Spray Pump Room (fire zone 2).

3. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards for the Auxiliary Feedwater Pump Room (fire area 5) and the Cable Spreading Room (fire area 8).

4. Complete independence from cables, systems, or components in the Cable Spreading Room (fire area 8) for the alternative shutdown capability in that area.

The exemptions are in partial response to the licensee's application for technical exemptions dated June 30, 1982, as supplemented by letters dated September 29 and October 11, 1982, February 7 and 25, April 28, May 31, July 20 and October 26, 1983, April 4 and 27, 1984 and January 3 and 9, 1985. The remainder of the licensee's exemption requests are still under staff review.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires would not be increased and the post-fire radiological releases would not be greater than previously determined. Neither would the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Point Beach Nuclear Plant Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemptions dated June 30, 1982, and the supplements dated September 29 and October 11, 1982, February 7 and 25, April 28, May 31, July 20 and October 26, 1983, April 4 and 27, 1984 and January 3 and 9, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland, this 14th day of May, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-12098 Filed 5-17-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautical Policy Review Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463], as amended, notice is hereby given that the Aeronautical Policy Review Committee (APRC) will hold a meeting on Tuesday and Wednesday, May 21-22, 1985. The meeting will be held in Room 5104 of the New Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. The meeting will commerce at 1:00 PM and end at 6:00 PM on May 21 and will commerce at 8:00 AM and end at 12:00 noon on May 22.

The meeting is for the purpose of Committee review, discussion, evaluation and recommendation of U.S. Government plans and programs concerning aeronautical research and technology development.

The proposed agenda for the meeting of the Aeronautical Policy Review Committee is as follows:

Tuesday, May 21, 1985

Review and discussion of the Committee's National Aeronautical R&D Goals report.

Wednesday, May 22, 1985

Review and discussion of technology roadmaps.

In accordance with the determination of the President's Science Advisor, these sessions will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

Further information with referred to this meeting can be obtained from Mr. Robert Williams, Committee Executive Secretary, Office of Science and Technology Policy, Washington, D.C. 20506 or call (202) 395-5736.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

May 13, 1985.

[FR Doc. 85-12155 Filed 5-17-85; 8:45 am]

BILLING CODE 3170-01-M

Laboratory Animal Welfare; U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training

AGENCY: Office of Science and Technology Policy.

ACTION: Publication of U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training.

SUMMARY: The purpose of this Federal Register notice is to publish the adoption of the U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training by U.S. Government agencies that either use or require the use of experimental animals. The following Interagency Research Animal Committee member agencies are committed to these Principles as published: The Department Health and Human Services (HHS) the Department of Agriculture, the Department of Defense, the Department of State, the Department of the Interior, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and the Veterans Administration. Components of the Public Health Service within the HHS that are represented on the committee include the Alcohol, Drug Abuse, and Mental Health Administration, the Centers for Disease Control, the Food and Drug Administration, the National Institutes of Health, and the Office of International Health.

DATE: The directive shall become effective on June 1, 1985.

ADDRESS: Requests for additional information should be addressed to: Dr. Thomas L. Wolfle, Executive Director, Interagency Research Animal Committee, National Institutes of Health, 9000 Rockville Pike, Building 12A, Room 4045, Bethesda, Maryland 20205.

U.S. Interagency Research Animal Committee

Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training

The development of knowledge necessary for the improvement of the health and well-being of humans as well as other animals requires *in vivo* experimentation with a wide variety of animal species. When U.S. Government agencies develop requirements for testing, research, or training procedures involving the use of vertebrate animals, the following principles shall be considered; and whenever these agencies actually perform or sponsor such procedures, the responsible institutional official shall ensure that these principles are adhered to:

I. The transportation, care, and use of animals should be in accordance with the Animal Welfare Act (7 U.S.C. 2131 et. seq.) and other applicable Federal laws, guidelines, and policies.[1]

II. Procedures involving animals should be designed and performed with due consideration of their relevance to human or animal health, the advancement of knowledge, or the good of society.

III. The animals selected for a procedure should be of an appropriate species and quality and the minimum number required to obtain valid results. Methods such as mathematical models, computer simulation, and *in vitro* biological systems should be considered.

IV. Proper use of animals, including the avoidance or minimization of discomfort, distress, and pain when consistent with sound scientific practices, is imperative. Unless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause paid and distress in other animals.

[1] For guidance throughout these Principles the reader is referred to the Guide for the Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, National Research Council.

V. Procedures with animals that may cause more than momentary or slight pain or distress should be preformed with appropriate sedation, analgesia, or anesthesai. Surgical or other painful procedures should not be performed on unanesthetized animals paralyzed by chemical agents.

VI. Animals that would otherwise suffer severe or chronic pain or distress that cannot be relieved should be painlessly killed at the end of the procedure or, if appropriate, during the procedure.

VII. The living conditions of animals should be appropriate for their species and contribute to their health and comfort. Normally the housing, feeding, and care of all animals used for biomedical purposes must be directed by a veterinarian or other scientist trained and experienced in the proper care, handling, and use of the species being maintained or studied. In any case, veterinary care shall be provided as indicated.

VIII. Investigators and other personnel shall be appropriately qualified and experienced for conducting procedures on living animals. Adequate arrangements shall be made for their in-service training, including the proper and humane care and use of laboratory animals.

IX. Where exceptions are required in relation to the provisions of these Principles, the decisions should not rest with the investigators directly concerned but should be made, with due regard to Principle II, by an appropriate review group such as an institutional animal research committee. Such exception should not be made solely for the purpose of teaching or demonstration.

Dated: May 15, 1985.

Jerry D. Jennings,

Executive Director, Office off Science and Technology Policy.

[FR Doc. 85-12059 Filed 5-17-85; 8:45 am]

BILLING CODE 4140-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Meeting

AGENCY: State Agency Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Institutional Roles
- Resource Portfolio Analysis
- BPA Action Plan
- Intertie Access Policy
- Other issues of interest to the Task Force

Status: Open

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee.

DATE: Friday, May 17, 1985 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield (503)222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-12064 Filed 5-17-85; 8:45 am]

BILLING CODE 000-00-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Requests for Consultative Medical Examination.

(2) Form(s) submitted: RL-12/ID-3 la.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Business or other for-profit, small businesses or organizations.

(6) Annual responses: 10,500.

(7) Annual reporting hours: 10,500.

(8) Collection description: Under Section 2 of the RRA and Section 2 of the RUIA disability and sickness benefits are respectively provided for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-12126 Filed 5-17-85; 8:45 am]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0482]

Norstar Capital Inc.; Issuance of a Small Business Investment Company License

On January 24, 1985, a notice was published in the **Federal Register** (50 FR 3447) stating that an application had been filed by Norstar Capital Inc., with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1985)] for a license as a small business investment company.

Interested parties were given until the close of business February 23, 1985, to submit their comments to the SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0482 on April 12, 1985, to Norsar Capital Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 7, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12104 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Licensee No. 02/02-0415]

Questech Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Questech Capital Corporation (QCC), 600 Madison Avenue, New York, New York 10022, a Federal License under the Small Business Investment Act of 1958 (Act), as amended, has filed an application

with the Small Business Administration (SBA), pursuant to § 107.903(b) of the SBA Regulations, governing small business investment (13 CFR 107.903 (1985)) for approval of a conflict of interest transaction.

Subject to such approval, QCC proposes to provide financing in the amount of $400,000 to Veraco, Inc. (Veraco), 2900 North Loop West, Houston, Texas 77092. Veraco will use $250,000 of the financing proceeds to purchase the stock of the Bloom Business Agency, Inc. (same address) from its parent company, the Bloom Companies, Inc. Veraco will use the balance of the financing proceeds ($150,000) for working capital. The Bloom Business Agency, Inc., will then become a subsidiary of Veraco.

The proposed financing is brought within the purview of Section 107.903 since Ms. S. Amber Gordon was an officer of QCC (resigned February 1985) and has been recruited to serve as the Chairperson of the Board of Veraco. Accordingly, Veraco is considered by SBA to be an associate of QCC

Notice is hereby given that any interested person may, not later than ten (10) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 7, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12103 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Notice of Application for Transfer of Ownership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a transfer of ownership of Rocky Mountain Ventures, Ltd., 315 Securities Building, Billings, Montana 59101 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

The present shareholders plan to sell 66 percent of their shares of ownership in the Licensee to Messrs. Norman M. Dean and Thomas A. Rapp, Jr. The present and proposed change in ownership is as follows:

Name	Title	Present percent of ownership	Proposed percent of ownership
Eldon E. Kuhns, 315 Securities, Billings, Montana 59101.	Chairman	70	24
James H. Koessler, 315 Securities, Billings, Montana 59101.	President	15	5
Robert M. Brown, 315 Securities, Billings, Montana 59101.	Vice President	15	5
Norman M. Dean, 1100 10th Street, Greeley, Colorado 80632.	vice President	0	33
Thomas A. Rapp, Jr., 1100 10th Street, Greeley, Colorado 80632.	Vice President	0	33

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Billings, Montana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 07, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12102 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6252; Amdt. 2]

Declaration of Disaster Loan Area; Iowa

The above numbered Designation (49 FR 2640) and amendment #1 (50 FR 4007) is amended to include the Counties of Carroll, Mitchell, and Palo Alto. All other information remains the same; i.e., the termination date for filing applications is the close of business on October 10, 1985, under presently existing regulations. This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-12108 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2190]

Declaration of Disaster Loan Area; Michigan

Marquette County in the State of Michigan constitutes a disaster area because of flooding which occurred on April 19-26, 1985. Applications for loans for physical damage may be filed until the close of business on July 5, 1985, and for economic injury until the close of business on August 1, 1985, at the address listed below. Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring Street SW., Suite 822, Atlanta, GA 30303, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219006 for physical damage and for economic injury the number is 630100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 3, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-12109 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6247; Amdt. 3]

Declaration of Disaster Loan Area; Nebraska

The above numbered Designation (49 FR 2640), Amendment #1 (49 FR 2640) and Amendment #2 (49 FR 2750) are hereby amended to include the County of Seward. All other information remains the same; i.e., the termination date for filing applications is the close of business on October 10, 1985, under presently existing regulations. This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-12110 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6301]

Designation of Economic Injury Diasaster Loan Area; New York

Lewis and Oswego Counties in the State of New York constitute a disaster area because of heavy rain, snowmelt and flooding which occurred December 29, 1984 through January 2, 1985. Eligible small businesses may file applications for economic injury assistance until the close of business on August 1, 1985, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations. The interest rate for eligible small business applicants without credit elsewhere is 4% and 11.125% for eligible small agricultural cooperative without credit elsewhere.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 3, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-12107 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before June 13, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of forms, request for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-3785.

Information Collections Submitted for Review

Title: Pass System User Questionnaire
Form No. SBA 1479
Frequency: On occasion
Description of Respondents: Small business are required to complete the user questionnaire that will be used to evaluate usefulness of the PASS system.
Annual Responses: 500
Annual Burden Hours: 250
Type of Request: New.

Title: SBIC Financial Reports
Form No. SBA 468
Fequency: Annually
Description of Respondents: Small Business Investment Companies are required to complete financial statements, with supporting schedules for review of regulatory compliance and credit analysis prior to providing financing to the SBIC.
Annual Responses: 521
Annual Burden Hours: 6773
Type of Request: Reinstatement.

Dated: May 13, 1985.

Elizabeth M. Zaich,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-12105 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0230]

Utica Investment Corp.; Surrender of License

Notice is hereby given that Utica Investment Corporation, 21st and Utica, P.O. Box 1559, Tulsa, Oklahoma 74101 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 195, as amended (the Act). Utica Investment Corporation was licensed by the Small Business Administration on February 3, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 1, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

Dated: May 8, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12106 Filed 5-17-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-5-74; Docket 42404]

Application of American Trans Air, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding American Trans Air, Inc. fit, awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATE: Persons wishing to file objections should do so no later than June 4, 1985.

ADDRESS: Objections and answers to objections should be filed in Docket 42404 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400

Seventh Street, SW., Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–5–74 is available from our Documentary Services Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85–5–74 to that address.

Dated: May 13, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–12136 Filed 5–17–85; 8:45 am]

BILLING CODE 4910–62–M

[Order 85–5–76; Docket 42682]

Application of K–Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that K-Air, Inc. continues to be fit, willing, and able to conduct charter operations as a certificated air carrier.

DATES: Persons wishing to file objections should do so no later than June 4, 1985.

ADDRESSES: Responses should be filed in Docket 42682 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755–3812.

Dated: May 13, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–12137 Filed 5–17–85; 8:45 am]

BILLING CODE 4910–62–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the New York Region

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice to Prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the New Jersey Transit Corporation are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Boonton/Montclair corridor of the New York-Northeastern New Jersey urbanized area. The EIS is being prepared in conformance with 40 CFR Part 1500, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Letitia Thompson, UMTA Region II, 26 Federal Plaza, Room 14–110, New York, New York 10278, telephone (212) 264–8162.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Public scoping meetings will be held to help establish the purpose, scope, framework, and approach for the analysis. The meeting schedule is as follows:

May 29, 1985—4:00pm to 8:30pm
Carteret School Gym, Grove Street, off Bloomfield Avenue (Parking lot on LaFrance Avenue), Bloomfield, NJ

May 30, 1985—3:00pm to 8:30pm
Glenfield School Catchings Community Suite, Maple and Bloomfield Avenues, Montclair, NJ

May 31, 1985—3:00pm to 8:30pm
Hoboken Rail Terminal, Main Waiting Room, Lackawanna Plaza, Hoboken, NJ

Staff will be available between the hours above and presentations will be given at 4:00 p.m. and 7:00 p.m.

At the scoping meetings, staff will present a description of the proposed scope of the study using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing.

Corridor Description

The Boonton/Montclair corridor is a travel corridor in northern New Jersey which is oriented to the New York City and Newark, New Jersey central business districts. The corridor is centered on the Boonton Line and Montclair Branch railroad lines through parts of Morris, Passaic, Essex, and Hudson Counties.

Alternatives

Transportation alternatives proposed for consideration in the corridor are the following:

1. Facility renovations that will allow existing Boonton Line and Montclair Branch rail service to continue to operate on a long-term basis;

2. A no-build option, under which existing Boonton Line rail service in time would not continue to operate, but instead be replaced by existing bus operations;

3. A transportation system management approach that would discontinue Boonton Line rail service and provide improved alternate bus and rail services.

4. A rail system consolidation plan that would extend the Montclair Branch approximately 1200 feet within Montclair to connect with the Boonton Line, allowing Boonton Line trains to operate via the Montclair Branch and Booton Line service to be eliminated along an 8.6 mile segment. This change would also provide direct Boonton Line rail service to the Newark central business district;

5. An alternate rail system consolidation plan that would allow Boonton Line trains to divert onto the Orange Branch (a local freight line) and then onto the Montclair Branch, permitting the discontinuance of service along a 5.4 mile segment of the Boonton Line and perhaps a 1.7 mile segment of the Montclair Branch. This change would also provide direct Boonton Line rail service to the Newark central business district.

Comments at the scoping meetings should focus on the appropriateness of these and other options for consideration in the study, not on individual preference for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, development, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meetings should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Issued on: May 14, 1985.

Richard Nasti,

Regional Administrator.

[FR Doc. 85-12038 Filed 5-17-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; American Surety and Casualty Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $250,000 has been established for the company.

Name of company: American Surety and Casualty Company
Business address: 2255 Phyllis Street, Jacksonville, Florida 32204
State of incorporation: Florida

Certificates of Authority expire on June 30 each y ear, unless reviewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as a July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27250 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: May 10, 1985.

W.E. Douglas,

Commissioner, Financial Management Service

[FR Doc. 85-12068 Filed 5-17-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 18]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Guard Casualty and Surety Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Guard Casualty and Surety Insurance Company, of Indianapolis, Indiana, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27254, July 2, 1984.

With respect to any bonds currently in force with Guard Casualty and Surety Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: May 10, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-12067 Filed 5-17-85; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Amendment

On February 15, 1985, notice was published at page 6423 of the Federal Register (50 FR 6423) by the United States Information Agency pursuant to Pub. L. 89-259 relating to the exhibit "The Sculpture of India." An itemized list of the objects included in the exhibit and covered by the notice was filed with the Federal Register at that time. On March 7, 1985, the notice was amended to cover additional objects (50 FR 9357). I hereby determine that other objects to be included in the exhibit "The Sculpture of India" (included in list [1] filed as part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display at the National Gallery of Art, beginning on or about May 19, 1985, to on or about September 2, 1985, and at the Art Institute of Chicago, Chicago, Illinois, beginning on or about October 19, 1985, to on or about January 5, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: May 17, 1985.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 85-12256 Filed 5-17-85; 11:47 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 97
Monday, May 20, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, May 23, 1985.

PLACE: Marriner S. Eccles Federal Reseve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 15, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-12152 Filed 5-15-85; 5:10 pm]

BILLING CODE 6210-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 88 19262.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 .m. (eastern time), Tuesday, May 14, 1985.

CHANGE IN THE MEETING: The following matter has been postponed and rescheduled for June 4, 1985.

Amendments to the Commission's Section 4(g) of the ADEA 29 U.S.C. Section 623(g)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: May 14, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued May 14, 1985.

FR Doc. 85-12206 Filed 5-16-85; 3:35 pm]

BILLING CODE 6750-06-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, May 14, 1985.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50-88-19262.

CHANGE IN THE MEETING: The following matter was added to the agenda for the closed portion of the meeting:

"Proposed Contract for Expert Services in Connection with a Court Case" A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of the change:

Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred Alvarez, Commissioner
Ricky Silberman, Commission

CONTRACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: May 14, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-12207 Filed 5-16-85; 3:35 pm]

BILLING CODE 6750-06-M

4

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, June 5, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1985.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523-5920.

Date of notice: May 14, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85-12158 Filed 5-16-85; 11:14 am]

BILLING CODE 7550-01-M

federal register

Monday
May 20, 1985

Part II

Department of Transportation

Research and Special Programs Administration

Tucson City Code Governing Transportation of Radioactive Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling, IR-16]

Tucson City Code Governing Transportation of Radioactive Materials

Applicant: Arizona Department of Transportation (Application docketed as IRA-28).

Local Law Affected: Section 13-12 of the Tucson Code adopted pursuant to Tucson Ordinance No. 5148 (December 14, 1981).

Applicable Federal Requirements: Hazardous Materials Transportation Act (49 U.S.C. 1801-1811); and the Hazardous Materials Regulations (49 CFR, Parts 171-179).

Modes Affected: Highway.

Issue Date: May 14, 1985.

Ruling: Section 13-12 of the Tucson City Code is inconsistent with the Hazardous Materials Transportation Act and the regulations issued thereunder and is, therefore, preempted.

SUMMARY: This inconsistency ruling is the opinion of the Materials Transportation Bureau concerning whether the provisions of § 13-12 of the Tucson Code are inconsistent with the Hazardous Materials Transportation Act or the regulations issued thereunder and, thus, preempted in accordance with § 112(a) of that Act. This ruling was applied for and is issued pursuant to the procedures set forth at 49 CFR 107.201-107.209.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590, [Tel: 202/755-4972].

I. Background

A. *Chronology.* By letter dated February 18, 1982, the Arizona Corporation Commission applied for an administrative ruling on the question of whether Tucson Ordinance No. 5148 is inconsistent with the Hazardous Materials Transportation Act (HMTA) or the regulations adopted thereunder. Tucson Ordinance No. 5148 amended the Tucson Code by adding sections 13-12 governing the transportation of radioactive materials.

Shortly thereafter, the hazardous materials transportation regulatory function was transferred from the Corporation Commission to the Arizona Department of Transportation and on March 25, 1983, the successor organization resubmitted the earlier request for an administrative ruling.

On December 12, 1983, the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration published a notice and invitation to comment on the application (48 FR 55383). In response to that notice, comments were received from the City of Tucson as well as from five commercial entities engaged in the shipment or carriage of radioactive materials. At its request, the City of Tucson was given an opportunity to respond to the other comments which had been received.

With the exception of the City of Tucson, all commenters asserted that Ordinance No. 5148 is inconsistent with the HMTA and the Hazardous Materials Regulations (HMR). The comments stressed the need for uniform transportation safety regulations, the consequences of delays attributable to local prenotification requirements, and the difficulty of complying with a hazard classification system which differs from that applicable nationwide. Specific reference was made to Appendix A to 49 CFR, Part 177, wherein the Department of Transportation set forth its policy regarding the types of state and local radioactive materials transportation regulations which it would generally consider to be inconsistent. Where appropriate, these comments, as well as previous administrative decisions, will be discussed in this ruling.

B. *General Authority and Preemption under the HMTA.* The HMTA authorizes the Secretary of Transportation to promulgate substantive regulations governing the safe transportation of hazardous materials in commerce. The HMR are codified at 49 CFR Parts 171-179, and mostly predate the HMTA. The HMR previously were authorized by the Explosives and Other Dangerous Articles Act (18 U.S.C. 831-835), which was repealed in 1979 (Pub. L. 96-129, November 30, 1970). The HMTA was enacted on January 3, 1975 and the HMR were reissued under its authority, effective January 3, 1977 (49 FR 39175, September 9, 1976). Subsequent amendments to the HMR have been issued under the authority of the HMTA and with the preemptive effect granted by that Act.

The HMR apply to persons who offer hazardous materials for transportation (shippers), those who transport the materials (carriers), and those who manufacture and retest the packagings and other containers intended for use with the materials. The scope of transportation activity affected includes: packaging of shipments of hazardous materials; package markings (to show content) and labeling (to show hazard); vehicle placarding (to show hazard); handling procedures, such as loading and unloading requirements; routing; care of vehicle and lading during transportation; preparation and use of shipping papers to show the identity, hazard class and amount of each hazardous material being shipped; and requirements for reporting any unintentional release of a hazardous material during transportation.

A discussion of the preemptive effects of the HMTA appears in previous inconsistency rulings. The discussion in IR-6 (48 FR 760, January 6, 1983) is extracted and summarized here.

The HMTA at section 112(a) (49 U.S.C. 1811(a)) preempts ". . . any requirement of a State or political subdivision thereof, which is inconsistent with any requirements set forth in (the HMTA) or regulations issued under (the HMTA)." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In 49 CFR Part 107, Subpart C, the MTB has published procedures by which a state or political subdivision thereof having a requirement pertaining to the transportation of hazardous materials, or any person affected by the requirement, may obtain an administrative ruling as to whether the requirement is inconsistent with the HMTA or regulations under the HMTA. The MTB may also initiate such a proceeding *sua sponte*. At the time these procedures were published, the MTB observed that "(t)he determination as to whether a State or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature." (41 FR 38167, September 9, 1976). Despite this judicial tradition, there are two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling provides an alternative to litigation for a determination of the relationship of Federal and state or local requirements. Second, if a state or political subdivision requirement is found to be inconsistent, such a finding provides the basis for an application for a determination by the Secretary of Transportation as to whether preemption will be waived (49 U.S.C. 1811(b); 49 CFR 107.215-107.225).

Since the proceeding here is conducted pursuant to the HMTA, the MTB will consider only the question of statutory preemption. A Federal court may find a state requirement not

statutorily preempted, but, nonetheless, preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations in the context of an inconsistency ruling proceeding.

Given the judicial character of the inconsistency ruling proceeding, the MTB has incorporated case law criteria for analyzing preemption issues into the inconsistency ruling procedures (see e.g. *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978)). At 49 CFR 107.209(c) the following tests are set forth for determining whether a state or local requirement is "inconsistent".

(1) Whether compliance with both the (state or local) requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the (state or local) requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, known as the "dual compliance" test concerns those state or local requirements that are incongruous with Federal requirements; that is, compliance with the state or local requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, known as the "obstacle" test, essentially subsumes the first and concerns those state or local laws that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the (HMTA) and the regulations issued under the (HMTA)." In determining whether a state or local requirement presents such an obstacle, it is necessary to look at the full purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the MTB's regulatory program.

In enacting the HMTA, Congress recognized the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes, and lacked completeness because of gaps in Departmental authority, most notably in the area of manufacturing and preparation of packagings used to transport these materials. In order to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801), Congress consolidated and expanded the Department's regulatory and enforcement authority.

With specific reference to the preemption provision of the HMTA, the legislative history indicates that Congress intended it "to preclude a multiplicity of state or local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93rd Cong., 2nd Sess. 37 (1974)). While the HMTA does not totally preclude state and local action in this area, it is the MTB's opinion that Congress intended, to the extent possible, to make such state and local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state and local activity. The nature, necessity and number of hazardous materials shipments make nationally uniform safety standards essential.

In summary, the MTB applies two tests to determine whether a state or local requirement is inconsistent and, therefore, preempted: the "dual compliance" test and the "obstacle test". When a state or local rule presents an issue which has already been considered in a previous inconsistency ruling, however, the MTB may cite the established precedent without reiterating the underlying tests.

C. *Radioactive Materials Transportation Under the HMTA.* On January 1, 1981, the MTB issued a final rule (46 FR 5298) entitled "Radioactive Materials; Routing and Driver Training Requirements," commonly known by its docket number, HM-164. In relevant part, HM-164 provided that highway carriers of "large quantity" radioactive materials (such as spent nuclear fuel) are required to use "preferred routes," which are defined as Interstate System highways or alternative highway routes designated by the states that provide an equal or greater level of safety as compared with the Interstate System.

The term "large quantity" was subsequently changed to "highway route controlled quantity" in a final rule published on March 10, 1983 (48 FR 10218) under docket number HM-169. The revision was necessary to ensure the compatibility of the HMR with the latest revised international standards for transport of radioactive materials. While there are some differences between the old values for "large quantity" and the new values for "highway route controlled quantity", the differences are relevant to this proceeding only insofar as Tuscon Ordinance No. 5148 may have incorporated by reference the now-obsolete definition of "large quantity".

In addition to the routing rules, HM-164 contained an Appendix A to Part 177 of the HMR which set forth Departmental policy regarding the preemptive effects of the routing rules. The Appendix provides that the Department generally regards state and local requirements to be inconsistent if they:

- Prohibit the highway transport of large quantity radioactive materials without providing for an alternative highway route for the duration of the prohibition;
- Require additional or special personnel, equipment, or escort;
- Require additional or different shipping paper entries, placards, or other hazard warning devices;
- Require filing route plans or other documents containing information that is specific to individual shipments;
- Require prenotification;
- Require accident or incident reporting other than as immediately necessary for emergency assistance; or
- Unnecessarily delay transportation.

Appendix A is not a regulation which imposes obligations to act. It is the Department's interpretation of the general preemptive effect of its regulation on state and local requirements. It was not intended to replace the two-prong test for determining the inconsistency or an existing state or local rule. Rather, it was intended to advise state and local governments contemplating rulemaking action as to the likelihood of such actions being deemed inconsistent. Therefore, while references to Appendix A are not determinative of inconsistency, they are illustrative of the Department's interpretation of the relationship between the HMR's routing requirements and those adopted by state or local governments.

II. Analysis

A. *Introduction.* Tucson Ordinance No. 5148 consists of three enumerated sections. Section 1 amends the Tucson Code by adding a new section 13-12 relating to transportation of radioactive materials. Section 2 authorizes City officers and employees to take all action necessary to put the Ordinance into effect. Section 3 gives immediate effect to the Ordinance. Thus, the existing local law to be examined for consistency with the HMTA is not Tucson Ordinance No. 5148, but section 13-12 of the Tucson Code which became effective upon passage and adoption of the Ordinance. Therefore, throughout this ruling, reference will be made to the respective subsections of section 13-12 of the Tucson Code.

B. *Section 13-12 (A) Prohibition.* Subsection A prohibits the

transportation within or through the City of Tucson of any quantity of radioactive materials not specifically exempted from such local regulation, unless such transportation is performed in accordance with the requirements of subsection C. Until the requirements of subsection C are examined, it is not possible to determine the scope of the prohibition enunciated in subsection A. Therefore, subsection A is discussed in the context of subsection C below.

C. *Section 13–12 (B) Definitions.* Subsection B defines four terms: (1) radioactive material; (2) large quantity radioactive materials; (3) person; and (4) industrial purposes. Each of these definitions is set forth below and compared to its counterpart, if any, in the HMR.

The first term defined under section 13–12(B) is "radioactive material":

(1) Radioactive material means any material (solid, liquid or gas) which emits radiation spontaneously. For the purpose of this definition, "radiation" means ionizing radiation, i.e., gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles.

The HMR define "radioactive material" at 49 CFR 173.403(y) as follows:

* * * * *

(y) "Radioactive material" means any material having a specific activity greater than 0.002 microcuries per gram (μCi/g) (see definition of "specific activity").

The critical difference between these two definitions is the identification of measurable quantities of radiation. The Tucson definition establishes no minimum quantity of radiation. Since virtually all matter emits calculable, if not measurable, radiation, the Tucson definition of "radioactive material" encompasses a vastly greater range of materials than is currently subject to regulation under the HMTA.

In prior inconsistency rulings, the MTB has given notice that it considers the Federal role in definition of hazard classes to be exclusive (IR–5, 47 FR 51991; relied on in IR–6, 48 FR 760, 763–4; IR–8, 49 FR 46637; IR–12, 49 FR 46650, 46651; and IR–15, 49 FR 46660.) As first articulated in IR–5 which dealt with a New York City ordinance regulating transportation of compressed gases:

The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations. * * * For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classification of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety. (47 FR 51994)

The term "radioactive material" is used in the HMR to identify a specific class of materials on the basis of the hazard they pose in transportation. By adopting the Federal term, but assigning to it an entirely different meaning, the City of Tucson has, in effect, created a new hazard class. If every jurisdiction were to assign additional requirements on the basis of independently created and variously named groupings of hazardous materials, the resulting confusion over regulatory requirements would increase the likelihood of reduced compliance with the HMR and subsequent decrease in public safety which was referred to in IR–5. As stated in IR–6 (48 FR 760, 764) which dealt with a Covington, Kentucky, ordinance establishing a hazard classification system totally at variance with the HMR:

The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulation. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA (49 U.S.C. 1811).

It should be noted at this point that section 13–12 (E) of the Tucson Code exempts certain radioactive materials from regulation under section 13–12. As is demonstrated in the discussion of subsection E below, those exemptions are not such as to result in restricting the effect of section 13–12 to the Federally-defined hazard class of radioactive material.

Because the hazard class definition set forth in section 13–12 (B)(1) of the Tucson Code constitutes an obstacle to the accomplishment of the Congressional objectives of enhanced safety and regulatory uniformity underlying enactment of the HMTA and adoption of the HMR, I find it to be inconsistent with the HMTA and the HMR.

The second definition set forth under section 13–12 (B) of the Tucson Code is:

(2) Large quantity radioactive materials means any quantity of materials whose aggregate radioactivity is specified as "large quantity" in Code of Federal Regulations, Title 10, Part 71.4, "Packaging of Radioactive Materials for Transport" of the United States Department of Transportation.

This definition poses a number of problems, the first being an incorrect citation. Title 10, § 71.4 of the Code of Federal Regulations (10 CFR 71.4) is not a regulation promulgated by the Department of Transportation under the HMTA. It is a regulation of the Nuclear Regulatory Commission promulgated under the authority of the Atomic Energy Act. This error would not be important if the term "large quantity" appeared in the HMR under the same definition as appears in 10 CFR 71.4. Such was the case when Tucson Ordinance No. 5148 was passed on December 14, 1981. However, on March 10, 1983, the MTB adopted a Final Rule (Docket No. HM–169; 48 FR 10218) which deleted the term "large quantity" (49 CFR 173.389(b)) and adopted the new term "highway route controlled quantity" (49 CFR 173.401(1)). The effect of this change was the adoption of the A_1/A_2 system to replace the transport group system of classifying radionuclides. By relying on a hazard class definition which has been expressly superseded in the HMR, the Tucson definition, in effect, creates a new hazard class. For all the reasons set forth in connection with the definition of "radioactive material", I find that the hazard class definition set forth in section 13–12 (B)(2) of the Tucson Code constitutes an obstacle to the accomplishment of the Congressional objectives of enhanced safety and regulatory uniformity underlying enactment of the HMTA and adoption of the HMR. Therefore, I find it to be inconsistent with the HMTA and the HMR.

The third definition set forth under section 13–12 (B) of the Tucson Code is:

(3) Person means any individual, partnership, or corporation, and includes any individual, partnership or corporation engaged in the transportation of passengers or property as common, contract, or private carrier or freight forwarder, as those terms are used in the Interstate Commerce Act, as amended.

The HMR define "person" at 49 CFR 171.8 as follows:

* * * * *

"Person" means an individual, firm, co-partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

* * * * *

While these two definitions are not worded identically, the differences are essentially a matter of degree of redundancy. Both the Tucson Code and the HMR define "person" to mean: a single human being; two or more individuals doing business together

whether as a partnership/co-partnership, association or other relationship; and a corporation, an artificial being which exists only in law. Both definitions contain express language as to what is included, but these descriptive clauses do not change the scope of the definition. I, therefore, find that the definition contained in section 13–12 (B)(3) of the Tucson Code does not, by itself, create any confusion or other regulatory obstacle to the accomplishment and execution of the HMTA and HMR. Nevertheless, because the term is defined only for the purposes of section 13–12, its consistency with the HMTA must ultimately rely on the consistency of the regulatory requirement of which it is an integral part.

The fourth definition set forth under section 13–12(B) of the Tucson Code is:

(4) Industrial purposes means purposes ancillary and specific to an industrial concern or process, the primary activity or result of which is not the production use of radioactive material, and specifically excludes generation of power through nuclear fission in any form, or the reprocessing of nuclear waste.

The term "industrial purposes" appears nowhere else in section 13–12 of the Tucson Code; neither is it assigned any specific meaning in the HMR. Therefore, in the context of an inconsistency ruling on section 13–12, the definition is without regulatory effect, as it neither modifies section 13–12 nor creates a potential for confusion with the HMR. For these reasons, the question of whether section 13–12(B)(4) is consistent with the HMTA is moot.

[In order of appearance, subsection C should be discussed next. However, subsection C is modified by all the other subsections of section 13–12 and is, therefore, discussed last.]

D. *Section 13–12(D) Materials Prohibited.* Subsection D prohibits the transportation within or through the City of Tucson of the following radioactive materials:

(1) Isotopes of plutonium and radium, other than plutonium 239, in any quantity and form exceeding 20 curies; plutonium 239 exceeding 5 curies;

(2) Uranium enriched in the isotope U–235 exceeding 25 atomic per cent of the total uranium content in quantities where the U–235 content exceeds one (1) kilogram;

(3) any of the actinides the activity of which exceeds 20 curies;

(4) Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies when from a reactor having a power level rating in excess of one (1) megawatt thermal; or

(5) Any "large quantity" of radioactive material as defined by the United States Department of Transportation in 49 CFR 173.389(B), other than cobalt 60 when being transported by or for medical or educational institutions duly licensed by the State of Arizona or the Federal Government.

The radioactive materials identified in subsection D constitute a locally created hazard class of prohibited materials. Whether considered as a group or as five separate categories, the groupings have no direct counterparts in the HMR. Rather, the list of prohibited materials is virtually identical to that which was set forth in Local Law No 10 of St. Lawrence County, New York, and which was found to be inconsistent with the HMTA in inconsistency ruling IR–12 (49 FR 46650, November 27, 1984).

The foregoing discussion of section 13–12(B)(1) set forth the basis for the MTB's long-held position that it considers the Federal role in hazard class definition to be exclusive. That reasoning applies equally to the hazard class created by subsection D and operates to render that provision inconsistent. However, a second issue raised by subsection D concerns the impact of the locally created hazard class on the shipping paper requirements of the HMR. Under the HMR, carriers are notified of the presence of Federally regulated materials through shipping papers, placards and certificates of compliance which originate with the shipper and accompany the cargo to its destination (49 CFR, Part 172). Carriers seldom have the technical capability for scientific analysis of the materials they transport and must rely on the shippers for information about the cargo. But, to comply with subsection D, carriers must have knowledge of the nature of their cargoes on the basis of technical criteria which are unrelated to the Federal system on which all hazard communication is based. A carrier's only recourse is to obtain documentation from the shipper in addition to that provided by the shipping papers. As stated in prior rulings (IR–2, 6, 8 and 15), it is the Department's view that:

. . . The shipping paper requirements of the HMR are exclusive and that any additional shipping paper requirements are inconsistent under the HMTA. Furthermore, when shipping papers contain information relating to hazard class definitions other than those in the HMR, the resulting confusion can lead to deviations from DOT's uniform hazard warning systems. This, in turn, can have detrimental, and potentially catastrophic, effects during emergency response operations. (IR–6, 48 FR at 764).

Finally, subsection D must be considered in terms of its intended effect—a local ban on the transportation of certain radioactive materials. The issue of transportation bans was addressed in the preamble to HM–164, the final rule on highway routing of radioactive materials:

On the basis of (public) comments, documented risk studies and past accident experience for radioactive material transport, the Department has concluded that the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation. (46 FR at 5299).

The City of Tucson supported its prohibition of certain materials as follows:

On a more general theme, respondents complain that our classification system is incompatible with the Federal system and that it unnecessarily prohibits various substances.

Our ordinance was very carefully worded to be compatible with both state and federal classification systems.

Moreover, we have investigated our local industries and found that none use or need any of the prohibited materials. In short, such materials have no business on our city streets.

Notwithstanding the care with which the ordinance was drafted, the resulting hazard classification system has been determined to be inconsistent with the Federal system. The proffered justification for the prohibition, however, raises a different issue.

Tucson asserts that, as no local industry uses or needs the prohibited materials, the transportation ban merely serves to ensure that the City will not be subjected to the risks posed by transportation of material which have no connection with local industry. This argument holds only so long as local industry has no use or need for the prohibited materials. It would seem that Tucson could accomplish its intended purpose more effectively by exercising its inherent authority to regulate land use and local activities. Such an approach would enable Tucson to ensure that the prohibited materials are not allowed within those areas of the City that are determined to be unsuited for their use. Moreover, since a local government can command cooperation from its own institutions and citizens, this alternate approach would be more readily enforceable than a ban directed at non-local carriers. Nevertheless, as was stated in IR–6, ". . . inefficiency will not require an ordinance to be deemed inconsistent unless it creates a situation which constitutes an obstacle to the accomplishment and execution of the HMTA." (48 FR at 765).

Subsection D of section 13–12 of the Tucson Code constitutes a locally created hazard class which differs from

the Federal system; it requires information beyond that required by the HMR on shipping papers; and it imposes precisely the kind of local ban which DOT considered during its promulgation of HM-164 and found unjustified. For all these reasons, I find that Subsection D constitutes an obstacle to the accomplishment and execution of the HMTA and the regulations promulgated thereunder and is, therefore, inconsistent therewith.

E. *Section 13-12 (E) Exemptions.* Subsection E exempts the following materials from regulation under section 13-12 of the Tucson Code:

> (1) Radioactive materials which are exempted from regulation by the Arizona Radiation Regulatory Agency or its legally established successor, or whose use is or would be permitted under a general license issued to other than carriers by the Agency or its successor.
>
> (2) Radioactive materials being transported by or for state or federally licensed medical, educational or research institutions in amounts which do not exceed "Type A quantities" as defined by the United States Department of Transportation in 49 CFR 173.390.
>
> (3) Medical devices designed for individual application, such as cardiac pacemakers, containing plutonium 238, promethium or other radioactive materials.
>
> (4) Radiation sources used in radiography and other non-destructive testing procedures when used by persons or firms duly licensed by the State of Arizona.

The radioactive materials identified in subsection E constitute a locally created hazard class of exempted materials. Whether considered as a group or as four separate categories, the groupings have no direct counterparts in the HMR. To this extent, the hazard class created by subsection E is analogous to the class of prohibited materials created by subsection D which was deemed to be inconsistent. However, there is a distinction which must be made.

Subsection D identified a class of materials and attached to that class a specific regulatory requirement, i.e. a transportation ban. Subsection E, on the other hand, identifies a class of materials and specifically exempts those materials from local regulation. Since no regulatory requirement is imposed on the materials, subsection E creates no requirement within the meaning of section 112(a) of the HMTA and, therefore, cannot be deemed an inconsistent requirement. Nevertheless, while subsection E may not impose any requirements, it does modify the scope of the substantive prenotification requirement imposed by subsection C. Therefore, the effect of the exemptions must be examined in order to determine the extent to which shipments of radioactive materials are subject to the substantive regulatory requirements of section 13-12(C).

In order to avail themselves of the exemptions, carriers must have notice that the radioactive materials they are transporting meet the criteria set forth in subsection E. As discussed in connection with subsection D *supra*, carriers are notified of the presence of Federally regulated materials through shipping papers, placards and certificates of compliance which originate with the shipper and accompany the cargo to its destination. Because the criteria set forth in subsection E are unrelated to the hazard classification system on which the Federal shipping paper requirements are based, carriers are unable to determine from the information contained in the shipping papers whether their cargoes qualify for exemption from local regulation.

To qualify under subection E (1), a carrier must have knowledge of all radioactive materials regulations of the State of Arizona, not merely those relating to transportation. Shipping papers do not provide this information.

To qualify under subsection E (3), a carrier must have knowledge that the contents of a shipment are intended to be used for individual medical application. Shipping papers do not describe the intended use of the cargo.

To qualify under subsection E (4), a carrier must have knowledge not only of the intended use of the shipment, but also of the adequate licensing of the intended user. Shipping papers describe neither the intended use nor the licensing status of the intended user of the cargo.

Subsection E (2) presents additional problems of interpretation. First of all, it refers to an obsolete provision of the HMR. As described above, the definition of "Type A quantities" in terms of the transport group system of classifying radionuclides (49 CFR 173.390) has been deleted from the HMR and replaced by the A_1A_2 system of classification. The second problem created by the language of subsection E (2) is its reference to "materials being transported by or *for* state or federally licensed medical educational or research institutions" (emphasis added). The question here is whether a carrier transports goods for the shipper or the consignee. In practice, the carrier performs for the party who hires it, in most cases the shipper. Under this construction, shipments leaving medical, educational or research institutions in Tucson would be exempt from local regulation but most arriving shipments would not. However, since subsections E (3) and (4) refer to the intended use of the shipments, it is possible to construe subsection E(2) as referring to shipments being delivered to and/or from such institutions. Finally, subsection E(2) requires the carrier to know both that the shipper (or consignee?) is a medical, educational or research institution and that it is licensed under Federal or state law. The institutional function of a shipper (or consignee?) may be inferred from its names as requred to be set forth on the shipping paper; but the shipping paper requirements do not cover the question of whether that institution is subject to and in compliance with *all* Federal and state license requirements (or even Federal and state license requirements relating to radioactive materials).

The foregoing analysis of subsection E demonstrates clearly that, for all practical purposes, carriers are unable to rely on any of the listed exemptions. Carriers rely on shipping papers for knowledge of the content of their shipments and the shipping papers do not provide the extensive detail necessary to determine whether any of the exemptions may apply.

Several commenters pointed out the problem of lack of knowledge with regard to both exempted materials and prohibited materials. The City of Tucson replied as follows:

> Some of the respondents note that they do not know what is in each shipment and/or that shipment content details are not available to us. It is astounding that a carrier would transport unknown radioactive materials let alone admit it and cite that failure as an agrument against prenotification.
>
> Morality, logic and I.C.C. tariffs all dictate that interstate carriers maintain full and accurate manifests. If they don't now, it is past time that they started.

The City somewhat overstates the case. No respondent claimed ignorance of shipment contents. Rather, they claimed that their knowledge was limited to that which the HMR require shippers to provide in the form of shipping papers, placards and certificates of compliance. The descriptions on which they rely are assigned specific meanings within the HRM, a comprehensive and technical set for regulations.

Carriers' lack of access to the additional, non-transportation-related information required by section 13.12 of the Tucson Code cannot be attributed to a failure to "maintain full and accurate manifests"; neither does it indicate lack of knowledge about the nature of the materials being transported. A carrier knows he is transporting chickens even if he does not know whether their intended use is to be in avian research

or coq au vin. Similarly, a carrier is put on notice by the shipping papers that he is transporting, for example, a highway route controlled quantity shipment of radioactive material in the form of an irradiator. The shipping papers provide him with all the information needed to ascertain what Federal transportation safety requirements must be met. Transportation safety is in no way impacted by the fact that the carrier is unaware of whether the irradiator is intended for use in treating cancer patients, in sterilizing surgical supplies, or even for sterilizing sludge at a waste treatment plant.

In order to take advantage of the exemptions set forth in subsection E, carriers must obtain information in addition to that which appears on the shipping papers. The MTB has long held the shipping paper requirements of the HMR to be exclusive. Thus the exemptions listed under subsection E are without effect because carriers lack the information necessary to determine whether their cargoes qualify. For these reasons, the substantive requrements of section 13–12 (C) must be interpreted as affecting all radioactive materials, without regard to any intended exemptions.

F. *Section 13–12(f) Nonapplicability.* Subsection F identifies certain shipments as being outside the scope of the substantive requirements of section 13–12 of the Tucson City Code:

> F. *Non-applicability.* This section shall not apply to materials passing through Tucson on highways of the state or federal system where the city does not have jurisdiction, or by rail over established tracks on rights-of-ways reserved to the railroads, nor being transported by or for the United States government for national security, military, or national defense purposes.

By letter dated December 27, 1983, the City of Tucson provided the following interpretation of subsection F:

> In furtherance of our desire to avoid impeding interstate commerce and avoid conflict with superior jurisdictions/law, we have instructed our Fire Chief to include within the activities exempted by "Section F. Non-applicability" of our ordinance, gas, food and rest stops made near the state and federal highways crossing our community. In other words, we require prenotice only of eligible shipments being picked up or delivered within our community.

Notwithstanding the City's explanation of its legislative intent, the actual language of the law must govern. By that standard, subsection F must be interpreted as exempting through shipments: (1) On highways over which the City has no jurisdiction, (2) on currently existing rail track, and (3) on either rail or highway if transported by or for the Federal government for national security or defense purposes. Not exempted from applicability of section 13–12 are non-defense through shipments of radioactive material on highways subject to the City's jurisdiction.

Subsection F imposes no transportation requirement. It merely modifies the effect of the substantive provisions of 13.12. Therefore, the question of inconsistency does not arise.

G. *Section 13–12(C) Notice to fire chief required.* Subsection C establishes a requirement for transporters of radiocative materials to provide the City Fire Chief with 48 hours advance notification:

> C. *Notice to fire chief required.* Any person transporting radioactive materials within or through the City of Tucson shall notify the chief of the Tucson Fire Department at least forty-eight (48) hours prior to commencement of such transportation and shall provide him with the following information and such other information as may be required:
>
> (1) Identification of each radionuclide being transported by element name, mass number, activity and quantity.
>
> (2) Identification of the transportation route, date and approximate time of such transportation;
>
> (3) Name, address, and telephone number of the person, association, partnership or corporation submitting the notice and the relationship to the shipment (e.g. consignee, shipper, transporter); the name, address, and telephone number of:
>
> (a) the person sending the shipment,
>
> (b) the carrier, and
>
> (c) the person to whom the shipment is being sent.

As noted previously, subsection A prohibits the transportation of any quantity of radioactive materials not specifically exempted unless performed in accordance with subsection C. Both subsections A and C refer to transportation "within or through" the City of Tucson. Moreover, subsection F is so drafted as to include certain through shipments within the scope of section 13–12. Thus, as drafted, the requirements of section 13–12 apply to through shipments as well as pick-ups and deliveries. However, in view of the City's stated intent to "require prenotice only of eligible shipments being picked up or delivered within our community" and the further admission that "to require shippers to prenotify all of the towns on the route of a proposed interstate shipment would be an unreasonable burden on interstate commerce" (Tucson letter of Dec. 27, 1983), it appears that the applicability of section 13–12 to through shipments of radioactive material is the result of correctable drafting error, rather than legislative intent. That point having been noted, I shall consider *arguendo* that section 13–12 applies only to shipments picked up or delivered in Tucson.

Clarification is also required to determine what radioactive materials are subject to the prenotification requirement. Subsection A prohibits the transportation of "any quantity of radioactive materials not specifically exempted" unless prenotification is provided in accordance with subsection C. As was noted in the discussion of subsection E *supra*, the exemptions listed thereunder are, for all practical purposes, without effect because carriers lack the information necessary to determine whether their cargoes qualify. Furthermore, as was noted in the discussion of subsection B *supra*, the definition of radioactive material contained in section 13–12 is so broad as to encompass virtually all matter. Thus, if construed literally, section 13–12(C) requires that the Fire Chief receive prior notice of every movement of goods or materials originating or arriving in Tucson. It is clear that this was not the City's intent. Therefore, in response to the City's entreaty that the whole ordinance not be rejected over one inconsistency or insufficiency, and in keeping with the precedent established in inconsistency ruling IR–6 (48 FR at 764), I shall consider the question of advance notification independent of the definitional inconsistency. In other words, if section 13–12 of the Tucson Code were to incorporate the definition of radioactive material contained in the HMR, would the advance notification requirement be inconsistent within the meaning of the HMTA?

Several commenters asserted that the Tucson prenotification requirement was clearly inconsistent with Appendix A to Part 177 of the HMR (49 CFR, Part 177). As discussed in part I (C) of this ruling, however, Appendix A is not a regulation which imposes obligations to act. It is a statement of DOT's interpretation of the general preemptive effect of its regulation on state and local governments, which was intended to advise state and local governments contemplating rulemaking action as to the likelihood of such actions being deemed inconsistent. Therefore, despite the assertions of several commenters, reliance on Appendix A alone is insufficient to support a finding of inconsistency. "An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy." *Pacific Gas & Elec. Co.* v. *FPC*, 506 F.2d 33, 38–9 (D.C. Cir.

1974). Therefore, notwithstanding the statement of policy articulated in Appendix A, DOT has an obligation "to present evidence and reasoning" supporting its advisory opinions unless there is an established precedent on which it may rely.

Subsection C, which imposes a prenotification requirement on highway shipments of radioactive materials, presents an issue which MTB has considered at length in seven of nine inconsistency rulings which were published together on November 27, 1984 (IR-7 through 15, 49 FR 46632). The precedents established in those rulings will be relied on herein.

With regard to the "dual compliance" test, the HMR do not contain an express prohibition of prenotification. Therefore, it is possible for carriers to provide the 48-hour advance notice required by subsection C and still remain in compliance with the HMR. The prenotification requirement of section 13-12 cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, a different conclusion is reached. While the HMR do not contain an express requirement for prenotification, § 173.22(c) of the HMR requires shippers of spent nuclear fuel to comply with a physical protection plan established under the requirements of the Nuclear Regulatory Commission (NRC) or equivalents approved by MTB. The NRC requirements for advance notification are contained in the physical protection standards at 10 CFR 73.37 and require transporters to provide a minimum of four days advance notification of shipments to the Governor or the Governor's Designated Representative. (Equivalent requirements on shipments of nuclear waste are set forth at 10 CFR 71.5b.) Local jurisdication receive notification from the Governor's Designee. The requirement that transporters comply with the NRC requirements or MTB-approved equivalents was adopted as part of HM-164. In the preamble to that rulemaking, MTB took administrative notice of the fact that the NRC was in the process of establishing prenotification requirements and stated:

> Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirements are not consistent with Part 177. (46 FR 5314-5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM-164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons stated in the preamble to that rulemaking, MTB declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of a study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of Prenotification: Hazardous Materials Study, Final Report*, May 4, 1981) and was relied on in an inconsistency ruling (IR-6, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification odinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving state, city and regional governments. In a related effort, MTB sponsored a comprehensive evaluation of state and local notification systems. Most recently, MTB issued seven inconsistency rulings (IR-8 and 10-15, 49 FR 46632, Nov. 27, 1984) in which it found state and local prenotification requirements to be inconsistent with the HMTA. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by state and local governments.

In previous inconsistency rulings, MTB has considered various transportation impacts which can result from state or local prenotification requirements. First of all, MTB noted that the mere threat of delay may redirect hazardous materials traffic into other jurisdictions, thereby increasing transit time and overall risk exposure. In the case of Tucson's prenotification requirement, the problems related to rerouting do not arise. Tucson's requirement applies only to shipments whose origin or destination is Tucson. No amount of rerouting can avoid Tucson if that is a shipment's origin or destination point. For this reason, Tucson's prenotification requirement cannot be deemed to be an inconsistent routing rule, as has been held in previous inconsistency rulings concerning state and local prenotification requirements (IR-3, 6, 8 and 10-15).

Other types of transportation impacts attributable to state or local prenotification requirements are related to the actions necessary to comply with the requirements. Transportation impacts attributable to compliance with section 13-12(C) of the Tucson Code differ according to the type of radioactive material shipment affected. Since subsection C is being interpreted as if it incorporated the HMR's definition of "radioactive material", then it must be considered as requiring 48-hour advance notification of any type of shipment which meets that definition. For purposes of the following analysis, radioactive material shipments will be divided into three categories: limited quantities, highway route controlled quantities and quantities for which placarding is required but which are not highway route controlled quantities.

Limited quantities of radioactive material, as defined in 49 CFR 173.403(m), are excepted from the HMR's more extensive requirements on specification packaging, shipping papers and certification, marking and labeling. The Department has carefully examined the transportation risks posed by limited quantity radioactive material (e.g. home smoke detectors and tritium backlit watches) and has determined that they do not justify imposition of the more stringent standards applicable to greater quantities of radioactive material. No such distinction is made by Tucson's prenotification requirement. Carriers of limited quantity radioactive material are required to provide the Tucson Fire Chief with 48 hours prior notice of, *inter alia*, the element name, mass number, specific activity, and quantity of the radionuclide being transported. Applied to limited quantity shipments, this requirement creates a basic operational problem. As one commenter pointed out, a carrier does not always have such detailed information concerning limited quantity shipments. Because shipping papers are not required for limited quantity shipments, a carrier's knowledge of the contents of such a shipment is usually limited to that contained in the notice which the HMR requires to accompany the shipment:

> . . . This notice must include the name of the consignor or consignee and the statement. "This package conforms to the conditions and limitations specified in 49 CFR 173.421 for excepted radioactive material, limited quantity, n.o.s., UN2910; 49 CFR 173.422 for excepted radioactive material, instruments and articles, UN2911; or 49 CFR 173.424 for excepted radioactive material, articles manufactured from natural or depleted uranium or natural thorium, UN2909", as appropriate. (49 CFR 173.421-2(a).)

The notice required by the HMR clearly does not include the detailed description of the radionuclide being transported which a carrier of limited quantity radioactive material would need in order to comply with subsection C of

section 13–12 of the Tucson Code. The difficulty carriers face when required to provide cargo information beyond that which the shipper must supply was discussed in connection with subsection D *supra*. As stated previously, a carrier's only recourse is to obtain documentation from the shipper in addition to that which the HMR requires shippers to provide and this creates the potential for transportation delay, the effects of which are discussed below.

The HMR impose more stringent regulatory requirements on shipments of radioactive materials which are less than highway route controlled quantities but greater than limited quantities. For ease of explication, I shall refer to these as "placarded shipments." Like highway route controlled quantity shipments, placarded shipments of radioactive material are fully subject to the HMR's extensive requirements on specification packaging, shipping papers and certification, marking and labeling. Placarded shipments must be accompanied by shipping papers, which identify each radionuclide being transported by element name, mass number, activity and quantity. Thus, unlike in the case of limited quantities, carriers of placarded shipments do not require additional information or documentation to obtain the information required by section 13–12 (C)(1) of the Tucson City Code.

Subsection C(2) requires carriers of placarded shipments of radioactive materials to provide the Tucson Fire Chief with 48-hour advance notification of "the transportation route, date and approximate time of such transportation". Carriers of placarded shipments are required to operate over routes selected in accordance with § 177.825(a) of the HMR. Since route selection and shipment scheduling are performed by the carrier, no significant additional time would be required to obtain the information required by section 13–12(C) of the Tucson City Code.

Subsection C(3) requires carriers of placarded shipments of radioactive materials to provide advance notification of the name, address and telephone number of the shipper, carrier and consignee of each shipment. This information is not required to be on the shipping papers for placarded shipments of radioactive material. Moreover, it is not clear from the language of subsection C(3) whether identification is sought of organizational entities (to establish liability) or individual employees (to tap technical expertise). For example, the shipper could be a corporate headquarters, its production facility, or its shipping clerk. The matter of vagueness aside, there remains the problem of delay while carriers of placarded shipments obtained the additional information or documentation necessary to provide the advance notice required by section 13–12(C)(3) of the Tucson City Code.

Beyond the possibly marginal delays attributable to the need for carriers of limited quantities and placarded shipments to obtain information in addition to that required by the HMR, the 48-hour prenotification requirement in subsection C creates a fundamental problem of transportation delay. Several commenters addressed this issue which was best described by the Committee on Radiopharamaceuticals and Radionuclides of the Atomic Industrial Forum:

> The short time allowed between the placement of an order for material and its delivery to the hospital or university medical school, typically on the order of 8 to 24 hours, makes the 48-hour prenotification requirement in this ordinance a serious detriment to delivery. For efficient use of short-lived radioactive materials orders are placed in many cases as patients needs are identified. Little notice can be given to either the supplier or the carrier as to what materials will be carried or the timing of the delivery.

Similarly, both Mallinkrodt, Inc. and Federal Express Corporation commented that orders for placarded shipments of radiopharamaceuticals are usually received less than 24 hours before delivery is to be made. In view of these operational realities, transportation delay is inherent in compliance with Tucson's requirement for 48-hour advance notification.

MTB first addressed the issue of transportation delay in IR–2 (44 FR 75566, December 20, 1979):

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation. (44 FR 75571.)

Since safety risks are "inherent in the transportation of hazardous materials in commerce" (49 U.S.C 1801), an important aspect of transportation safety is the minimization of time in transit. This objective has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

The City of Tucson responded to those comments which addressed the problem of delay by stating that the City's emergency personnel had been instructed to accept "whatever notice is possible under the circumstances". The City further offered to consider adding an emergency short-notice provision to its ordinance. While City employees have been instructed not to demand every minute of the advance notice provision, the City Code is explicit in its requirement of 48 hours advance notice, and it is the Code which establishes legal liability. Were Tucson to amend its Code by addition of an emergency short-notice provision, the problem of transportation delay would be reduced, but it would not be eliminated. Placarded shipments which could proceed in full compliance with the HMR would still experience delay while carriers obtained and transmitted the additional information required by subsection C. This delay would be even greater if the origin/destination cities of shipments going to/from Tucson also adopted prenotification requirements involving acquisition and transmittal of information not required by the HMR. For these reasons, I find that, insofar as it affects limited quantities and placarded shipments of radioactive materials, subsection C of section 13–12 of the Tucson City Code constitutes an obstacle to the HMTA's primary objectives of enhanced safety and regulatory uniformity. Accordingly, I find it to be inconsistent with the HMTA.

The last category of radioactive materials to be considered in connection with subsection C is designated in the HMR as "highway route controlled quantity" (49 CFR 173.403(1)). This category of material, which includes spent nuclear fuel and high level radioactive waste, is subject to the most stringent transportaion safety standards. Unlike limited quantities and placarded shipments, highway route controlled quantities are subject to Federal prenotification requirements as described above. Subsection C does not provide Tucson with any advance notification not already provided for under Federal law. What it requires is that carriers of highway route controlled quantity radioactive materials provide advance notice directly to the Tucson Fire Chief instead of relying on the designated representative of the Governor of Arizona to provide affected jurisdictions with the information which shippers are required to provide at least four days before a shipment enters Arizona.

In inconsistency ruling IR–14 MTB considered the effects of a local requirement on transporters of highway route controlled quantity radioactive material to provide 24-hour advance notification. Noting that the information sought by the local rule was already

required to be provided to the state under Federal law, MTB found the requirement to be inconsistent with the HMTA for the following reasons:

> If Jefferson County could impose such a requirement, then every political subdivision of every State along the shipment route could impose such a requirement. As stated in a previous inconsistency ruling, "(r)edundancy does not further transportation safety and represents the type of multiplicity that the HMTA intended to make unnecessary." (IR-2, 44 FR 75571).) It was for this reason that Appendix A to Part 177 sets forth the Department's opinion that local prenotification requirements are inconsistent. As stated in the section-by-section analysis of Appendix A, which was published as part of HM-164, the Department underlined the seriousness of its concern with redundant regulations by stating that "(p)renotification requirements by State and local governments, if found to be necessary, will be established in a nationally uniform manner." (46 FR 5314.) [IR-14, 49 FR 46656, 46658, November 27, 1984.]

Tucson asserts that this reasoning does not apply here. First of all, because its prenotification requirement applies only to shipments whose origin or destination is Tucson, the issue of multiplicity does not arise. Widespread adoption of similar requirements by other localities would subject shipments to only two regulatory schemes, those of the origin and destination cities. Thus, the Department need not be concerned about multiplicity even if every political subdivision of every state along a shipment's route were to impose such a requirement. Admittedly, the effect of multiplicity is much less with requirements such as Tucson's than with requirements like Jefferson County's. Indeed, were this the only objection to the prenotification requirement, the issue of inconsistency would be a closer question.

Tucson asserts further that its requirement is not redundant; rather, it fills a gap in the effective regulation of transportation safety. In its letter responding to public comments on this proceeding, Tucson stated:

> The law requires that U.S.D.O.T. develop rules, enforce those rules and coordinate emergency responses; thanks to inadequate resources, that has not been adequately accomplished and is not likely to in the foreseeable future.
>
> Thus we are faced with the prospect of the federal government precluding us from an area of regulation which they in turn have failed to fulfill.

In other words, Tucson apparently has taken the position that, when a locality considers Federal safety regulations inadequate to meet local needs, it may, on its own determination, regulate to overcome the preceived Federal inadequacy. This completely undermines the regulatory system mandated by the HMTA. Congress recognized that rules of national applicability would not always meet unique local conditions. It was for this reason that the HMTA did not preempt all state or local rules, but only those that were inconsistent. Furthermore, Congress recognized that there could be valid safety reasons for permitting certain inconsistent state or local rules to coexist with their Federal counterparts, and authorized the Department of Transportation to waive preemption in certain circumstances.

In implementing its regulatory authority under the HMTA, MTB has sought to ensure the flexibility necessary to respond to changing conditions. Recognizing that practical experience in applying the regulations can point out the need for change, MTB adopted procedures in 49 CFR Part 106, whrerby "(a)ny interested person may petition the Director to establish, amend, or repeal a regulation." (49 CFR 106.31.) With specific regard to the establishment of prenotification requirements for highway shipments of radioactive materials, MTB had the authority to either impose a fixed prenotification requirement or prohibit transporters from providing advance notice. Instead of taking either of these courses, MTB chose to rely on the Federal prenotification requirements established by NRC and to state its determination that, at such time as state and local prenotification requirements are found to be necessary, they will be established in a nationally uniform manner (46 FR 5314-5), i.e., in a manner consistent with the HMTA's objective of precluding "the potential for varying and conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93rd Cong., 2nd Sess. 37 (1974)). As discussed at length above, the absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field.

In view of the foregoing, Tucson's defense of its prenotification requirement must be rejected. If, as alleged, the Federal safety regulations are inadequate to meet Tucson's need for emergency response planning information, then the city has recourse to at least three alternatives to the imposition of independent requirements:

1. Concede inconsistency and apply for a waiver of preemption pursuant to 49 CFR 107.215.
2. File a petition for rulemaking pursuant to 49 CFR 106.31.
3. Select an alternate method for obtaining the information it deems necessary for emergency response planning.

Nothing in Tucson's response justifies departure from MTB's established position that state or local routing requirements (as defined in appendix A to 49 CFR, Part 177) which require prenotification are inconsistent with the HMTA.

Finally, Tucson asserts that no local industry utilizes or produces highway route controlled quantity radioactive materials and, thus, such materials have no business on the city's streets. As discussed *supra*, the City could maintain this apparently desirable status through regulation of land use and local activities without impacting transportation safety regulation under the HMTA.

In summary, the prenotification requirement imposed by section 13-12(C) of the Tucson City Code impedes the accomplishment of the HMTA's dual objectives of safety enhancement and regulatory uniformity, whether applied to limited quantities, placarded shipments or highway route controlled quantities. Having determined that the requirement fails the obstacle test, I conclude that section 13-12(C) is inconsistent with, and thus preempted by, the HMTA.

III. Ruling

For the foregoing reasons, I find that section 13-12 of the Tucson City Code constitutes a regulatory scheme which is inconsistent with the HMTA and the HMR issued thereunder and, therefore, preempted under section 112(a) of the HMTA (49 U.S.C. 1811(a)).

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, D.C., on May 14, 1985.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 597/Pub. L. 99-36

To amend subtitle II of title 46, United States Code, "Shipping", making technical and conforming changes, and for other purposes. (May 15, 1985; 99 Stat. 67) Price: $1.00

S.J. Res. 65/Pub. L. 99-37

Designating the month of November 1985 as "National Alzheimer's Disease Month". (May 15, 1985; 99 Stat. 69) Price: $1.00

S.J. Res. 53/Pub. L. 99-38

To authorize and request the President to designate the month of June 1985 as "Youth Suicide Prevention Month". (May 15, 1985; 99 Stat. 70) Price: $1.00

S.J. Res. 94/Pub. L. 99-39

To designate the week beginning May 12, 1985, as "National Digestive Diseases Awareness Week". (May 15, 1985; 99 Stat. 71) Price: $1.00

S.J. Res. 60/Pub. L. 99-40

To designate the week of May 12, 1985, through May 18, 1985, as "Senior Center Week". (May 15, 1985; 99 Stat. 73) Price: $1.00

CFR CHECKLIST

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