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Thursday
June 20, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 50, No. 119
Thursday, June 20, 1985

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Continental/Air Micronesia

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Continental/Air Micronesia to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Continental/Air Micronesia on April 25, 1985, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Continental/Air Micronesia.

* * * * *

Dated: June 13, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–14860 Filed 6–19–85; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–08–AD; Amdt. 39–5084]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection for cracks in the area of the inboard elevator control rods, inboard elevator Power Control Package (PCP) input rods, and elevator aft quandrant tube on all Model 747 series airplanes. This action is prompted by the recent finding of 12 cracked rods. An undetected crack could result in loss of redundancy in the elevator control.

EFFECTIVE DATE: July 28, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Aerospace Engineer, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for and subsequent repair of cracked structure was published in the **Federal Register** on March 1, 1985 (50 FR 8338). The comment period for the proposal closed on April 22, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Comments were received from the Air Transport Association (ATA) of America which requested that the repetitive inspection interval be increased from 15 to 24 months. The ATA based this request on the negative findings by Northwest Airlines, TWA and CP Air after conducting this type of inspection. This would allow accomplishment of the inspections within normal carrier maintenance schedules. The ATA further commented that no one has advised them of any discrepancies and they consider cracking of the subject rods to be isolated occurrences. The FAA does not concur. There have been four operators that have found cracking and one, American Airlines, found four cracked rods on three airplanes. This indicates that the occurrences are not isolated. Also, since the cracking is caused by corrosion and is time

dependent, the 15 months interval is considered appropriate and takes into account operators scheduled inspection periods.

Another commenter recommended that the inspection interval be specified in terms of airplane flight hours and not by calendar time. It was assumed that crack initiation is caused by fatigue. The FAA does not concur with the use of airplane flight hours as a basis for inspection intervals since the cracks are initiated by corrosion, and corrosion is calendar time dependent.

The manufacturer commented that terminating action should be the replacement of the inboard elevator control rods, inboard Power Control Package (PCP) input rods, and elevator aft quandrant tube with new improved production parts in accordance with Boeing Production Revision Record (PRR) 80331. The FAA concurs and paragraph A. of the AD has been revised accordingly.

It is estimated that 160 airplanes of U.S. operators will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $32,000.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes certificated in any category that have not incorporated Boeing Production Revision Record (PRR) 80331, or an FAA approved equivalent. To prevent failure of the inboard elevator control rods, inboard elevator Power Control Package (PCP) input rods, and the aft quadrant tube, accomplish the following, unless already accomplished:

A. Within 6 months after the effective date of this AD or prior to the accumulation of 6 years after the date of manufacture, as shown on the airplane identification plate, whichever occurs later, and thereafter at intervals not to exceed 15 months, visually inspect the inboard elevator control rods, PCP input rods, and aft quadrant tube assembly for cracks or corrosion, in accordance with Boeing Service Bulletin 747-27A2253 dated October 19, 1984, or later FAA-approved revisions. Cracked or corroded parts are to be replaced with airworthy parts prior to further flight, and inspections are to be continued as noted above. Replacing the above parts with new improved production parts in accordance with Boeing Production Revision Record (PRR) 80331, or an FAA approved equivalent, constitutes terminating action for the required repetitive inspections.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations to operate airplanes to a base for inspection and/or modification required by this AD.

D. On request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD, if the request contains substantiating data to justify the adjustment period.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective July 28, 1985.

Issued in Seattle, Washington, on June 13, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-14787 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-19-AD; Amdt. 39-5085]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive that requires the modification of wiring for the aft equipment/lavatory/galley ventilation fans and the air conditioning pack flow control on certain Boeing Model 767 airplanes. This action is necessary because, in the event of a fire in the aft cargo compartment, the airplane systems as presently configured allow the fire extinguishing agent concentration to drop to a level which may not prevent a smoldering fire from rekindling.

EFFECTIVE DATE: July 28, 1985.

Compliance: Required within the next 90 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Service Bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the modification of wiring for the aft equipment/lavatory/galley ventilation fans and the air conditioning pack flow control on certain Boeing Model 767 airplanes was published in the Federal Register on March 19, 1985 (50 FR 10976). This action is necessary to prevent degradation of the fire protection capability in the aft cargo compartment.

The comment period for the NPRM, which ended May 5, 1985, afforded interested persons an opportunity to participate in the making of this amendment. The Air Transport

Association (ATA) of America, representing operators of Boeing Model 767 airplanes, noted that the wire called out in the service bulletin (BMS 13-48 24 AWG) is available with a 60-day lead time, and requested that the proposed compliance period be changed from 90 days to 1 year. An inquiry with Boeing established that the 18 inch length-per-airplane piece of wire is available from Boeing with no delay; therefore, the compliance period proposed remains 90 days. Another commenter noted that cargo compartment fire protection duration is especially important during extended range operation. The FAA has determined that compliance with the provisions of this AD as proposed will assure correction of the unsafe conditions for all Boeing Model 767 airplanes.

The manufacturer has issued Revision 1 to the referenced service bulletin which clarifies the functional test. Since this does not increase the burden upon operators it has been incorporated in the final rule.

One comment was received after the close of the comment period and was considered as it did not add expense or cause a delay in the release of the final rule. The commenter suggested changes to the "Discussion" section of the NPRM which were editorial in nature. While the comments were valid and useful, that portion of the NPRM does not appear in the final rule. Therefore, these changes are not incorporated.

It is estimated that fifty-four airplanes of U.S. registry are affected by this AD, that it will take approximately eight manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $17,280.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 767 Series airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 series airplanes certificated in all categories, as enumerated in Boeing Service Bulletin No. 767-21-0041, Revision 1, dated February 15, 1985. To assure the effectiveness of the cargo compartment fire protection system, accomplish the following, unless already accomplished.

A. Within 90 days after the effective date of this AD, revise the wiring and test the operation of the aft equipment/lavatory/galley ventilation fans and the left and right air conditioning pack flow controls in accordance with Boeing Service Bulletin 767-21-0041, Revision 1, dated February 15, 1985, or later FAA approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the above specified service bulletin from the manufacturer may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, WA 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective June 28, 1985.

Issued in Seattle, Washington, on July 13, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-14876 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANE-26]

Control Zone; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Suspension of effective date.

SUMMARY: This action suspends the effective date of Federal Register Document 85-11458 published on May 13, 1985, (50 FR 19909) that amended the Lebanon, New Hampshire Control Zone by adding an extension from the 5 mile radius to 9.5 miles northwest of the DV LOM. Due to a delay in installation of the DV LOM, the effective date of this rule, presently July 2, 1985, is suspended until further notice pending equipment certification.

EFFECTIVE DATE: 0901 G.m.t., July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-11458 was published on May 13, 1985, (50 FR 19909) that amended the Lebanon, New Hampshire Control Zone by adding an extension from the 5 mile radius to 9.5 miles northeast of the DV LOM. Due to a delay in installation of the DV LOM, the effective date of this rule is suspended until further notice pending equipment certification.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Suspension

Accordingly, pursuant to the authority delegated to me, the **Federal Register** Document 85-11458, as published in the **Federal Register** on May 13, 1985 (50 FR 19909) is suspended until further notice.

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510 Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69] 49 CFR 1.47.

Issued in Burlington, Massachusetts, on June 5, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-14791 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24685; Amdt. No. 1297]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, standard instrument, Aviation safety.

Issued in Washington, D.C. on June 14, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard

Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective August 1, 1985*

Savoonga, AK—Savoonga, VOR Rwy 23, Orig.
Savoonga, AK—Savoonga, VOR/DME Rwy 23, Orig.
Tracy, CA—Tracy Muni, VOR-A, Amdt. 3
Boise, ID—Boise Air Terminal (Gowen Fld), VOR/DME or TACAN Rwy 28L, Amdt. 8
Greenville, IL—Greenville, VOR/DME-A, Amdt. 2
Minneapolis, KS—Minneapolis City County, VOR/DME Rwy 34, Orig.
Northhampton, MA—Northhampton, VOR/DME-B, Amdt. 1
Charlotte, MI—Fitch H Beach, VOR Rwy 20, Amdt. 8
East Tawas, MI—Iosco County, VOR-A, Amdt. 4
Fredericktown, MO—Fredericktown Muni, VOR/DME Rwy 1, Orig.
Fredericktown, MO—Fredericktown Muni, VOR-B, Orig.
Austin, TX—Austin Executive Airpark, VOR/DME Rwy 18, Amdt. 2
Laredo, TX—Laredo Intl, VOR or TACAN Rwy 32, Amdt. 5
Laredo, TX—Laredo Intl, VOR/DME or TACAN Rwy 14, Amdt. 5
Waco, TX—Waco-Madison Cooper, VOR/DME Rwy 32, Amdt. 12
Huntington, UT—Huntington Muni, VOR/DME-A, Orig., Cancelled
Huntington, UT—Huntington Muni, VOR/DME-B, Orig.
Price, UT—Carbon County, VOR Rwy 36, Amdt. 3, Cancelled
Price, UT—Carbon County, VOR Rwy 36, Orig.
Douglas, WY—Converse County, VOR Rwy 28, Orig.
Jackson, WY—Jackson Hole, VOR/DME Rwy 36, Amdt. 1
Jackson, WY—Jackson Hole, VOR-A, Amdt. 4

** * * Effective June 10, 1985*

Lake Charles, LA—Lake Charles Muni, VOR-A, Amdt. 11
Lake Charles, LA—Lake Charles Muni, VOR/DME-B, Amdt. 6

** * * Effective June 7, 1985*

Baytown, TX—RWJ Airpark, VOR/DME Rwy 33, Amdt. 1

** * * Effective June 5, 1985*

Kennett, MO—Kennett Memorial, VOR Rwy 36, Amdt. 4

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective August 1, 1985*

Boise, ID—Boise Air Terminal (Gowen Fld), LOC/DME(BC) Rwy 28L, Amdt. 3
Latrobe, PA—Westmoreland County, LOC BC Rwy 5, Amdt. 7
Laredo, TX—Laredo Intl, LOC BC Rwy 35L, Orig.
Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt. 15

4. By amending § 97.27 NDB and NDB/DME SIPSs identified as follows:

** * * Effective August 1, 1985*

Togiak Village, AK—Togiak, NDB/DME-A, Orig.
Togiak Village, AK—Togiak, NDB-B, Orig.
Carmi, IL—Carmi Municipal, NDB Rwy 36, Amdt. 5
Greenville, IL—Greenville, NDB Rwy 18, Amdt. 4
Taylorville, IL—Taylorville Muni, NDB Rwy 18, Amdt. 1
Sullivan, IN—Sullivan County, NDB Rwy 36, Amdt. 5
Ottawa, KS—Ottawa Muni, NDB Rwy 35, Amdt. 1
Circleville, OH—Pickaway County Memorial, NDB Rwy 19, Amdt. 3
Latrobe, PA—Westmoreland County, NDB Rwy 23, Amdt. 10
Laredo, TX—Laredo International, NDB Rwy 17L, Orig.
Laredo, TX—Intl, NDB Rwy 17R, Amdt 6
Waco, TX—Waco-Madison Cooper, NDB Rwy 19, Amdt. 15

** * * Effective July 4, 1985*

Seattle, WA—Seattle-Tacoma Intl, NDB Rwy 16L/R, Amdt. 4

** * * Effective June 11, 1985*

Lake Charles, LA—Lake Charles Muni, NDB Rwy 15, Amdt. 17

** * * Effective June 6, 1985*

Eliot, ME—Littlebrook Air Park, NDB-A, Amdt. 1
Hatteras, NC—Billy Mitchell, NDB Rwy 6, Amdt. 6
Ocracoke, NC—Ocracoke Island, NDB-A, Amdt. 1

** * * Effective June 5, 1985*

Kennett, MO—Kennett Memorial, NDB Rwy 18, Amdt. 1

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DM and MLS/RNAV SIAPs identified as follows:

** * * Effective August 1, 1985*

Boise, ID—Boise Air Terminal (Gowen Fld), ILS Rwy 10R, Amdt. 5
Fargo, ND—Hector Field, ILS Rwy 35, Amdt. 30
Latrobe, PA—Westmoreland County, ILS Rwy 23, Amdt. 11
Laredo, TX—Laredo Intl, ILS Rwy 17R, Amdt. 7
Salt Lake City, UT—Salt Lake City Intl, ILS Rwy 16L, Amdt. 7
Jackson, WY—Jackson Hole, ILS Rwy 18, Amdt. 4

** * * Effective June 11, 1985*

Pensacola, FL—Pensacola Regional, ILS Rwy 16, Amdt. 13

** * * Effective June 10, 1985*

Lake Charles, LA—Lake Charles Muni, ILS Rwy 15, Amdt. 18

6. By ameding § 97.31 RADAR SIAPs identified as follows:

** * * Effective August 1, 1985*

Fargo, ND—Hector Field, RADAR-1, Amdt. 7

7. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective August 1, 1985*

Sidney, OH—Sidney Muni, RNAV Rwy 28, Amdt. 2

** * * Effective June 10, 1985*

Lake Charles, LA—Lake Charles Muni, RNAV Rwy 5, Amdt. 2
Lake Charles, LA—Lake Charles Muni, RNAV Rwy 23, Amdt. 2

[FR Doc. 85-14793 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8805]

Great Lakes Carbon Corp. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the matter in Docket No. 8805 and revises Paragraph X of the Commission's order issued on June 5, 1973 (38 FR 19216) to provide that the order, which was scheduled to expire in June of 1993, will terminate immediately upon entry of the modifying order. After considering respondent's petition requesting termination of the 1973 order, together with other relevant information, the Commission determined that the requested modification would serve the public interest. Changes in the market indicated that the order, which among other things required the companies to restrict their contracts for the purchase and sale of industrial quality petroleum coke to terms of three years, was no longer necessary and impeded the ability of respondent companies to compete effectively.

DATE: Modifying order issued June 4, 1985.

FOR FURTHER INFORMATION CONTACT: FTC/L-301, Elliot Feinberg, Washington, D.C. 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of Great Lakes Carbon Corporation, a corporation, et al. Codification, appearing at 38 FR 19216, remains unchanged.

List of Subjects in 16 CFR Part 13

Petroleum coke, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

[Docket No. 8805]

In the matter of Great Lakes Carbon Corporation, a corporation, *et al.*

Order Reopening and Modifying Order Issued June 5, 1973

By a petition filed on January 3, 1985, respondent Great Lakes Carbon Corporation joined by respondents Standard Oil Company (Indiana), Conoco, Inc., Derby Refining Company, Farmland Industries, Inc., Sun Refining and Marketing Company, Texaco, Inc., and Mobil Oil Corporation (by its separate submission filed on January 7, 1985), request that the Commission reopen the proceeding in Docket No. 8805 and modify Paragraph X of the order to provide that the order terminate immediately. Upon consideration of Great Lakes' petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Paragraph X of the order as requested.

The record describes an industry in which the respondents' use of long-term sales and purchase contracts by and between the respondents and others for industrial quality petroleum coke would not appear likely to have anticompetitive effects during the next eight years. Changes in the market indicate that the order is no longer necessary and the order has accomplished all it is likely to do. At the same time, the order now appears to be limiting respondents' ability to compete effectively for, among other things, participation in cogeneration and waste heat recovery projects, development of new markets, and export sales. As a result, we conclude that it is in the public interest to set aside this order.

Accordingly, it is ordered that this matter be and it hereby is reopened, and that Paragraph X of the Commission's order issued on June 5, 1973, be modified as follows:

X

This order shall terminate and cease to be effective immediately upon entry of this order reopening and modifying the order issued on June 5, 1973.

By direction of the Commission.

Issued: June 4, 1985.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-14811 Filed 6-19-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0058]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In FR Doc. 85-13135 beginning on page 23295 in the issue of Monday, June 3, 1985, make the following correction:

§ 178.2010 [Corrected]

On page 23295, in § 178.2010(b), in the table, under the entry for "Substances", second line, "(1H, 3H, 5H)" should have read "(1*H*, 3*H*, 5*H*)".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a final regulation to implement the formula grant program authorized by Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 (Pub. L. 98-473, October 12, 1984). The 1984 Amendments reauthorize and modify the Federal assistance program to State and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under title II, Part B, Subpart I of the Act (42 U.S.C. 5611 et seq.). The regulation provides guidance to States in the formulation, submission, and implementation of State formula grant plans.

EFFECTIVE DATE: These regulations are effective June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Acting Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue, NW., Room 768, Washington, D.C. 20531; telephone 202/724-5921.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The statutory changes instituted by the new legislation include new programmatic emphasis on programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, programs which seek to facilitate the coordination of services between the juvenile and criminal justice systems, education and special education programs, involvement of parents and other family members in addressing the delinquency related problems of juveniles, drug and alcohol abuse programs, law-related education, and approaches designed to strengthen and maintain the family units of delinquent and other troubled youth. The regulation implements significant statutory changes related to the jail removal requirement, including a change in the statutory exception and an extension of the date for States to achieve full compliance from December 8, 1987 to December 8, 1988.

The regulation details procedures and requirements for formula grant applications under the revised Act. Additional requirements for grant administration and fund accounting are set forth in the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M 7100.1.

Objectives

OJJDP has revised the regulation to accomplish three objectives:

(1) Implement the 1984 Amendments which affect the formula grant program;

(2) Simplify the regulation, where possible, in order to maximize State flexibility and reduce paperwork, while still providing appropriate Federal guidance, where necessary; and

(3) Simplify and clarify the requirements of section 223(a) (12), (13), (14), And (15) in a way that will permit States the widest possible latitude in meeting these objectives in a manner that is consistent with both Federal law and State law, priorities, and resources.

Description of Major Statutory Changes

Family Programs

The Act places increased emphasis on programs which seek to address the

problem of delinquency and its prevention by strengthening and maintaining the family unit. Section 223(a) (10) and (17) was amended to reflect the role of the family in addressing problems of juvenile delinquency. The State must now provide an assurance that consideration and assistance will be given to programs designed to strengthen and maintain the family unit to prevent delinquency.

Deinstitutionalization

The 1984 Amendments defined "valid court order" in section 103(16). This definition has been incorporated in the regulation but, consistent with Congressional intent, it does not necessitate any change in § 31.303(f)(3) of the regulation.

Jail Removal

Section 223(a)(14) was amended to provide additional clarification and flexibility for the States in complying with the objectives of removing juveniles from adult jails and lockups. The Act was amended to provide an explicit, limited exception. The regulation (§ 31.303(f)(4)) parallels the statutory exception, establishing six conditions which must be met before a juvenile can be detained in an adult jail. They are: (1) The juvenile must be accused of a criminal-type offense; (2) the juvenile is awaiting an initial court appearance; (3) the State in which the juvenile is detained has an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody, excluding Saturdays, Sundays and holidays; (4) the area is outside a Metropolitan Statistical Area; (5) no existing acceptable alternative is available; and (6) the jail or lockup provides sight and sound separation between juvenile and adult offenders.

The statutory amendment and the implementing regulation should be viewed as an attempt to assist States, particularly those with large rural areas, in complying with the jail removal requirement, while at the same time providing for both the protection of the public and the safety of those juveniles who require temporary placement in secure confinement.

Two other exceptions to the jail removal requirement serve this objective. The first excepts juveniles who are under criminal court jurisdiction, i.e. where a juvenile has been waived, transferred, or is subject to original or exclusive criminal court jurisdiction based on age and offense limitations established by State law and felony charges have been filed (See § 31.303(e)(2)). The second exception provides that a juvenile arrested or taken into custody for committing an act which would be a crime if committed by an adult may be temporarily held for up to 6 hours in an adult jail or lockup for purposes of identification, processing, or transfer to other facilities (See § 31.303(f)(5)(iv) (G) and (H)).

Section 223(c) of the JJDP Act was amended to allow States *three* additional years to achieve full compliance with the jail removal requirement if the State achieves a minimum 75 percent reduction in the number of juveniles held in adult jails and lockups and makes an unequivocal commitment to achieving full compliance within the additional three year period. Thus, full compliance must be demonstrated after December 8, 1988.

The regulation establishes, for the first time, criteria which will be applied by OJJDP in determining whether a State has achieved full compliance, with de minimis exceptions, with the jail removal requirement. States requesting a finding of full compliance with de minimis exceptions should submit the request at the time the annual monitoring report is submitted or as soon thereafter as all information required for a determination is available. Additional de minimis criteria, based on the model originally developed to measure full compliance with de minimis exceptions with section 223(a)(12)(A), will be developed by OJJDP after substantial compliance data have been received from the States. These criteria will establish a violation rate per 100,000 juvenile population which will be considered de minimis, thereby providing States with additional flexibility. Determinations of full compliance, with de minimis exceptions, with section 223(a)(14) would then be made annually by OJJDP and individual States required to show progress toward achieving a 100 per cent reduction in order to maintain eligibility for funding.

Audit of State Monitoring Systems

Section 204(b)(7) of the JJDP Act requires the OJJDP Administrator to provide for the auditing of State monitoring systems required under section 223(a)(15) of the Act. The State plan for monitoring compliance with sections 223(a) (12), (13) and (14) is a part of each State's three year plan. The monitoring plan requirements (§ 31.303(f)(1)) have been clarified to ensure that States establish a comprehensive monitoring plan and to enable OJJDP to review the plan for adequacy. The regulation does not expand the requirements for monitoring, rather it clarifies what constitutes an adequate system in order to assist the States in their monitoring efforts. OJJDP will undertake a periodic audit of each State's monitoring system and the reliability and validity of the data submitted in the State's monitoring report. The initial step in this process is to review the plans which States develop to monitor for compliance.

Discussion of Comments

A proposed regulation was published in the **Federal Register** on February 13, 1985 for public comment. Written comments from some 28 national, regional, and local organizations and individuals were received. All comments have been considered by the OJJDP in the issuance of a final regulation. A majority of the respondents commented favorably upon the regulation.

The following is a summary of the substantive comments and the response by OJJDP.

1. *Comment:* One State raised a concern over the relationship between the State agency head, who is by law responsible for carrying out the agency's functions, and the supervisory board. The concern was whether the agency head would be required, under the regulation, to "divest his authority and responsibility" in violation of State law.

Response: OJJDP has not been presented with a State law that would preclude the type of broad policy establishment, review and approval role that the JJDP Act and implementing regulations contemplate for the State agency supervisory board. Such a law would jeopardize a State's eligibility to participate in the formula grant program.

The supervisory board requirement of the statute, implemented in § 31.102 of the regulation, reflects a congressional judgment that the formula grant planning and funding process will be improved by the establishment of a policy board reflecting the diverse views of individuals involved in the law enforcement, criminal and juvenile justice systems.

Consequently, final decisionmaking authority on such matters as plan priorities, programs, and selection of sub-award recipients cannot be vested in a State agency head. Such decisions of necessity involve interplay between and joint action by the policy board and agency staff. Both the policy board and the agency are bound by laws, regulations, by-laws, and executive orders. Where the policy board and the head of the State agency cannot agree on some matter of policy, generally the policy board must prevail. However, the Governor, as the State's Chief Executive, and to the extent he or she reserves the power to resolve any intra-

agency conflicts or to determine major policy issues, would be the final decisionmaker.

2. *Comment:* The submission of a State's formula grant application should be allowed as late as 90 days subsequent to the start of the Federal fiscal year or at such date as mutually agreed to by the State and OJJDP.

Response: Section 31.3 of the regulation "encourages" States to submit their application 60 days prior to the beginning of the fiscal year. This would allow sufficient time for application review and award at the beginning of the fiscal year for which the funds are appropriated. It is OJJDP policy that a State's formula grant allocation remain available for obligation until the end of the fiscal year of appropriation, unless the State officially notifies OJJDP that it does not intend to apply for a formula grant award. Thus, flexibility exists for a State and OJJDP to mutually agree upon a date for application submission ranging from 60 days prior to the start of the fiscal year through the end of the fiscal year of appropriation.

3. *Comment:* OJJDP should provide the Formula Grant Application Kit, containing information and instructions for application preparation, to States no later than June 1st of each year.

Response: OJJDP intends to develop and disseminate an updated fiscal year 1985 Application Kit as soon as the final formula grant regulation is published. For those States whose fiscal year 1985 plan has already been submitted, separate instructions for supplementing the FY 1985 multi-year plan to meet any new or modified requirements imposed by the final regulation will also be issued. The fiscal year 1986 Application Kit will be available by July 15, 1985 and the fiscal year 1987 Kit by June 1, 1986 (See § 31.3).

4. *Comment:* Language should be added to the regulation which indicates OJJDP will notify the States of their formula grant allocation within 30 days after the fiscal year appropriation measure has been enacted.

Response: Section 31.301(a) has been modified by adding language specifying that OJJDP will notify States of the respective allocation within 30 days after the annual appropriation bill becomes law.

5. *Comment:* Several commentators expressed concern over OJJDP's explanation of how nonparticipating State funds are reallocated and awarded. These concerns revolve around the identity of the funds upon reallocation (formula or discretionary), their use (authorized purpose or purposes), and eligibility (State, local public and private agencies in the nonparticipating State, or States in full compliance with section 223(a) (12)(A), and (13)). Some confusion may have resulted from a Federal Register printing error which was later corrected (47 FR 9679, March 11, 1985).

Response: Although OJJDP sees no need to modify § 31.301(e) of the regulation, a brief clarification should suffice to alleviate the concerns raised.

OJJDP has treated reallocated formula grant funds as if they were discretionary funds since the 1980 Amendments established the current section 223(d) reallocation formula. This is because section 221 limits formula grant awards to "States and units of general local government or combinations thereof" while section 223(d) provides that reallocated formula grant funds may be awarded to "local public and private nonprofit agencies", a separate and distinct group of eligible receipients. However, OJJDP considers these funds to be subject to the following section 223(d) (rather than section 224) fund use limitations:

(1) The OJJDP Administrator must endeavor to make a State's reallocated funds available within that nonparticipating State;

(2) Funds are available only to local public and private nonprofit agencies; and

(3) Fund use is limited to carrying out the purposes of deinstitutionalization, separation, and jail removal.

In all other respects, however, OJJDP considers the award of these funds to be in the nature of discretionary awards under the Special Emphasis Program and, consequently, subject to the requirements of sections 225–229.

It is only after OJJDP has endeavored to make the reallocated funds available in the nonparticipating State that the Administrator can make the remainder (if any) of these funds available, on an equitable basis, to States in full compliance with sections 233(a)(12)(A) and 233(a)(13).

6. *Comment:* The State advisory group composition provision (§ 31.302(b)(2)) does not list all the membership and other statutory requirements related to State advisory group composition.

Response: OJJDP sees no need for the regulation to repeat all of the statutory advisory group composition requirements. However, § 31.302(b)(1) specifies that the advisory group must meet all of the section 223(a)(3) statutory requirements. These requirements will be specified in detail in the Formula Grant Application Kit. Section 31.302(b)(2), on the other hand, merely suggests that the Governor consider appointing representatives of areas and interests that OJJDP believes to be underrepresented on State advisory groups generally and important to a balanced perspective on juvenile justice policy and funding priorities. In addition, these individuals can provide a valuable contribution in assessing the programs marketed through OJJDP's State Relations and Assistance Division. Several minor clarifying changes have been made to the § 31.302(b)(2) language.

7. *Comment:* The permissive language of the § 31.303(b) serious juvenile offender emphasis provision was endorsed by one commentator because it provides needed discretion to States. Another commentator suggested removal of the "minimum" of 30% language because it interferes with State discretion.

Response: The provision encouraging States to allocate a minimum of 30% of their formula grant award to serious and violent juvenile offender programs was placed in the formula grant regulation in 1981 as a result of the 1980 Amendment's emphasis on serious and violent juvenile crime. Under this provision, the Office has simply "encouraged" the allocation of a minimum of 30% funding for serious and violent juvenile offender programs in States which have identified this as a priority program area. OJJDP sees no need to impliedly limit funding to a 30% level, particularly because as States come into compliance with the requirements of section 233(a) (12) to (14), additional formula grant funds will be available for other priority program needs. Therefore, in the final regulation, States are encouraged to provide a level of funding for serious and violent juvenile offender programs that is both adequate and sufficient to meet the level of need for such programs that has been identified through the State planning process.

OJJDP will continue to assist States in meeting their identified needs in the area as serious and violent juvenile offender programs through the provision of technical assistance, training, and Special Emphasis programming under section 224(a)(5).

8. *Comment:* When OJJDP added the term "felony" in § 31.303(e)(2) it closed an unintended loophole whereby juvenile traffic offenders and violators of other misdemeanor laws could be inappropriately jailed. Limiting this exception to "felony" violations is more restrictive and may increase the number of compliance violations, thereby creating a problem in measuring progress with section 223(a)(14) of the JJDP Act. Thus OJJDP should allow

affected States Flexibility for this particular element of the monitoring report.

Response: Flexibility will be provided to a State which cannot, or chooses not to, reconstruct baseline data consistent with the change in § 31.303(e)(2) *and* is unable to demonstrate substantial compliance with section 223(a)(14) because the current data excepts only "criminal felony charges" while the baseline data excepts all "criminal charges". Under these circumstances, OJJDP will allow the State, upon request and with OJJDP prior approval, to modify the current data to also except juveniles having any "criminal charges" filed in a court with criminal jurisdiction in lieu of excepting only "criminal felony charges".

9. *Comment:* The establishment, in § 31.303(e)(3), of the four criteria to be used in determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup, in circumstances where juvenile and adult facilities are located in the same building or on the same grounds, was the subject of several comments which made the following points:

(1) The criteria should mandate the provision of programs and services appropriate to the needs of incarcerated juveniles as determined by law and professional standards of practice; and

(2) The proposed regulation permits "enhanced separation" in lieu of complete removal as intended by Congress. To qualify as a separate facility, a place of juvenile detention or confinement should share no common wall or common roof with an adult jail or lockup.

Response: OJJDP believes it is beyond the office's statutory authority to prescribe the level of programs and services which must be provided in State juvenile facilities. These matters are best left to State law and regulation and State and Federal judicial determination. While OJJDP recognizes that these are important issues, the JJDP Act mandates provide only the framework within which States can continue to evolve a more efficient and effective juvenile justice system.

OJJDP intended the policy statement to be used only as a method to classify facilities as either adult jails and lockups or as separate juvenile detention facilities. It was never intended to be used as a guide to planning for or establishing "enhanced separation" of juvenile and adult offenders in lieu of jail removal. OJJDP had determined that it is entirely appropriate to provide flexibility to States in those situations where a truly separate facility for juveniles is located on the same grounds or in the same building as an adult jail or lockup. It should also be noted that, to date, *no* State has formally requested OJJDP approval of a State's determination of a separate juvenile facility under the terms and conditions of the policy.

OJJDP has learned that several counties are considering new jail construction or the expansion or renovation of existing jails to provide "enhanced separation" for the juvenile area or section of the facility.

OJJDP does not view this as a positive development because it: (1) Stifles consideration of the many viable alternatives to the use of adult jails and lockups which are available to States, counties, and local governments; (2) may lead to increased isolation of juveniles in secure facilities; (3) may lead to a failure to provide needed programs and services; and (4) is clearly not responsive to the thrust of the removal mandate.

OJJDP's primary objective in establishing the policy in the first instance was to permit existing juvenile facilities to continue to operate in circumstances where they are, in fact, separate from an adult jail or lockup. While it is possible that new facilities could come into existence that meet the four minimum requirements to establish that two separate facilities exist, the mere provision of "enhanced separation" of juveniles and adults within an existing facility will not serve to meet the minimum requirements. Consequently, OJJDP will only exempt facilities which fully meet each of the four criteria required to be met in order to establish facility separateness. For this purpose, the regulation continues to provide for an initial State determination that a particular facility meets the four criteria, submission to OJJDP of documentation establishing that the requirements are met for the particular facility, and OJJDP concurrence or nonconcurrence with the State determination.

OJJDP will make staff and technical assistance resources available to States to ensure that the full range of alternatives to the use of adult jails and lockups is considered by those jurisdictions which will need to modify their existing practices in order for the State to meet the applicable statutory deadlines for compliance with the jail removal requirement.

10. *Comment:* The designated State agencies established pursuant to section 223(a)(1) of the JJDP Act should have input into the design of the auditing methodology which OJJDP undertakes pursuant to section 204(b)(7) of the Act and any OJJDP audit activity should be conducted in coordination with State agency juvenile justice staff.

Response: OJJDP intends to involve the designated State agency juvenile justice staff in both the methodology development and actual conduct of any on-site audits of State monitoring systems (see § 31.303(f)).

11. *Comment:* OJJDP should reconsider the regulation requiring the monitoring of nonsecure facilities. The requirement to identify, classify, and inspect all facilities could be difficult given limited staff, the excessive amount of work involved, and the fact that compliance monitoring should focus or secure facilities. Also, because other State agencies oversee many of these facilities, the regulation would require a duplication of existing efforts.

Response: Section 223(a)(15) of the JJDP Act expressly requires States to monitor jails, detention facilities, correctional facilities and *nonsecure facilities.* Thus, § 31.303(f)(1)(i) of the regulation reflects a statutory requirement which OJJDP cannot waive or delete by regulation. To enable a State to determine which facilities fall under the purview of section 223(a) (12), (13) and (14), all facilities which may hold juveniles must be identified and classified. Only those facilities classified as secure detention facilities, secure correctional facilities, adult jails, or adult lock-ups fall under the data collection and data verification monitoring requirements. Once a facility is classified as nonsecure, the State does not necessarily have to reinspect the facility annually, but should have adequate procedures to ensure its classification as a nonsecure facility remains accurate. Classification review should occur at least every two years. The regulation does not require the State agency designated pursuant to section 223(a)(1) of the JJDP Act to perform all monitoring tasks. If other agencies have monitoring responsibilities, the designated State agency can utilize their information. The regulation requires a description of the monitoring activities and identification of the specific agency responsible for each task. Also, formula grant funds, other than the 7½ allowed for administrative costs pursuant to section 222(c), may be used to pay costs associated with implementing the monitoring requirement of section 223(a)(15).

12. *Comment:* (1) The valid court order regulation (Section 31.303(f)(3)), allowing secure detention of a juvenile who is alleged to have violated a valid court order, provides too much latitude to States. The regulation should clarify that there must be "reasonable grounds" or

"probable cause" before securely detaining a juvenile who has allegedly violated a valid court order. (2) The regulation does not require that the court order be entered *after* the provision of all due process. If the juvenile is not provided with right to counsel at the initial proceeding when the order is entered, then it is not constitutionally "valid." (3) The regulation should prohibit the detention of juveniles for allegedly violating a valid court order until a formal judicial determination (adjudication) has been made that such violation occurred.

Response: OJJDP considered the legal and constitutional issues raised by these commentators in developing the existing valid court order regulation. This development process included hearings held at two sites and the receipt, review and analysis of many written comments. The final regulation was published on August 16, 1982 (47 FR 35686). Since that time, OJJDP has been presented with no allegations or documentation of abuse in the application and/or implementation of the regulation. Consequently, OJJDP sees no basis to consider modification to this section of the regulation.

13. *Comment:* The statutory exception which permits States to jail juveniles in non-MSA areas for up to 24 hours, provided they are sight and sound separated from adults, gives rise to the very isolation problems, such as increased suicides, which motivated Congress to require complete jail removal in the first place. Consequently, the regulation requiring sight and sound separation under the 24 hour non-MSA exception should be strengthened to ensure that no youth is placed in a situation where he or she is placed in "de facto" solitary confinement because of the desire to achieve separation from adult offenders.

Response: Congress established the six specific requirements for this exception. However, OJJDP agrees with the thrust of this comment. Consequently, language has been added to § 31.303(f)(4), which implements the non-MSA statutory exception provision, to strongly recommend the provision of continuous visual supervision for those juveniles held up to 24 hours in an adult jail or lockup, pursuant to the exception, during the period of their incarceration.

14. *Comment:* States have not collected data which parallels the new jail removal exception. Thus, for States demonstrating a good-faith effort in the area of jail removal monitoring, appropriate flexibility by OJJDP is needed.

Response: States which established baseline jail removal data using the original statutory exception for "low population density areas" *and* which fail to demonstrate substantial compliance solely because the current data reflects the revised statutory exception for non-MSA areas, will be permitted to modify their current data by using the original statutory exception, upon request and with OJJDP prior approval (see § 31.303(f)(4)).

15. *Comment:* The word "certify" in § 31.303(f)(4)(iv) should be removed and the regulation require only that a "determination" has been made that the adult jail or lockup provides for the sight and sound separation of juveniles and incarcerated adults.

Response: The use of the term "certify" was intentionally included to require that specific action be taken, both by the State and the facility administration, to ensure the facility provides for sight and sound separation of juveniles and incarcerated adults. Through a certification process, the facility would have to document it provides for both separation and visual supervision. This could be accomplished by the jail administration stating in writing that these requirements are met and agreeing to notify the State if the facility is unable or fails to maintain the required level of separation and supervision.

16. *Comment:* The regulation requirement of "at least 6 months of data" for the annual monitoring report will create problems with data collection and monitoring because of the lack of both staff and resources.

Response: OJJDP will provide assistance and guidance to those States which will need to expand the length of their reporting period to comply with § 31.303(f)(5). With regard to costs associated with accomplishing the monitoring requirement, see Comment 11.

17. *Comment:* The six-hour "grace period" for detaining juveniles in adult jails or lockups is extremely difficult to rationalize and justify and a less restrictive limit would allow the freedom to determine more accurately the needs of a juvenile. Does the six-hour provision preclude placing a juvenile in a jail late at night and releasing him or her the next morning? The six-hour grace period should be extended to 10, 12, or 24 hours because in some remote areas it is impossible to travel the distance necessary, particularly in foul weather, to pick up a youth within six hours.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal-type offenders) and who are held in an adult jail or lockup for up to six hours. This six-hour period would be limited to the temporary holding in an adult jail or lockup by police for the specific purpose of identification, processing, and transfer to juvenile court officials or to juvenile shelter or detention facilities. Any such holding of a juvenile criminal-type offender must be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, and in no case overnight. Even where such a temporary holding is permitted, the section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six-hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained, even temporarily, in an adult jail or lockup under section 223(a)(14). In monitoring for compliance with section 223(a)(14), section 31.303(f)(5)(iv) of the regulation requires States to report the number of juvenile criminal-type offenders held in adult jails and lockups in excess of six hours. However, it should be noted that the six hours does not include time involved in transporting a juvenile to or from an adult jail or lockup.

18. *Comment:* The revised definition of the term "secure" in § 31.304(b), which clarified that "staff secure" facilities are outside the scope of the statutory definition, was the subject of several comments. Some commentators found the clarification helpful, recognizing the need to provide for the safety and protection of all juveniles in appropriate circumstances through therapeutic intervention. However, a number of others felt that better definitions of related terms such as "limited", "reasonable" and "for their own protection and safety" required further study, particularly in view of the due process and liberty interest implications of the staff secure concept, a perceived potential for abuse, and the need to identify effective staff secure programs in order to properly define the concept.

Response: OJJDP found these comments helpful. The use of the word "secure" in "staff secure" in the draft regulation apparently caused some confusion. Perhaps "staff restrictive" would have been a better descriptor. In any event, OJJDP has eliminated the use of the term "staff secure" in the final regulation. However, the office will continue to work with individuals and organizations in the field of juvenile justice to define this concept in the context of effective programs that use staff control techniques, which include procedures or methods other than the use of construction fixtures, that may physically restrict the movements and activities of individual facility residents. The objective is to insure that juveniles will remain in residential facilities to receive the care and treatment that is necessary to carry out the juvenile or family court custody order.

The JJDP Act defines the terms "secure detention facility" and "secure correctional facility" in sections 103 (12) and (13). In this context, the terms are expressly defined to include only those public or private residential facilities which "include(s) construction fixtures designed to physically restrict the movements and activities of juveniles . . .". The plain meaning of this statutory language is that facility features other than "construction fixtures", such as the use of staff to restrict physically or procedurally the movements and activities of juveniles, are not within the scope of the definition.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final rule does not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

The collection of information requirements for compliance monitoring contained in this regulation have been approved by the Office of Management and Budget (Data Collection #1121-0089, expiration date June 30, 1986) under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 31

Grant programs, Juvenile delinquency.

Accordingly, 28 CFR Part 31 is revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec.

Subpart B—Eligible Applicants

Subpart C—General Requirements

Subpart D—Juvenile Justice Act Requirements

Subpart E—General Conditions and Assurances

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Formula Grant Applications for each of Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency: (a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act; (b) has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and (c) has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds.

§ 31.103 Membership of Supervisory Board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a

board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants", Guideline Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, *et seq.*, where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administrative agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency and its supervisory board established pursuant to section 261(c)(1) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands; Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age. OJJDP will officially notify the States and territories of their respective allocation within 30 days after the appropriation bill for the applicable fiscal year becomes law.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 227(a)(2) which also require a 100% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, and/or removal of juveniles from adult jails and lockups. Absent the demonstration of compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds will be reallocated on October 1 following the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the Federal Register.

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 261(c) of the JJDP Act, the State must assure that the State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory Group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all

current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(a)(3) (A) to (E), appointing at least one member who represents each of the following: A law enforcement officer such as a police officer; a juvenile or family court judge; a probation officer; a corrections official; a prosecutor; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; and a high school principal.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a) (4), (5), (6), (7), (8)(C), (9), (10), (11), (16), (17), (18), (19), (20), and (21), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application Kit can be used as a reference in providing these assurances.

(b) *Serious Juvenile Offender Emphasis.* Pursuant to sections 101(a)(8) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(f)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance", as outlined in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c) (1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with Incarcerated Adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d) (i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those States not in compliance must show annual progress toward achieving compliance until compliance is reached.

(e) *Removal of Juveniles From Adult Jails and Lockups.* Pursuant to section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. In circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four requirements initially set forth in the January 17, 1984 **Federal Register** (49 FR 2054–2055) must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

(B) Total separation in all juvenile and adult program activities within the

facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults, can serve both.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met.

(4) For those States that have achieved "substantial compliance" with section 223(a)(14) as specified in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(5) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1), (2), and (4) of this Section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of Monitoring Universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the Monitoring Universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include: (*1*) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequqte sight and sound separation between juvenile and adult offenders exists *and* (*2*) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a) (12), (13) and/or (14).

(D) *Data Collection and Data Verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a) (12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a) (12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a) (12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders, *or* used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State and approved by OJJDP;

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs (f)(4) (i) thru (iv) of this Section have been met and received prior approval from OJJDP. In addition, OJJDP strongly recommends that jails and lockups which incarcerate juveniles pursuant to this exception be required to provide continuous visual supervision of juveniles incarcerated pursuant to this exception.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than 6 months. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private secure detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2) for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(E) Total number of status offenders held in any secure detention or correctional facility pursuant to a judicial determination that the juvenile violated a valid court order as defined in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(D) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lockups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lockups holding juveniles during the past twelve months.

(F) Total number of adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which it is located.

(G) Total number of juvenile criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lockup.

(J) Total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of section 223(a) (12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of this Section within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State

has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

(ii) *Compliance* with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) *Substantial compliance* with section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lockups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within three additional years. *Full compliance* is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14). *Full compliance with de minimis exceptions* is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii) (A) or (B) of this section:

(A)(*1*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*5*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(A)(*4*) of this section.

(B) [Reserved]

(*7*) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with section 223(a)(12)(A) and compliance with section 223(a)(13) of the JJDP and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of section 223(a) (12)(A) and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of statute and procedures for remedying violations are set forth.

(g) *Juvenile Crime Analysis.* Pursuant to section 223(a)(8) (A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multiyear application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual Performance Report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A).

(i) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Other Terms and Conditions.* Pursuant to section 223(a)(23) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this

term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

(o) *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local Private Agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M 7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M 7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Non-discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-007]

Arizona State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart CC of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Arizona State plan. As a

result of this affirmative determination under Section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Arizona plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector, over smelter operations and within the Indian reservations in the State. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by Section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of the State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers, established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan. State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of Arizona Plan and its Compliance Staffing Benchmarks

Arizona Plan

On March 7, 1973, Arizona submitted an occupational safety and health plan in accordance with Section 18(b) of the Act and 29 CFR Part 1902, Subpart C. Initial OSHA review of the plan raised several significant concerns which would have precluded approval of the plan. Among these issues were the lack of first instance sanctions for serious and non-serious violations and the lack of an informal review procedure if complaince action was not taken following an employee complaint. Because of these and other OSHA concerns, the State was notified that its plan would be subject to disapproval. Following this notice, on October 11, 1973, the State requested an opportunity to correct the deficiencies and requested that the Assistant Secretary postpone his decision on the disapproval of the plan. These requests were granted. On August 6, 1974, the State resubmitted its plan and addressed the Assistant Secretary's concerns. The State of Arizona amended its State plan sections on sanctions, enabling legislation, standards, response to employee complaints through inspection, advance notice, employee participation in the review process, and the right to compel entry.

On August 23, 1974, a notice was published in the **Federal Register** (39 FR 30559) concerning the resubmission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. No written comments were received concerning the revised plan and there were no requests for an informal hearing.

On November 5, 1974, the Assistant Secretary published a notice granting initial approval of the Arizona plan as a developmental plan under Section 18(b) of the Act (39 FR 39037). The Plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Plan covers all issues except private sector maritime employment, smelter operations and employees on Indian reservations. The Industrial Commission of Arizona is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Arizona Division of Occupational Safety and Health. The Plan provides for the adoption by Arizona of standards which are identical to Federal occupational safety and health standards, including emergency temporary standards. The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with all standards and regulations applicable to their conduct.

The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, protection of employees against discrimination for exercising their rights under the plan, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by the Arizona Occupational Safety and Health Review Board. Decisions of the Board may be appealed to the Arizona Court of Appeals.

The Assistant Secretary's initial approval of the Arizona developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart CC; 39 FR 39037 (November 5, 1974)).

In accordance with State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending November 30, 1977. These "developmental steps" included legislative amendments; a management information system; a merit staffing system; a safety and health poster for private and public employees; regulations for inspections, citations and proposed penalties; review procedures; recordkeeping and reporting regulations; and interagency agreements between the designated agency and the Arizona Department of Health Services' laboratory.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State subsmissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of Section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Arizona subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.354).

On October 13, 1975, OSHA entered into an operational status agreement with the State of Arizona (as amended on December 17, 1981). A **Federal Register** notice was published on June 11, 1982, (47 FR 24323), announcing the signing of the amended agreement. Under the terms of that agreement, OHSA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Arizona plan.

On September 18, 1981, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Arizona had satisfactorily completed all developmental steps (46 FR 46320). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Arizona plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with Section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Arizona Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the court containing the benchmarks and requiring Arizona to allocate 24 safety compliance officers and 33 industrial hygienists to conduct inspections under the plan.

In Septemer 1984 the Arizona State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Arizona. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Arizona reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 9 safety and 6 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Arizona and the resultant eligibility of the Arizona State plan for determination under Section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2440). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Arizona plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Arizona operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982—March 1984 Evaluation Report of the Arizona plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 2–12). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

The January 16 **Federal Register** notice also contained notice of OSHA's proposed approval of revised compliance staffing benchmarks for Arizona. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Arizona was included in the notice. In addition, OSHA submitted, as part of the record (Docket No. T–007), Arizona's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T–018) and contained background information relevant to the benchmark issue in

general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region IX Office in San Francisco, California, and at the State offices of the Arizona Department of Occupational Safety and Health. A summary of the January 16 proposal, with an invitation for public comments, was published in Arizona on January 25, 1985 (Ex. 2–4).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO), written comments and views regarding the Arizona plan, whether the proposed revised compliance staffing benchmarks should be approved and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Ten comments were received in response to these notices. Five comments were received from organized labor, three from employer groups in Arizona, and two from private employers. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Arizona plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Arizona.

In response to the January 16 **Federal Register** notice, OSHA received comments from the Guy F. Atkinson Construction Company, Harry L. Eckstein, Safety Manager (Ex. 3–1); Arizona Association of Industries, John C. Leonard, Executive Director (Ex. 3–3); Bechtel Construction, Inc., A.D. Horton, Jr., Project Safety Supervisor, Palo Verde Nuclear Generating Station (Ex. 3–4); Phoenix Building and Construction Trades Council (AFL–CIO), Dudley Brown, Business Manger (Ex. 3–5); Associated General Contractors of America, Inc., James R. McDonald, Executive Secretary (Ex. 3–6); Associated General Contractors of America, Inc., Gary R. Lisk, Executive Director (Ex. 3–7); Central Arizona Labor Council (AFL–CIO), Patrick Cantelme, President (Ex. 3–8); International Brotherhood of Electrical Workers (AFL–CIO), Local Union 266, Bill Bearden, Business Manager/Financial Secretary (Ex. 3–11); American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Ex. 3–9); and United Steelworkers of America (AFL–CIO–CLC), Mary Win-O'Brien, Assistant General Counsel (Ex. 3–10). Larry Etchechury, Director, Division of Occupational Safety and Health, the Industrial Commission of Arizona, responded to the public comments (Ex. 3–12).

Three State labor organizations, affiliated with the AFL–CIO, expressed their support for final State plan approval for Arizona. Dudley Brown, Business Manager for the Phoenix Building and Construction Trades Council, expressed the view that the Arizona program has been very effective in promoting the safety and health of the people of Arizona and in reducing the incidence of injuries and accidents. Bill Bearden, Business Manager for Local 266, International Brotherhood of Electrical Workers, praised the professionalism of the State program. President of the Central Arizona Labor Council, Patrick Cantelme, indicated that the 82 local unions which are members of that Council support final approval and are pleased with the high standards and cooperation of the program.

Mr. Harry L. Eckstein, of the Guy F. Atkinson Construction Company, expressed his full support of the Arizona program and praised Arizona State Designee, Larry Etchechury, for his implementation and management of the plan. A.D. Horton, Jr. of Bechtel Construction, Inc., states that the employees of the Arizona Division of Occupational Safety and Health are fair, honest and professional people "who displayed attitudes that produced positive results for all those involved." Mr. John C. Leonard of the Arizona Association of Industries, states that through the leadership of Larry Etchechury, the Arizona occupational safety and health program has been extremely responsive to both employee and employer needs throughout the manufacturing industry in Arizona. James R. McDonald, Executive Secretary of the Associated General Contractors of America, Inc., wishes to "go on record" as a strong supporter of the Arizona State plan and feels that the plan has provided helpful and innovative programs. The Associated General Contractors of America, Arizona Building Chapter, Executive Director Gary R. Lisk, expressed the opinion that the State is doing an "exceptional job of overseeing the safety needs of Arizona."

The United Steelworkers of America commented extensively on the benchmark revision process in general, but did not direct any specific comments to the Arizona revision.

The AFL–CIO indicated opposition to approval of the proposed revised benchmarks of Arizona and therefore opposed the granting of final State plan approval. Some of the AFL–CIO's comments were directed toward OSHA's system for monitoring and evaluating State plans and the requirements that a State must meet to be eligible for final approval.

The evaluation of the Arizona plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL–CIO expressed concern that Federal OSHA's monitoring system, with its reliance on statistical indicators, fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made. Mr. Etchechury, Director of the Arizona Division of Occupational Safety and Health, in his response to the AFL–CIO comments, affirmed that OSHA's present system for monitoring and evaluating States is an objective means to evaluate every significant issue involved with the total OSHA program.

The AFL–CIO also commented on specific State performance issues. These comments addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Arizona State Designee Larry Etchechury, responded to the concerns expressed by the AFL–CIO and the United Steelworkers on

both the benchmark and State-specific issues.

Comments by the AFL–CIO and the Steelworkers addressing the proposed revised benchmarks for Arizona reflected for the most part the commenters' concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmarks formula as applied in Arizona should have assumed a need for routine, general-schedule inspections at all covered workplaces; whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Arizona's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the **Federal Register** notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Arizona and other States involved in the 1984 revision process employs the best information and techniques currently available; properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall*; and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985, **Federal Register** notice on Kentucky (50 FR 24884).

Certain of the AFL–CIO comments deal with issues specific to Arizona's benchmark calculations. The union objected to the fact that no workplaces with ten or fewer employees were added to either the State's safety or health inspection universes. Arizona based the safety exclusion on the statistical evidence from the BLS injury/illness survey that small employers have a significantly lower all case incidence rate than the average. Therefore, it is much more appropriate to utilize complaints and accidents as a means of identifying potentially hazardous small establishments. In addition, as the State points out in its benchmark submission, many small establishments in Arizona are in the construction and other mobile industries and are covered under the State's relatively high level of effort devoted to this factor in the benchmark formula.

OSHA believes that Arizona's determination that general schedule inspection resources should be focused primarily on larger work sites is reasonable and consistent with achieving proper program coverage within that State, especially since many smaller work sites are mobile sites subject to coverage elsewhere in the benchmark formula, and all of the State's work sites, regardless of size, remain subject to complaint and accident inspections.

The union also expressed its belief that firms in low hazard industries should receive routine safety inspections if they are shown to have "high hazard experience." In determining the focus of its general schedule inspection program, Arizona has placed a heavy emphasis upon coverage of manufacturing, agriculture, and construction industries, a proper emphasis given the historically high injury rates in these employments (both nationally and in the State). The State has analyzed Arizona Workmen's Compensation data and historical inspection data to determine if any manufacturing or non-manufacturing industries which were not within the initial high hazard universes should be included. The State found, with regard to most of these employments, either that the injury rate was low or that such injuries as resulted in Workmen's Compensation claims were not the result of hazards addressed by OSHA standards. OSHA believes, based on a review of the State's submission and its own enforcement experience, that Arizona's heavy emphasis upon coverage of high hazard industry groups is an entirely reasonable and appropriate means of determining when and where general inspection resources are needed in order to provide proper program coverage.

The AFL–CIO objected to the exclusion from the State's general schedule safety universe of many non-manufacturing industry groups with injury rates higher than the State average, mentioning several specific industries of concern. Arizona believes that the two non-manufacturing groups which warrant general schedule inspection coverage are construction and agriculture. No other groups have injury rates which are significant in comparison to the rates for these major industry groups. Although OSHA's authority for coverage of agriculture is relatively limited, because of its unique State-initiated standard banning use of the short handled hoe, Arizona has added a significant number of agriculture establishments to its initial universe. The State, in its response, points out that all Arizona inspectors are cross-trained and thus, although no transportation SIC's have been added to the safety universe, public warehousing is scheduled in the health universe. Thus, safety hazards will be identified and referred for further investigation as appropriate. In addition, many transportation activities fall under the jurisdiction of the U.S. Department of Transportation. With respect to "sanitary services," Arizona asserts that much of this activity occurs in the public sector and is covered under another element of the formula.

The union also suggests that many establishments with significant health hazards are excluded from the health general schedule universe, specifically automotive repair shops and hospitals. In its response, Arizona explains that after review of its historical data on health violations it has added a number of establishments to its universe in industry groups that have higher violation rates. Included among these are several automotive repair facilities as well as ones in public warehousing, miscellaneous durable goods, etc. Hospitals were not among these with a high violation history. However, many hospitals are within the public sector and are covered under that element of the health formula.

In all industries excluded from the general schedule universes, coverage is provided through response to complaints, accident investigations, and referrals from cross-trained safety and health compliance officers. OSHA agrees with the State that this provides proper program coverage in those industries that are statistically less likely to contain hazards that could be eliminated by inspection.

The State has projected, in accordance with its past enforcement experience, that 7% of its general schedule health inspection resources

will be required for the public sector program, and another 13% of those resources will be required for coverage of construction and other mobile industries. The AFL–CIO expresses the view that because these levels are based on actual enforcement history, they do not make provision for coverage of hazards which have "not been adequately covered by inspections in the past." No data is offered to support this suggestion of inadequate enforcement. To the contrary, AFL–CIO affiliates who have firsthand knowledge of Arizona enforcement have generally praised the manner in which the State has carried out its plan. (*See* comments of the Phoenix Building and Construction Trades Council, AFL–CIO; comments of Central Arizona Labor Council, AFL–CIO). OSHA's findings concerning the effectiveness of State plan enforcement, set forth elsewhere in this notice, show that the State's inspections effectively identify and require the correction of workplace hazards. In particular, as the State indicates in its response, citations and penalties for asbestos (a concern specifically raised by the AFL–CIO) have been issued when such violations are found, both in public sector workplaces and in construction. Further, a large proportion of State safety resources are devoted to mobile industries. Cross-trained safety inspectors will identify and either address or refer any health hazard present.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Arizona and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was the direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Arizona.

For these reasons, and in light of other comments by groups and individuals directly affected by and knowledgeable about safety and health enforcement needs in Arizona, OSHA believes application of the current benchmark formula for Arizona has resulted in staffing levels which result in fully effective enforcement in the State of Arizona.

Findings and Conclusions

Arizona Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Arizona, in conjunction with OHSA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Arizona. OHSA has reviewed the State's proposed revised benchmarks and supporting documentation and carefully considered the public comments received with regard to this proposal, and determined that compliance staffing levels of 9 safety and 6 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Arizona Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Arizona State plan. This information has included all previous evaluation findings since certification of completion of the State plan's development steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.(b)(2)(vii); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Arizona State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Arizona plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the January 16, 1985 **Federal Register** notice, Arizona has generally adopted standards in a timely manner which are identical to Federal standards and additionally has adopted State standards for conditions.

not covered by Federal standards, such as the Short Handle Hoe for Weeding or Thinning Crops. Arizona has adopted a Hazard Communication Standard identical to the Federal.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. As already noted, the Arizona plan provides for adoption of standards identical to Federal standards. Arizona likewise adopts standards interpretations which are identical to Federal standards.

OSHA's monitoring has found that Arizona's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Arizona.

Therefore, in accordance with Section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Arizona program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Arizona State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the January 16 notice, Arizona had no requests for permanent or temporary variances during the period October 1982 through March 1984 (Evaluation Report, p. II). However, past years' experience indicates that the State's procedures were properly applied when granting permanent and temporary variances.

Accordingly, OSHA finds that the Arizona program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Arizona law (Statute 23–407(E)) and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms virtually identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985, **Federal Register** notice, Arizona follows the Federal OSHA complaint policy. Data contained in the 18(e) Evaluation Report (p. VIII) indicates that 72.4% of the safety complaints and 64.0% of the complaints resulted in inspections.

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). The 18(e) Evaluation Report (p. VII–1) indicates that 96.7% of State programmed safety and 93.7% of programmed health (general schedule) inspections during October 1982 through March 1984 were conducted in high hazard industries, which compares favorably with Federal performance. Arizona utilizes the Federal high hazard list to schedule programmed inspections.

(b) *Employee Notice and Participation in Inspections.* In conducting inspections a State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. Arizona conducted a high percentage of initial inspections (33.6%) with employees or employee representatives accompanying the inspector on the walk-around (Evaluation Report, p. XI). From this data OSHA concludes that employee representation was properly provided in State inspections.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Arizona requires that a poster, which was previously approved by OSHA (40 FR 28472), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices, such as citations, contests, hearings and variance applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure to Medical Records standard. No posting violations were evident during this evaluation period (Evaluation Report, p. XI). Federal OSHA's evaluation concludes that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Arizona Act, approved as part of the initial approval and certification process, provides for such protection. Nine complaints of discrimination were investigated during the evaluation period. Five were found meritorious and settled administratively. Four were investigated and dismissed. Federal evaluation of these cases indicates that the State action was satisfactory (Evaluation Report, p. XVI).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisons concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were no imminent danger

situations identified during this time period. No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets during this time period.

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (Section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). The Arizona Occupational Safety and Health Act authorizes the Office of the Chief Counsel of the Industrial Commission of Arizona to petition for an order to permit entry into such establishments that have refused entry for the purpose of inspection of investigation. The Arizona law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. During this evaluation period, Arizona received 22 refusals of entry. The State successfully obtained warrants for all but 6 of these cases (Evaluation Report, p. X). Entry into the remaining 6 establishments was obtained voluntarily and, therfore, warrants were not needed. There were 14 instances of advance notice. In all 14 instances, advance notice was properly given in accord with procedures as required for the effective conduct of inspections (Evaluation Report, p. XI).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2)(x) and (xi)). The Arizona plan, through its law, regulations and field operations manual, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure to abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Comparison of Federal and State data showed a somewhat lower percentage of State serious safety violations (15.6%) and serious health violations (9.3%), which OSHA evaluation has attributed to the fact that Arizona inspects relatively smaller sized firms than OSHA, especially construction firms, and the avarage worksite is inspected at more frequent intervals (Evaluation Report, pages VII–2–5). The 18(e) Evaluation Report also indicates that the State thus finds a somewhat smaller number of violations per inspection (.7) (p. XII–2) and has a lower percentage of not-in-compliance safety programmed inspections (26.2%) and not-in-compliance health programmed inspections (27.0%). The AFL–CIO comments suggest that the lower number of violations and higher percentage of inspections in compliance cast doubt on the effectiveness of Arizona plan administration, the training of State personnel and whether violations are properly cited. OSHA's findings as documented in the 18(e) Evaluation Report, however, confirm that the principal factors causing these differences from Federal experience are, in fact, the more frequent inspection of establishments by the State and the smaller size of those establishments. When the data on violation experience is adjusted for establishment size to a common factor such as per 100 employees rather than by different size establishments, Arizona performance is comparable to OSHA's. During the evaluation period, Arizona cited an average of 7.2 violations per 100 employees while OSHA cited 7.7 violations (Evaluation Report, p. VII–2). The State's lapse time from inspection to issuance of citation was timely and averaged 10.4 days for safety and 8.9 days for health (Evaluation Report, p. XVII). OSHA monitoring indicates that the State adequately identifies, documents and cites violations of its standards.

The 18(e) Evaluation Report (p. XIV–2) indicates that Arizona proposes and assesses appropriate penalties. The average penalty for serious safety violations was $269.20, the average serious health penalty was $490.90, both of which were higher than Federal penalty levels.

Historically, Arizona officials have adhered to a policy of verifying abatement of all serious hazards which are not abated at the time of the inspection. Accordingly, 8% of Arizona's inspections were follow-up. This policy had minimal impact on the State's ability to conduct programmed inspections (Evaluation Report, p. XIII–1).

Abatement periods are generally shorter than those set Federally (4.5 days average for safety; 9.7 days average for health). Arizona attempts to document abatement within 30 days for all serious, willful and repeat violations, and the evaluation report indicates effective performance in this area (Evaluation Report, pp. XIII–1 and 2).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Arizona procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in its law, regulations and field operations manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Hearing Division of the Industrial Commission of Arizona which may be further appealed to a five-member Review Board and then to the Arizona Court of Appeals. Forty-three cases of the 667 inspections with violations resulted in contests during this evaluation period. OSHA evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. XV–1).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the

Arizona plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Arizona plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Arizona's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During this evaluation period, the State conducted 60 inspections and cited 49 violations in the public sector. Injury and illness all case rates in the public sector in Arizona are somewhat higher (public sector all case rate=10.7 per 100 full-time workers) than those in the private sector, but the lost workday case rate is lower (3.1). The AFL–CIO in its written coments expressed concern about the high Arizona public sector all case rates. The 18(e) Evaluation Report (p. VI–2) indicates that while many local governments contract sanitary services, Arizona provides this service with city employees. This is affirmed in Arizona State Designee Larry Etchechury's response to the AFL–CIO comments (Ex. 2–12), who along with the Bureau of Labor Statistics, notes that the hazardous nature of sanitary service employment is the primary factor in Arizona's high injury and illness all case rate in the public sector (Evaluation Report, p. VI–2). The proportion of inspections dedicated to the public sector was considered appropriate to the needs of public employees.

Because the State treats the public sector in the same manner as the private sector, as evidenced by its written procedures, which are applicable to all covered employees, public and private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Arizona program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Arizona has committed itself to funding the State share of salaries for 9 safety inspectors and 6 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Arizona.

As noted in the Federal Register notice announcing certification of the completion of development steps for Arizona (47 FR 24323), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substatial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

The State provides continuing training for its staff. The 18(e) Evaluation Report (p. V) noted that the State provided an average of 52.8 hours of training for safety inspectors, and 225.3 hours of training for industrial hygienists.

Because Arizona has allocated sufficient enforcement staff to meet the revised benchmarks for the State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Arizona plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Arizona plan was funded at $1,431,876 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.) The 18(e) Evaluation Report notes that Arizona's funding appears sufficient in absolute terms (Evaluation Report, p. XVIII–1). On this basis, OSHA finds that Arizona has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (Section 18(c)(8) of the Act and 29 CFR 1903.(1)). Arizona employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries. As noted in the January 16, 1985 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Arizona has met the requirements of Section 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the 18(e) evaluation period, 152 public sector employers and supervisors and 1,534 employees participated in training programs totaling 112 sessions and 465 private sector employers and supervisors and 1,383 employees participated in training programs totaling 139 sessions (Evaluation Report, p. IV). Arizona provides public and private sector on-site consultation under its approved State plan. The State made a total of 2,070 consultation visits during the evaluation period. Of the total, 1,612 were visits made through the Continuous Consultation Program for Construction. The program consisted of monthly consultation visits to prime contractors and subcontractors, upon request, and specific worksites until completion of the project and included such things as identifying hazards, recommending corrective action for their elimination, and assuring abatement of all hazards both serious and non-serious (Evaluation Report, p. IV).

Accordingly, OSHA finds that Arizona has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics (BLS) Annual Occupational Safety and Health Survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)).

Comments from the AFL–CIO point out that injury and illness rates in Arizona (except lost workday case rate in manufacturing) are above Federal averages in absolute terms. However, while Arizona's rates are somewhat

higher than the Federal rates, lost workday cases in four of the State's five high rate industries experienced a greater percentage decline that experienced in States under Federal jurisdiction. Additionally, the 1982 total case incidence rate in the private sector of 8.8 declined from the 1981 rate of 10.0 cases per 100 full-time workers. This is the lowest rate ever recorded in Arizona since the first BLS survey was conducted in 1972, and thus documents a significant decline since the State plan was initiated (Evaluation Report, p. XIX–1).

Based upon the State's overall downward trends in injury and illness rates, OSHA finds that the trends in illness and injury statistics in Arizona compare favorably with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that: (1) The revised compliance staffing levels proposed for Arizona meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) the Arizona State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the revised compliance staffing benchmarks of 9 safety and 6 health are approved and the Arizona State plan is hereby granted final approval under Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective June 20, 1985.

Under this 18(e) determination, Arizona will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Arizona must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in Section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Arizona plan terminates OSHA authority for Federal enforcement of its standards in Arizona, in accordance with Section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of Sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under Section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (Section 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under Section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by Section 18(e)) (Section 8); to conduct enforcement proceedings in contested cases (Section 10); to institute proceedings to correct imminent dangers (Section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (Section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Arizona plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement on October 13, 1975.)

Federal authority under provisions of the Act not listed in Section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under Section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with Section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Arizona plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety and health coverage in private sector maritime employment, in copper smelters, and within Indian reservations, since these issues are excluded from coverage under the Arizona plan. In addition, Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart CC of Part 1952 to reflect the final approval of the Arizona plan.

A new § 1952.353, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Arizona.

A new § 1952.354, Final approval determination, has been revised to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.355, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.352, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on October 13, 1975 (as amended June 11, 1982). Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Arizona, and the Operational Status Agreement is no longer in effect. Section 1952.355 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present Federal Register notice.

While most of the existing Subpart CC has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.350, to clearly identify the 1977 initial plan approval decision to which it relates, and deletion of former § 1952.355, which pertains to approval of miscellaneous, unrelated plan changes. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.356.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Arizona under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C., this 20th day of June, 1985.

Robert A Rowland,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart CC of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

§ 1952.355 [Removed]

2. Section 1952.355, Changes to Approved Plans, is removed.

3. Section 1952.350 is amended by revising the heading to read: § 1952.350 Description of the plan as initially approved.

§ 1952.353 [Redesignated as § 1952.351]

4. Section 1952.353 is redesignated as 1952.351 and a new 1952.353 is added to read as follows:

§ 1952.353 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984, Arizona in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 9 safety and 6 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 20, 1985.

§ 1952.354 [Redesignated as § 1952.352]

5. Section 1952.354 is redesignated as 1952.352 and a new 1952.354 is added to read as follows:

§ 1952.354 Final approval determination.

(a) In accordance with Section 18(e) of the Act and procedures in 29 CFR Part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall*, (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the State plan for a period of at least one year following certification of completion of developmental steps (46 FR 46320). Based on the 18(e) Evaluation Report (October 1982–March 1984) and after opportunity for public comment, the Assistant Secretary determined that, in operation, the State of Arizona's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Arizona plan was granted final approval and concurrent Federal enforcement authority was relinquished under Section 18(e) of the Act effective June 20, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Arizona except for private sector maritime, copper smelters, and Indian reservations.

(c) Arizona is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revision to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

6. Section 1952.352 is revised and redesignated as 1952.355 to read as follows:

§ 1952.355 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final

approval of the Arizona plan under Section 18(e) of the Act, effective June 20, 1985, occupational safety and health standards which have been promulgated under Section 6 of the Act do not apply with respect to issues covered under the Arizona plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violation of such standards under Section 5(a) (2) and 9 of the Act; to conduct inspections and investigations under Section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by Section 18(e)); to conduct enforcement proceedings in contested cases under Section 10; to institute proceedings to correct imminent dangers under Section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under Section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with Section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Arizona plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments, in copper smelters, and within Indian reservations. Federal jurisdiction is also retained with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in Section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under Section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under Section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by Section 18(f) of the Act, OSHA will continue to monitor the operations of the Arizona State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the Final determination under Section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

7. Section 1952.351 is revised and redesignated as 1952.356 to read as follows:

§ 1952.356 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 11349 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102; and, Office of the Arizona Division of Occupational Safety and Health, Industrial Commission of Arizona, 1624 West Adams, Phoenix, Arizona, 85005.

[FR Doc. 85-14739 Filed 6-19-85; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 4

[CGD 85-043]

OMB Control Numbers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), requires generally, that all regulations which contain recordkeeping or reporting requirements must be approved by the Director, Office of Management and Budget (OMB). Once approved, these regulations are assigned an OMB Control Number. OMB Control Numbers for regulations within Title 33, Code of Federal Regulations are displayed in a Table appearing at 33 CFR 4.02. This document updates the table to display OMB Control Numbers assigned to certain regulations within Parts 45, 137 and 165.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: LT. Dave Shippert (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days. This rule merely displays existing OMB Control Numbers pertaining to specific Coast Guard regulations for the public's information. Therefore, the Coast Guard has determined that notice and public procedure are unnecessary in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Also, delaying the effective date would preclude publication in the revised Code of Federal Regulations. Therefore, it is in the public's best interest and good cause exists to make this rule effective in less than thirty days in accordance with 5 U.S.C. 553(d)(3).

Drafting Information

This rule was drafted by LT. Dave Shippert, Office of Chief Counsel, Regulations and Administrative Law Division.

Discussion

OMB Control Numbers applicable to regulations contained in Title 33 CFR are displayed in table format at 33 CFR 4.02 (49 FR 26583, June 28, 1984). Several OMB Control Numbers were inadvertently omitted from this initial compilation. This document revises the table to display three (3) existing OMB Control Numbers which are applicable to regulations in Parts 45, 137 and 165.

Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers for the public's information and imposes no new requirements. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

PART 4—[AMENDED]

Accordingly, Part 4 of Title 33 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 4 is revised to read as follows:

Authority: 44 U.S.C. 3501 et seq., 49 CFR 1.46

§ 4.02 [Amended]

2. Section 4.02 is amended by adding the following CFR citations and corresponding OMB Control Numbers to the table in the appropriate positions.

Part 45	2115-0036
Part 137	2115-0545
Part 165	2115-0076

Dated: June 13, 1985.

E. H. Daniels,

Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 85-14853 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CCGD12 85-04]

Special Local Regulations; Budweiser Western States Championships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Western States Championships on the San Joaquin River, Stockton Channel. This event will be held on June 29 and 30, 1985 in the Stockton Channel of the San Joaquin River, Stockton, CA. The regulations are needed to provide for the safety of life on navigable waters during the event by regulating vessel traffic in designated areas.

EFFECTIVE DATE: These regulations become effective on June 29, 1985 and terminate on June 30, 1985.

FOR FURTHER INFORMATION CONTACT: LT Bob Olsen, c/o Commander (bt), Twelfth Coast Guard District, Government Island, Alameda, California 94501, (415) 437-3309.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was received on February 14, 1985, but additional information and final input from interested parties necessary to draft the regulation was not received until May 28, 1985. Input was received from Channel Star Excursions and was considered in establishing the periods during which the regulated area would be open to navigation. The San Joaquin County Sheriff's Office and the U.S. Navy Communications Station Stockton requested copies of the regulation.

Drafting Information

The drafter of this notice is LT Bob Olsen, Chief Boating Technical Branch, Twelfth Coast Guard District.

Discussion of Regulations

The West Coast Outboard Association is sponsoring the Budweiser Western States Outboard Championships on June 29 and 30, 1985. This event consists of high speed powerboat races with 90 hydroplanes, tunnelhulls, and runabouts 14 to 17 feet in length competing on a closed oval course that could pose hazards to navigation. Vessels desiring to transit the regulated area may do so, only with clearance from a patrolling law enforcement vessel or an event committee boat. By the authority contained in Title 33 U.S.C. 1233, as implemented by Title 33, Part 100 U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters described is promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since it involves negligible cost and will not have significant impact on recreational vessels, commercial vessels or other marine interests. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed under the provisions of Executive Order 12291 of February 17, 1981, on Federal Regulation and had been determined not to be a major rule under the terms of that order. This conclusion follows from the fact the regulated area will be open periodically for the passage of commercial vessels and recreational vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as set forth below:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-1204 is added to read as follows:

§ 100.35-1204 San Joaquin River, Budweiser Western States Championships.

(a) *Effective Dates:* These regulations are effective from 1000 PDT June 29 to 1800 PDT June 30, 1985.

(b) *Regulated Area. Budweiser Western States Championships Race Course Area:* That portion of the Stockton Deep Water Channel from Stockton Channel Light 43 (Light List Number 978) East (upstream) to Stockton Channel Light 48 (Light List Number 981) a distance of approximately 1.00 statute mile, will be closed to navigation during the Budweiser Western States Championships trials, races and heats, from 1000 to 1800 Daily. *The regulated area will be opened at 1130, 1315, 1500, and 1645 PDT on Saturday June 29,* and *at 1100, 1215, 1430, 1545 on Sunday June 30,* for a *minimum of fifteen (15) minutes* to allow for the safe transit of non participant vessels through the area.

(c) *Regulations.* (1) All vessels not officially involved with the Budweiser Western States Championships will remain outside of the regulated area during periods of closure.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) All vessels not officially involved with the Western States Championships shall proceed directly through the regulated area when it is open to navigation in a safe and prudent manner.

(4) All vessels in the vicinity of the regulated area shall comply with the instructions of U.S. Coast Guard or local enforcement patrol personnel.

(33 U.S.C. 1233; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: May 31, 1985.

M.E. Gilbert,

Captain, U.S. Coast Guard, Acting Commander, Twelfth Coast Guard District.

[FR Doc. 85-14859 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-05]

Marine Event; Lake Havasu Water Ski Shows

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish special local regulations for a series of water ski shows under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

EFFECTIVE DATE: These regulations become effective on June 8, 1985 and terminate on September 7, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: On May 2, 1985, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (50 FR 18691). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Although no comments were received, interested persons wishing to comment may do so by submitting written arguments to the office listed under **"FOR FURTHER INFORMATION CONTACT"** in this preamble. Commenters should include their names and addresses, identify this notice (CGD11 85-05), and give reasons for their comments. Based on comments received, the regulation may be changed.

Discussion of Regulations

The Lake Havasu Water Ski Club's "Lake Havasu Water Ski Shows" will be conducted between 5:45 PM and 7:15 PM on June 8, 15, 29, July 13, 27, August 10, 24, and September 7, 1985 under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. This event will have 3 tournament ski boats, towing up to 35 skiers, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment 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 of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic and is only in effect for a short period of time.

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—SAFETY OF LIFE ON NEVIGABLE WATERS

In view of the foregoing, Part 100 of Title 33 CFR is amended as follows:

1. The authority citation for Part 100 continues to read as set forth below:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35 11-85-05 is added to read as follows:

§ 100.35 11-85-05 Lake Havasu Water Ski Show, Lake Havasu City, Arizona.

(a) *Regulated Area.* The following area will be closed intermittently to all vessel traffic: that portion of the Bridgewater Channel, Lake Havasu City, Arizona, commencing approximately 200 yards north of the London Bridge, thence southernly along the channel to approximately 200 yards south. Event participants will be transiting under the center span of the bridge.

(b) *Effective Dates.* The regulated area will be closed intermittently to all vessel traffic from 5:45 PM to 7:15 PM on the following dates:

June 8, 15 and 29, 1985
July 13 and 27, 1985
August 10 and 24, 1985
September 7, 1985

(c) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: May 29, 1985.

F.P. Schubert,

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

[FR Doc. 85-14856 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-06]

Marine Event; Bullhead City Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish special local regulations for a series of high speed drag boat races, at Sunshine and Riviera Marina, Riviera, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

EFFECTIVE DATE: These regulations become effective on June 1, 1985 and terminate on September 8, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822; Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: On May 2, 1985, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (50 FR 18692). Interested persons were requested to submit comments and 3 written comments were received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Comments were received from three individuals. The City Managers' office is in favor of the event and praised the sponsors performance of last year, two additional commenters questioned the traffic restriction imposed during the event. To alleviate this problem the regulations have been changed to only restrict non-commercial traffic, also, the sponsor will routinely open the regulated area to allow the passage of recreational traffic.

Interested persons still wishing to comment may do so by submitting written arguments to the office listed under **"FOR FURTHER INFORMATION CONTACT"** in this preamble. Commenters should include their names and addresses, identify this notice (CGD11 85-06), and give reasons for their comments. Based on comments received, the regulation may be changed.

Discussion of Regulations

The Sunshine Promotions Inc's, "Bullhead City Boat Drags" will be conducted between 8:30 AM and 5:30 PM on June 1, 2, August 10, 11, and September 7, 8, 1985 at Riviera, Arizona. This event will have approximately 80 high speed drag boats, 18 to 21 feet in length, that could pose a hazard to navigation. Race boats will compete in heats starting from the entrance of Riviera Marina; thence 1200 feet north, 1000 additional feet will be allowed for slow down and turn around. They will then idle southerly along the natural flow of the river back to the starting point. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

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 of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

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]

In view of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as set forth below:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35 11–85–06 is added to read as follows:

§ 100.35 11–85–06 Bullhead City Boat Drags, Riviera, AZ.

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic: that portion of the Colorado River starting from the entrance of Riviera Marina, Riviera, Arizona to 2200 feet north.

(b) *Effective Dates.* The regulated area will be closed intermittently to all non-commercial vessel traffic from 8:30 AM to 5:30 PM on the following dates:

June 1 and 2, 1985
August 10 and 11, 1985
September 7 and 8, 1985

(c) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: May 29, 1985.

F.P. Schubert,

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

[FR Doc. 85–14855 Filed 6–19–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[A–9–FRL–2847–9]

Extension of Exemption Period for Guam Power Authority; Section 325(b) of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; Notice of Administrative Action.

SUMMARY: On September 6, 1984 the Guam Power Authority (GPA) submitted to the Environmental Protection Agency (EPA) a formal request (Request) to extend to a permanent status the eighteen month exemption from certain requirements of the Clean Air Act (CAA) provided by section 325(b) of the CAA. The request was reviewed by EPA to determine its merit under section 325(b). Based on this review, EPA has decided to approve the extension for the two units which comprise the Cabras Power Plant, provided that the exemption shall be periodically reviewed and may be revoked for cause following such reviews by EPA. This

Notice provides a description of the basis for the request under section 325, the request and supporting documentation submitted by GPA, and the decision by EPA on the request. Comments on this administrative action and related issues, including future actions on the exemption for GPA under section 325(b), may be made to EPA as described below. A docket has been established at the EPA-Headquarters Central Docket Office, Docket Number A-85-07. The action is a final action reviewable under section 307(b) in the ninth circuit.

EFFECTIVE DATE: May 24, 1985.

FOR FURTHER INFORMATION CONTACT: Norman Lovelace, Chief, Office of Territorial Programs (W-1-1), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7431.

SUPPLEMENTARY INFORMATION:

Background

Section 325(b) provides an eighteen month exemption for fossil fuel fired steam electric power plants operating (at the time of enactment of this provision) of Guam from sulfur dioxide limitations promulgated under section 111 (New Source Performance Standards/NSPS) and from sulfur dioxide standards and limitations contained in the State Implementation Plan (SIP) for Guam approved under section 110. This exemption expires June 8, 1985. Subsection (b) further authorizes the Administrator to extent for an undefined period the initial eighteen month exemption upon determining that emission reductions are being made to the extent practicable to prevent exceedence of the NAAQS for sulfur dioxide. On September 6, 1984 the Guam Power Authority (GPA) formally requested EPA to permanently extend the legislated eighteen month exemption as it pertained to the Cabras Power Plant. This request is the subject of the administrative action described in this notice.

Description of Submittal by Guam Power Authority

The September 6, 1984 request by GPA asked for a determination by the Administrator of EPA that ". . . a permanent extension of the eighteen month exemption provided by section 325(b) from the requirements of section 110 and 111 of the Clean Air Act, 42 U.S.C. 7410 and 7411, is appropriate for the Cabras power plant facilities located on Guam and operated by GPA, and that the eighteen month exemption will be made permanent."

GPA provided documentation to support the request for a permanent exemption. This documentation consisted of information relating to (1) the financial status of GPA, including its current ability to incur indebtedness and to raise rates, (2) cost estimates of capital and operating expenses associated with meeting SIP and NSPS requirements under the CAA for the Cabras Power Plant, (3) commitments to an emission reduction strategy for sulfur dioxide which would be adhered to if an extension were granted, (4) estimates of the impact on air quality of granting an extension, (5) the practicability of further emission reduction efforts by GPA, and (6) the position of the government of Guam and the Guam Environmental Protection Agency on the request.

Criteria For Approval

Section 325(b) requires the Administator to determine that that the GPA is making ". . . all emissions reductions practicable to prevent exceedance of the national ambient air quality standards for sulfur dioxide." before extending the initial 18 month exemption. The statute does not further identify criteria for extending the exemption; EPA, therefore, developed procedures for considering requests submitted under section 325(b).

In accordance with the aforementioned procedures, EPA advised the GPA that the request should:

(1) Be made by the owner or operator of the affected facility.

(2) Include a description and characterization of the source for which the exemption extension is sought.

(3) Specify the period of time for which the extension is being sought.

(4) Identify requirements of the CAA for which the exemption is to be extended.

(5) Describe the emission control method that would be applied and resulting emission reductions that would occur if the extension is granted, and the nature of the emission reductions that would occur in the absence of an extension and an explanation of why the granting of the extension would result in the best long-term practice and air quality impact.

(6) Describe the effect of the extension on the attainment and maintenance of the NAAQS for sulfur dioxide.

(7) Effect on compliance with other CAA requirements for which secton 325(b) provides no exemption;

(8) An evaluation by the Guam Environmental Protection Agency (GEPA) of the impact of the requested extension or relevant GEPA requirements, including those necessary to attain and maintain NAAQS.

Description of Administrative Process

EPA performed a preliminary review of the submittal and on September 28, 1984 advised the GPA that a formal review had commenced. During the course of the review additional information needs were identified. The GPA was requested on February 13, 1985 to provide certain information regarding the costs of further emission reduction and its abilities to recover such costs. The GPA responded to this request on March 12, 1985. Additionally, EPA obtained supplementary information from the U.S. Department of the Interior relative to the GPA request.

GPA has submitted the following information along with other data, in response to EPA's criteria for approval:

(a) The source to be affected by the extension is described as ". . . two sixty-six megawatt oil-fired steam units, which comprise the Cabras Power Plant. The Power Plant is located on the eastern end of Cabras Island, on the western side of Guam, facing the Philippine Sea."

(b) The period for which the extension is being sought is "permanent".

(c) The requirements of the Clean Air Act affected by the extension are identified as ". . . the requirements of the new source performance standards relating to sulfur dioxide under Section 111 of the Clean Air Act, and from the (related) sulfur dioxide standards established by Guam's State Implementation Plan, as approved under section 110 of the Clean Air Act."

(d) The emission control method to be applied if an extension is granted is identified as the ". . . Air Quality Control Contingency Plan for the GPA's Cabras and the Navy's nearby Piti Power Plants, which was submitted to the Guam Environmental Protection Agency on January 31, 1979 . . . The plan formalized a supplemental [(sic) intermittent] control strategy that has been used since its implementation in 1975. The strategy provides for constant monitoring of effluents (ambient concentrations) by sulfur dioxide analyzers at three points on Guam, and the standby storage of several thousand barrels of low sulfur oil at both the Piti and the Cabras plants. If either of two conditions occurs—the exceedance at any monitoring site of the standard of 0.3 parts per million of sulfur dioxide over a 24-hour period, or the existence of adverse, extraordinary wind conditions that would carry stack emissions over populated areas—the Piti and Cabras plants are required to burn

only low sulfur fuel oil in their generating units." The result has been described as sufficient to result in ". . . no exceedances of the sulfur dioxide standard . . . the representative average annual concentration of sulfur dioxide (is) 10 micrograms per cubic meter, as measured in 1977. . ."

(e) GPA states that emission reductions above and beyond those contained in the Air Quality Contingency Plan are not practical at this time due to: (1) The costs associated with additional emission reductions; (2) GPA's financial condition; and (3) GPA's inability to recover additional cost and incur indebtedness.

There are basically two options available to GPA to achieve the emission reductions required under section 111 of the CAA: continuous burning of low-sulfur fuel (0.75%) or installation and operation of flue gas desulfurization (FGD) devices. Estimates of the cost of these options have varied widely. Nevertheless, a range of costs in available and the respective impacts on GPA customers can be generally predicted. The installation and operation of FGD devices is expected to require a capital investment of $13.5 million to $25 million and increase annual operating cost by $2 million to $7 million. These increased costs would increase existing utility charges (13.7 cents per KWH) by approximately 3% to 8%.

GPA states that the continuous burning of low-sulfur fuel would increase existing utility charges by 5% at a minimum.

The financial condition of GPA has been unstable. Over the last several years, GPA has met its financial needs only with the assistance of the Federal Financing Bank, grants from the government of Guam and grants from the Department of the Interior. At the present time GPA has no ability to obtain financing from commercial sources. Furthermore, GPA has been advised that further financing from the Federal Financing Bank will not be approved. GPA is therefore presently unable to obtain the financing that would be required for any improvements requiring capital investment, including FGD devices.

GPA's ability to recover operating costs, including fuel costs, is a function of the rates charged to its customers. Further rate increases would result in severe hardships on the utility's customers, who already pay rates that are among the highest anywhere. This would, in turn, adversely affect GPA's ability to raise revenues through rates and jeopardize GPA's tenuous financial condition.

(f) There is no expected effect on section 112 or any other CAA requirements not affected by section 325.

(g) Letters of support for the extension request were submitted by both the Governor of Guam and the Administrator of the Guam Environmental Protection Agency (GEPA). The Administrator of GEPA indicated that the continuing implementation of the intermittent control strategy has resulted in no exceedances of the NAAQS for sulfur dioxide in nearly ten years and goes on to state that ". . . granting this exemption would not, in my judgment, jeopardize compliance with section 112 requirements of the Clean Air Act. . . ."

Administrative Action

EPA has evaluated GPA's application and has concluded that, under conditions stated in detail below, GPA's submittal demonstrates that further emission reductions are impracticable due to GPA's inability to obtain financing and its inability to raise rates due to resulting adverse effects on rate customers. A more complete discussion of EPA's analysis is contained in a backs ground document.

Based on its review and consideration of the request by the Guam Power Authority for a permanent extension of the eighteen month exemption from sections 110 and 111 requirements provided under section 325(b) of the Clean Air Act, EPA has decided to take the following action:

Effective on the expiration date of the initial eighteen month exemption provided under section 325(b) of "the Act", the Administrator of the Environmental Protection Agency (EPA) exempts the Guam Power Authority's two sixty-six megawatt oil-fired steam units which comprise the Cabras Power Plant from sulfur dioxide requirements associated with New Source Performance Standards (NSPS) under Section 111 of the Clean Air Act and from the related NSPS limitation on sulfur dioxide emissions contained in the Guam SIP.

The exemption will be reviewed at intervals and upon occasions to be specified by EPA (not longer than 2 years), allowing EPA to determine whether the factual circumstances upon which it is based, including commitments made by GPA in the application for extension and the continuing attainment of the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide, have changed. The commitments include reporting requirements specified by the Guam Environmental Protection Agency (GEPA), including but not limited to strict implementation of both the monitoring (wind direction and ambient SO_2 concentration) and fuel switching portions of the control strategy, reporting to GEPA of all applications of the strategy, and reporting to GEPA of laboratory analyses of percent sulfur in all new fuel stocks acquired by GPA. A finding by EPA that the source is not in compliance with the terms of the exemption will be grounds for enforcement of the terms of the exemption under section 113. A finding by EPA that factual circumstances have changed will be grounds for revocation of the exemption and enforcement of the underlying Clean Air Act requirements.

It is a condition of this action that GPA provide to EPA a copy of any GPA application for rate changes or for commercial credit for construction or replacement of capital assets, simultaneously with submission of such application to the rate making authority or commercial credit institution. No later than the 90th day after a finding by EPA that the circumstances upon which the determination for continuing the exemption was originally made have changed, this exemption shall terminate unless within that time GPA submits information that it is taking all practicable steps to comply with NSPS and SIP requirements related to SO_2. EPA shall review such information under the procedures it has established and shall, as appropriate, extend or terminate the exemption.

List of Subjects in 40 CFR Part 69

Air pollution control.

Dated: May 24, 1985.

Lee M. Thomas,

Administrator.

Part 69 of Chapter I, Title 40 of the *Code of Federal Regulations* is added to read as follows:

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

Subpart A—Guam

Sec.

69.11 New exemptions. [Reserved]

69.12 Continuing exemptions.

Subpart B—American Samoa [Reserved]

69.21 New exemptions. [Reserved]

Subpart C—Commonwealth of the Northern Mariana Islands [Reserved]

69.31 New exemptions. [Reserved]

Authority: Sec. 325(b), Clean Air Act, as amended; 42 U.S.C. 7625–1.

Subpart A—Guam

§ 69.11 New exemptions. [Reserved]

§ 69.12 Continuing exemptions.

(a) Effective on the expiration date of the initial eighteen month exemption provided under section 325(b) of "the Act", the Administrator of the Environmental Protection Agency (EPA) exempts the Guam Power Authority's two sixty-six megawatt oil-fired steam units which comprise the Cabras Power Plant from sulfur dioxide requirements

associated with New Source Performance Standards (NSPS) under Section 111 of the Clean Air Act and from the related NSPS limitation on sulfur dioxide emissions contained in the Guam SIP.

(b) The exemption will be reviewed at intervals and upon occasions to be specified by EPA (not longer than 2 years), allowing EPA to determine whether the factual circumstances upon which it is based, including commitments made by GPA in the application for extension and the continuing attainment of the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide, have changed. The commitments include reporting requirements specified by the Guam Environmental Protection Agency (GEPA), including but not limited to strict implementation of both the monitoring (wind direction and ambient SO_2 concentration) and fuel switching portions of the control strategy, reporting to GEPA of all applications of the strategy, and reporting to GEPA of laboratory analyses of percent sulfur in all new fuel stocks acquired GPA. A finding by EPA that the source is not in compliance with the terms of the exemption will be grounds for enforcement of the terms of the exemption under section 113. A finding by EPA that factual circumstances have changed will be grounds for revocation of the exemption and enforcement of the underlying Clean Air Act requirements.

(c) It is a condition of this action that GPA provide to EPA a copy of any GPA application for rate changes or for commercial credit for construction or replacement of capital assets, simultaneously with submission of such application to the rate making authority or commercial credit institution. No later than the 90th day after a finding by EPA that the circumstances upon which the determination for continuing the exemption was originally made have changed, this exemption shall terminate unless within that time GPA submits information that it is taking all practicable steps to comply with NSPS and SIP requirements related to SO_2. EPA shall review such information under the procedures it has established and shall, as appropriate, extend or terminate the exemption.

Subpart B—American Samoa [Reserved]

§ 69.21 New exemptions. [Reserved]

Subpart C—Commonwealth of the Northern Mariana Islands [Reserved]

§ 69.31 New exemptions. [Reserved]

[FR Doc. 85-13858 Filed 6-19-85; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 119
Thursday, June 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 24466; Notice No. 85-6A]

Airworthiness Standards Aircraft Engines, Engine Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice of Proposed Rulemaking (NPRM), No. 85-6 (50 FR 6186; February 14, 1985). The notice proposes to establish requirements for the certification of electronic aircraft engine control systems. The proposal would add a new section to Federal Aviation Regulations (FAR) Part 33, to establish uniform functional standards specifically designed for electronic controls. This reopening of the comment period is based on requests received from the Joint Airworthiness Requirements (JAR) Engine Study Group, the General Aviation Manufacturer's Association (GAMA) and an engine manufacturer, for more time in order to study the proposal and provide quality comment.

The FAA has determined that it is in the public interest to reopen the comment period to allow the public more time to undertake a thorough review of this proposal.

DATES: Comments on Notice 85-6 must be received on or before July 29, 1985.

ADDRESSES: Comments on Notice 85-6 may be mailed in duplicate to: Federal Aviation Administration, Office of the General Counsel, Room 916, Attention: Rules Docket No. 24466, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: H. Alden Jackson, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7078.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule.

Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard with the following statement: "Comments to Docket No. 24466." The postcard will be date/time stamped and returned to the commenter. The proposals contained in Notice 85-6 may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice and Notice 85-6 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Reopening of Comment Period

The closing date for comments on Notice 85-6 was May 20, 1985. The JAR, GAMA, and an engine manufacturer requested more time to study the proposals and to prepare their comments. In consideration of these requests, the FAA concludes that reopening the comment period for an additional 30 days would serve the public interest. Accordingly, the comment period for Notice 85-6 is reopened. The comment period will close on July 29, 1985.

Conclusion

This document reopens the comment period on a notice of proposed rulemaking. Therefore, I certify that this document is not major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The authority citation for Part 33 continues to read as follows:

Authority: 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45.

Issued in Burlington, Massachusetts on June 6, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-14792 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-19-AD]

Airworthiness Directives; Beech Model 34, 50, 60, 65, 70, 90, 99, 100 and 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Model 34, 50, 60, 65, 70, 90, 99, 100 and 200 series airplanes. This AD would require inspection and coating of the nut and tension bolt in certain wing attachment

joints every five years, annual injections of a corrosion preventative compound into joints which contain barrel nuts, and provides that each bolt and nut that is rejected during the inspection be sent to the FAA for examination. The need for this action stems from finding unsafe stress corrosion cracks in some wing attachment bolts and nuts and a determination that this condition is likely to exist or develop in other similar parts. The proposed actions will counteract susceptibility to stress corrosion cracking of the previously mentioned parts and preclude loss of structural integrity.

DATES: Comments must be received on or before July 26, 1985.

Compliance: As prescribed in the body of the proposed AD.

ADDRESSES: Beech undated Service Instructions T-34C-1-0083, T-34C-0158 Revision 2, T-44A-0049 Revision 1; Beech Part Number (P/N) 98-39006 Structural Inspection and Repair Manual dated December 20, 1984; or Beech Maintenance Manual P/N 60-590001-25 dated June 13, 1984; as applicable, may be obtained from Beechcraft Aero and Aviation Centers; Beech Aircraft Corporation, 9709 East Central, Post Office Box 85, Wichita, Kansas 67201; or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Rose R. Spencer, Federal Aviation Administration, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Stress corrosion cracking of the H-11 steel alloy in a bolt in a lower forward wing attachment tension joint has caused one bolt failure in a four year old Beech Model 200 airplane and one bolt failure in a seven year old Beech Model E90 airplane. In each case the failure of these bolts has caused an accident. Ensuing inspections have disclosed unsafe stress corrosion cracking in the H-11 steel alloy in a lower forward wing attachment barrel nut in five Beech Model 200 series airplanes that had been in service of 0.8 or more years. To counteract susceptibility to such cracking, ADs 80-07-05 and 81-23-01R1 were issued which require a one-time application of a protective coating in lower forward wing attachment joints that are like the ones in which parts were found to be cracked. After the above ADs were issued, studies were made concerning durability of the protective coating and susceptibility of various steel alloys to stress corrosion cracking. The sequence of development of these cracks is: (1) Moisture enters the fitting, (2) corrosion causes plating to decrease in thickness, (3) corrosion begins in the parent metal, (4) a stress corrosion crack develops and grows, (5) a brittle fracture occurs across the shank of a bolt or across one wall of a nut, and (6) joint failure occurs or becomes likely to occur. Based on the above studies, the FAA concludes that action in accordance with the proposed new AD must be accomplished in order to prevent accidents from being caused by stress corrosion cracking in wing attachment bolts and nuts.

Since the condition described is likely to exist or develop in certain Beech Models 34, 50, 60, 65, 70, 90, 99, 100, and 200 airplanes, the proposed AD would require certain wing attachment bolts and nuts to be removed, inspected, and coated every five years. Wherever a wing attachment joint contains a steel barrel nut, the AD would also require injection of protective compound into the barrel nut when joint tightness is checked, and annually thereafter. While lower forward bolts from certain Beech Model 50, 65, 70, 90, 99, or 100 series airplanes are being inspected for unsafe conditions in the bolts, the proposed AD would recommend that the lower forward inboard and outboard fittings be inspected for fatigue cracks in accordance with applicable Beech instructions. Such inspections of some of the above fittings are required by ADs 70-25-01, 70-25-04, or 77-05-01, and the actions of the proposed AD will minimize frequency of bolt removals. For further study of this matter and possible adjustment of related requirements, the proposed AD would require that each bolt and nut that is removed from a Beech wing attachment joint, and is replaced, be sent to the FAA's Aeronautical Center in Oklahoma City. Beech airplanes which are equipped with wing attachment bolts and nuts that are made of Inconel would not be affected by the proposed Ad. As indicated by Beechcraft Service Instructions No. 1235 and the Part No. 98-39006 Beechcraft Structural Inspection and Repair Manual, the Inconel parts are available only for turbine-powered multiengine Beech airplanes.

The proposed AD would require accomplishment of actions which are shown to be necessary for safety by service difficulty reports, analyses, or reports of laboratory testing that are in FAA files. More extensive and more frequent actions are specified by Beech maintenance and service publications, and the FAA recommends that these Beech maintenance actions be accomplished as precautionary measures. Nevertheless, FAA files do not contain information which establishes that a wing attachment bolt or nut is likely to fail to perform its intended function if some action is not taken as specified by the Beech publications. Consequently, the proposed Ad is more lenient than Beech publications which are cited by the proposed AD.

There are approximately 4000 privately operated airplanes affected by the proposed AD. The average cost of compliance with proposed requirements for repetitive inspections and "on condition" replacements during the first ten years is estimated to be $1000 per airplane, for a total cost of $4 million to the private sector. Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures

(44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation Safety, Aircraft, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Beech: Applies to Beech airplanes listed in Table I below, certificated in any category, upon accrual of five years in service. This AD does not apply to those airplanes in which bolts and nuts made of Inconel have been installed in the wing attachment joints that are specified in Table I below.

TABLE I

(Beech model) military model	Serial No.	Joints (1)	Instruction (2)
34C	GP-1 and up	LF, UF, UR, LR	T-34C-1-0083.
T-34C	GP-1 and up	LF, UF, UR, LR	T-34C-0158R2.
T-34C-1	GM-1 and up	LF, UF, UR, LR	T-34C-1-0083.
50	H-1 thru H-11	LF*	P/N 98-39006.
50 (L-23A, U-8A)	LH-1 thru LH-55	LF*	See Note 3a.
B50	CH-12 thru CH-110	LF*	P/N 98-39006.
B50 (L-23B)	LH-56 thru LH-95	LF*	See Note 3b.
C50	CH-111 thru CH-350	LF*	P/N 98-39006.
D50 (L-23E, L-23G)	DH-1 thru DH-154	LF*	P/N 98-39006.
D50A, D50B, D50C	DH-155 thru DH-300	LF*	P/N 98-39006.
D50E, D50E-5990	DH-301 thru DH-347	LF*	P/N 98-39006.
E50	EH-1 thru EH-70	LF*	P/N 98-39006.
E50 (L-23D, U-8D)	LH-96 and up	LF*	See Note 3b.
E50 (RL-23D, RU-8D	RLH-1 and up	LF*	See Note 3b.
E50 (RL-23D, RU-8D)	LHC-1 and up	LF*	See Note 3b.
E50 (RL-23D, RU-8D	LHD-1 and up	LF*	See Note 3b.
E50 (RL-23D, RU-8D	RLHE-1 and RLHE-2	LF*	See Note 3b.
E50 (RL-23D, RU-8D)	LHE-3 and up	LF*	See Note 3b.
F50	FH-71 thru FH-96	LF*	P/N 98-39006.
G50	GH-94 thru GH-119	LF*	P/N 98-39006.
H50	HH-120 thru HH-149	LF*	P/N 98-39006.
J50	JH-150 thru JH-176	LF*	P/N 98-39006.
60, A60, B60	P-4 and up	LF, UF, LR	P/N 60-590001-25A13
65	LC-1 thru LC-239	LF*	P/N 98-39006.
65 (L-23F, U-8F)	L-1 thru L-6	LF*	See Note 3b.
65 (L-23F, U-8F	LF-7 and up	LF*	See Note 3b.
A65, A65-8200	LC-240 thru LC-335	LF*	P/N 98-39006.
65-80, 65-A80, 65-A80-8800	LD-1 thru LD-269	LF*	P/N 98-39006.
65-B80	LD-270 and up	LF*	P/N 98-39006.
65-88	LP-1 thru LP-47	LF*	P/N 98-39006.
65-A90-1 (U-21A, RU-21A, RU-21D, JU-21A, U-21G, RU-21H)	LM-1 and up	LF*	See Note 3c.
65-A90-2 (RU-21B)	LS-1 and up	LF*	See Note 3c.
65-A90-3 (RU-21C)	LT-1 and up	LF*	See Note 3c.
65-A90-4 (RU-21E, RU-21H)	LU-1 and up	LF*	See Note 3c.
70	LB-1 thru LB-35	LF*	P/N 98-39006.
65-90, 65-A90, B90, C90	LJ-1 thru LJ-993	LF*	P/N 98-39006.
	LJ-995- thru LJ-1007	LF*	P/N 98-39006.
	LJ-1009- thru LJ-1034	LF*	P/N 98-39006.
	LJ-1037- thru LJ-1039	LF*	P/N 98-39006.
	LJ thru LJ-1044	LF*	P/N 98-39006.
E90	LW-1 thru LW-347	LF*	P/N 98-39006.
F90	LA-2 thru LA-90	LF, UR, LR	P/N 98-39006.
	LA-92 thru LA-156	LF, UR, LR	P/N 98-39006.
	LA-158 thru LA-169	LF, UR, LR	P/N 98-39006.
	LA-171 thru LA-173	LF, UR, LR	P/N 98-39006.
	LA-175 thru LA-182	LF, UR, LR	P/N 98-39006.
	LA-185 thru LA-187	LF, UR, LR	P/N 98-39006.
	LA-189 thru LA-191	LF, UR, LR	P/N 98-39006.
	LA-193 thru LA-196	LF, UR, LR	P/N 98-39006.
	and LA-199	LF, UR, LR	P/N 98-39006.
H-90 (T-44A)	LL-1 thru LL-16	LF	T-44A-0049R1.
	LL-20 thru LL-40	LF	T-44A-0049R1.
	LL-42 thru LL-48	LF	T-44A-0049R1.
	LL-50 thru LL-61	LF	T-44A-0049R1.
99, 99A, 99A (FACH) A99, A99A, & B99	U-1 thru U-49 and	LF	P/N 98-39006.
C99	U-51 thru U-164	LF*	P/N 98-39006.
	U-50 and U-165 thru U-179	LF, UF	P/N 98-39006
		LF, UF	P/N 98-39006.
	U-181 thru U-184	LF, UF	P/N 98-39006.
	U-186 thru U-192	LF, UF	P/N 98-39006.
	U-194 thru U-196	LF, UF	P/N 98-39006.
100, A100 and A100A	B-1 thru B-247	LF*	P/N 98-39006.
B100	BE-2 thru BE-131, and BE-135	LF*	P/N 98-39006.
		LF*	P/N 98-39006.
A100-1 (RU-21J), 200, and B200	BB-2 thru BB-342	LF, UF	P/N 98-39006.
	BB344 thru BB-983	LF, UF	P/N 98-39006.
B200	BB-985 thru BB-1038	LF, UF	P/N 98-39006.
	BB-1040 thru BB-1045	LF, UF	P/N 98-39006.
	BB-1047 thru BB-1049	LF, UF	P/N 98-39006.
200C, B200C (C-12F)	BB-1053 thru BB-1078 and BB-1080	LF, UF	P/N 98-39006.
	BL-1 thru BL-51	LF, UF	P/N 98-39006.
	BL-53, BL-55	LF, UF	P/N 98-39006.

TABLE I—Continued

(Beech model) military model	Serial No.	Joints (1)	Instruction (2)
200 CT	BN-1	LF, UF	P/N 98-39006.
200 T	BT-1 thru BT-22	LF, UF	P/N 98-39006.
A200 (C-12A, C-12C)	BC-1 thru BC-75	LF, UF	P/N 98-39006.
	BD-1 thru BD-30	LF, UF	P/N 98-39006.
A200C (UC-12B)	BJ-1 thru BJ-47	LF, UF	P/N 98-39006.
A200CT (C-12D, FWC-12D)	BP-1 thru BP-27	LF, UF	P/N 98-39006.

Note 1.—Wing attachment joints, on left and right sides of each airplane, are abbreviated as: LF=lower forward, UF=upper forward, UR=upper rear, LR=lower rear.
Note 2.—T-34C-1-0083-1, T-34c-0158 Rev. 2, and T-44A-0049 Rev. 1 are Beech Service Instructions. Cited Beech Manuals, and their earliest applicable revision dates are:

Part No.	Name	Date
60-590001-25	Maintenance Manual	June 13, 1984.
98-39006	Structural Inspection and Repair Manual	December 20, 1984.

Note 3.—Apply the following portions of P/N 98-39006 manual even though applicability to military models is not shown within the P/N 98-39006 manual:

Note	Manual section	Reference figure	Bolt P/N	Nut P/N
3a	57-10-00	209	NAS495-14-27	EB-144.
3b	57-11-00	210	MS20014-29	EB-144.
3c	57-13-00	212	LWB-14-32	FN22-1414.

Note 4.—*-See Paragraph (a) of this AD.

Compliance: Required initially, upon accrual of five years after first airworthiness certification or within 60 days after the effective date of this AD (whichever is later), and thereafter at intervals which do not exceed five years, unless already accomplished.

To assure structural integrity of attachments of outer wing panels to the wing center section, use procedures in instructions identified in Table I of this AD to accomplish the following at each wing attachment joint that is specified for a particular airplane by Table I of this AD:

(a) Remove each steel nut and each steel tension bolt. Use visual and magnetic particle methods to inspect the bolt and nut for cracking and corrosion in parent steel, and replace each bolt and nut found cracked or corroded.

Note.—In lower forward joints that are asterisked in Table I of this AD, while bolts are removed for accomplishment of Paragraph (a), above, it is recommended that inboard and outboard fittings be inspected, by a fluorescent penetrant method, for fatigue cracks in washer face areas of the fittings. For some of the asterisked joints, inspections of fittings are required by other ADs, but inspections of fittings are not required by this AD.

(b) During reassembly of each joint, coat the bolt, nut, and adjacent parts with MIL-C-16173 Grade 2 corrosion preventative compound.

(c) Within the next 150 hours of flight time, check joint tightness, and tighten as necessary.

(d) Inject MIL-C-16173 Grade 2 corrosion preventative compound into a lubrication fitting on each barrel nut, (wherever a barrel nut is used) when joint tightness is checked per Paragraph (c), above, and thereafter at intervals which do not exceed one year.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(f) For examination and any specified return, each nut and each bolt that is replaced in response to this AD must be identified with the related years in service, joint, and airplane serial number and sent to FAA/AVN-112, Room 203, Airmen Records Building, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Post Office Box 26460, Oklahoma City, Oklahoma 73125. Parts so sent will be destroyed if return to a specified address is not requested. Reporting requirements approved by OMB pursuant to clearance No. 2120 0056.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beechcraft Aero and Aviation Centers; Beech Aircraft Corporation, 9709 East Central, Post Office Box 85, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 11, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-14789 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-124-AD]

Airworthiness Directives; Boeing Model 767, 757, 737, and 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This document amends an earlier proposed airworthiness directive which would have required inspection and rework of the Rosemount Angle of Attack (AOA) sensors on Boeing Model 767 and 757 series airplanes, and on certain Model 737 and 727 series airplanes. This document amends the earlier proposal by requiring replacement prior to further flight of units which are revealed to be faulty by the inspection.

DATES: Comments on the NPRM, as amended, must be received by July 15, 1985.

ADDRESSES: Send comments on the proposed rule in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Systems and Equipment Branch; telephone (206) 431-2948. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before

the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84–NM–124–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Notice of Proposed Rulemaking, Docket No. 84–NM–124–AD, was published in the **Federal Register** on February 11, 1985 (50 FR 5625). This proposed rule would require inspection and replacement of Rosemount Angle of Attack (AOA) sensors on Boeing Model 767 and 757 series airplanes, and on certain Model 737 and 727 series airplanes. As proposed, the rule would require inspection of the sensors within 30 days after the effective date of the AD, and thereafter at intervals not to exceed 30 days, until the units are replaced with modified units. The proposal also provides that units determined to be faulty during inspections would be replaced within either 180 or 360 days after the effective date of the AD with modified units.

The actual intent of the Notice was that the units determined to be faulty would be required to be replaced with serviceable units before further flight. Failure of the AOA sensor could result in inadvertent stall warning or no warning by the affected channel; inoperative stick pusher; erroneous minimum speed computations by the autopilot and thrust management systems; erroneous autoslat operations; and secondary effects on yaw damper performance. However, as proposed, the rule would permit replacement of faulty units within either 180 or 360 days. Therefore, the FAA is amending the NPRM to conform with the intent that faulty units be replaced before further flight, and is extending the comment period on the NPRM as amended.

It is estimated that 87 airplanes of U.S. registry would be affected by this AD; that it would take approximately 3 manhours per aircraft to accomplish the required inspection, removal, rework, and/or replacement; and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD would be $10,440.

The FAA had determined that this action (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since few, if any, Boeing Model 767, 757, 737, and 727 series airplanes are operated by small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

List of Subjects in 14 CFR Part 39

Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By amending Notice of Proposed Rulemaking, Docket 84–NM–124–AD, as published in the **Federal Register** on February 11, 1985 (50 FR 5625), to read as follows:

Boeing: Applies to Boeing Model 767 and 757 series airplanes, and certain Model 737 and 727 series airplanes, certificated in all categories, equipped with Rosemount angle of attack (AOA) sensors, identified as Model 861CAB or 861CAK, and modification number 0001. To prevent the hazards associated with a malfunctioning AOA sensor caused by loose resolver and/or damper gears, accomplish the following as indicated below, unless already accomplished:

A. Inspect Model 757 and 767 series airplanes equipped with Rosemount AOA sensors, Model 861CAB, modification number 0001, within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days until replacement prescribed in subparagraph A.1. or A.2., below, is accomplished. Inspect in accordance with Boeing Alert Service Bulletins 757–34A0026 or 767–34A30, both dated November 12, 1984, or later FAA approved revision. Units determined to be faulty during inspections must be replaced with a serviceable unit prior to further flight, and:

1. Replace AOA sensors, serial numbers 00475 through 00629, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

2. Replace AOA sensors, serial numbers 00001 through 00474, within 360 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

B. Inspect Model 727 and 737 series airplanes equipped with Rosemount AOA sensors, Model 861CAK, modification number 0001, within 30 days after the effective date of this AD and thereafter at intervals not to exceed 30 days until replacement required in subparagraph B.1., below, is accomplished. Inspect in accordance with paragraph 3 of "Accomplishment Instructions" of Boeing Alert Service Bulletin 727–34A0223 or 27A1126, both dated November 12, 1984, or later FAA approved revision. Units determined to be faulty during inspections must be replaced with a serviceable unit before further flight, and:

1. Replace AOA sensors, serial number 00001 through 00173, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

C. Remove, inspect, and rework Rosemount AOA sensors specified in paragraphs A. and B., above, in accordance with Rosemount Service Bulletin 861CAB–34–02 or 861CAK–34–01, both dated November 12, 1984, as applicable, or later FAA approved revision. Units found with both resolver gears loose must be returned to Rosemount for rework.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturers may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or from Rosemount, Inc., P.O. Box 35129, Minneapolis, Minnesota 55435.

Issued in Seattle, Washington, on June 13, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–14784 Filed 6–19–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84-NM-133-AD]

Airworthiness Directives; British Aerospace Viscount Model 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the aircraft hydraulic system cutout valve on British Aerospace (BAe), Aircraft Group, Viscount Model 700 series airplanes. This action is taken as a result of a report of an inadvertent withdrawal of the mechanical nose landing gear downlock which caused the nose landing gear to collapse.

DATES: Comments must be received on or before August 12, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-133-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Wantiez, Aerospace Engineer, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rulemaking of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date of comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a report to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-133-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

As the result of a recent investigation of a Vickers Viscount Model 745 D nose gear collapse, the manufacturer determined that the collapse was the result of failure of the cutout valve in conjunction with a high flow rate of hydraulic fluid in the gear return line. This caused the down lock to withdraw. Incorporation of BAe cutout valve modification, Modification Standard SR 3490, Drawing Issue Number 19, dated December 16, 1959, into the aircraft hydraulic system cutout valve, Part Number AIR 41916-17, will preclude further incidents of landing gear collapse.

Since these conditions are likely to exist or develop on other airplanes of this model, an AD is proposed that would require modification in accordance with British Aerospace Modification Standard SR3490, dated December 16, 1959.

It is estimated that twenty-nine airplanes would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost could be $40 per manhour. Repair parts are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $29,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, because few, if any, BAe Viscount Model 700 airplanes are operated by small entites. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Vickers Viscount Model 700 series airplanes certificated in all categories. To prevent nose landing gear collapse accomplish the following:

A. Within the next 100 hours time-in service or 9 months, whichever occurs first, modify the aircraft hydraulic system cutout valve, Part Number AIR 41916-17, in accordance with British Aerospace Modification Standard SR3490, dated December 16, 1959, unless previously accomplished.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued In Seattle, Washington, on June 13, 1985.

Leroy A. Keith,

Acting Director Northwest Mountain Region.

[FR Doc. 85-14788 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 74, 82, 201, and 701

[Docket Nos. 77N-0009 and 78P-0164]

Colors Additives; Proposed Use of Abbreviations for Labeling Foods, Drugs, Cosmetics, and Medical Devices

Correction

In FR Doc. 85-13565 beginning on page 23815 in the issue of Thursday, June 6, 1985, make the following corrections:

1. On page 23816, in the first column, in the second complete paragraph, in the fifth line, "usual appear" should read "usual names appear".

2. On page 23817, in the third column, the line preceding paragraph A4 should read, "§ 82.2707a [Redesignated as § 82.2712]" and in the amendatory instruction, in the second line, "§ 82.2702a" should read "§ 82.2707a".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210 and 218

Information Collection; Solid Minerals

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule describes the information collection necessary to start up and operate the MMS's new Auditing and Financial System for solid minerals. The information to be collected is required from lessees and lease operators to provide comprehensive sales and royalty data on coal and other solid minerals produced from leased Federal and Indian lands. The data is used to document payments, to maintain royalty accounts, and for audits.

DATES: Comments must be received on or before 12 noon EST July 22, 1985. The proposed effective date of this rule would be June 20, 1985—see discussion of effective date in supplementary information.

ADDRESS: Comments should be mailed to Mr. Orie L. Kelm, Chief, Office of Royalty Regulations Development and Review, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Billie Clark, Lakewood, Colorado, (303) 231-3412.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. Geary Keeton and Mr. Billie Clark of the Minerals Management Service, Lakewood, Colorado.

The Department of the Interior (DOI) is charged by law with the responsibility for the collection and evaluation of royalty payments on minerals produced from leased Federal and Indian lands. The Royalty Management Program is administered by the Department's Minerals Management Service (MMS).

To fulfill its legal responsibilities, the MMS is using two comprehensive integrated accounting systems, the Auditing and Financial System (PAAS). The AFS is a revenue accounting system which monitors royalties and related information reported by the lessees or operators of record who are required to pay rentals and royalties. The PAAS is a production accounting system which monitors minerals production and disposition from the source to the point of royalty determination. These systems are designed to implement the 1982 recommendation of the Linowes Commission on Fiscal Accountability of the Nation's Energy Resources, and depart substantially from the previous Royalty Accounting System (RAS) they are replacing. In addition to providing the controls and capabilities of modern accounting systems, these new systems embody the "modified Internal Revenue Service (IRS) concept" of accepting royalty and sales information as correct subject to audit. The two systems operate independently, but at the same time information from AFS is compared with information from PAAS to assure that minerals produced on Federal and Indian lands are properly accounted for and that appropriate royalties on those minerals are paid.

In concert with the MMS Royalty Management responsibilities, the Bureau of Land Management (BLM) is responsible for the verification of production upon which royalties are payable. This rule does not revise the BLM production verification responsibility.

In response to the Linowes Commission report, Congress enacted the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* That Act requires the Secretary of the Interior to ". . . establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner." 30 U.S.C. 1711(a). For solid minerals, the Act requires the Secretary to "study the question of the adequacy or royalty management for coal, uranium and other energy and nonenergy minerals . . . ." 30 U.S.C. 1752(a). Such a study was undertaken and a conclusion was reached that in order to comply with the intent of Congress to provide adequate controls to accurately determine royalties and other amounts due, the AFS and PAAS systems should be extended to cover solid minerals royalty management in addition to oil and gas. An examination of existing laws regarding solid minerals royalty management concluded that new legislation is not required to extend PAAS and AFS to cover solid minerals.

This proposed rulemaking, therefore, would serve to implement the recommendation of the solid minerals royalty management study by placing solid minerals under the AFS. A separate rulemaking would also place solid minerals under the PAAS.

Under the AFS, solid mineral payors would be required to submit data on Form MMS-4014 and Form MMS-4030. These two forms replace several forms previously required for the RAS. The forms replaced include forms 9-373A for coal, 9-368 for phosphate, 9-128a through 9-128d for sodium and potassium, and 9-1146 for silica sands.

This rule would require payors to submit on Form MMS-4014 with every payment to provide the MMS with specific information on the royalties due and being paid. The MMS would use the sales and royalty data on Form MMS-4014 to identify the payor and the lease subaccounts, to maintain the lease accounts on a monthly basis, to reconcile or audit the accounts, to distribute payments to States and Indians, and to correlate lump sum payments with the appropriate subaccount charge entries.

At the time of conversion to AFS from RAS, payors also would be required to complete a separate Form MMS-4030 for each Federal or Indian lease on which production or minimum royalties are paid. This form provides specific information on who pays rent, minimum royalties, advance royalties, and production royalties; it identifies revenue sources and selling arrangements for the lease, and provides necessary information to assure that AFS covers all interests in the lease for all products. The MMS would use this information to establish a static,

automated data base that reduces the amount of information payors must provide routinely. The MMS also would use the information to assign a unique Accounting Identification (AID) number to each royalty source within the lease. The MMS would then send confirmation letters to the payors to provide the AID numbers, which are needed to complete the Report of Sales and Royalty Remittance for Solid Minerals (Form MMS–4014). The information which would be required by the form would correspond with the payors' own sales or contract-level records and enable the payors to simply transfer figures from their own record to Form MMS–4104. A new Form MMS–4030 would be required to be submitted only when there is a change in the information previously submitted.

This proposed rulemaking would amend 30 CFR Part 210 by revising § 210.10 of Subpart A and by adding §§ 210.200, 210.201, 210.202, and 210.203 to subpart E. Section 218.56 of 30 CFR Part 218, Subpart B would be redesignated as § 218.40 of Subpart A and amended by this rulemaking. This action is being taken so that assessments for late or incorrect reports and failure to report may be applied to both fluid and solid mineral AFS reporting.

Because MMS already is in the process of implementing the AFS and phasing out the RAS, the effective date of the final rule is proposed to be retroactive to the date this proposed rule is published. It is important to the accounting requirements of solid minerals royalties and to a smoother and more equitable transition from RAS to AFS that the Form MMS–4014 and Form MMS–4030 be used without significant delay. MMS therefore expects payors to begin using the new forms immediately. This obligation would become formalized when the final rule is adopted retroactively. However, the effective date proposed herein is only a proposal—the rule published today is *not* yet effective.

Executive Order 12291 Federal Regulations

The Department of the Interior has determined that this is not a major rule and does not require a regulatory analysis under Executive Order 12291.

The regulatory burden on industry due to the information collection requirements for Form MMS–4014 and Form MMS–4030 is estimated to be approximately $14,450. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Some portion of the approximately $14,450 cost burden to industry would fall on the small businesses that are among the potential respondents. Since the total cost to the public is quite small, and because the MMS provides special training and assistance to small organizations, there would be no significant economic effect on small entities. Consequently, it does not require a Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis.

Paperwork Reduction Act of 1980

The information collection requirements under §§ 210.10, 210.200, 210.201, and 210.202 have been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). These sections require the use of Forms MMS–4014 and Form MMS–4030. Both forms have been approved and granted OMB clearance number 1010–0064. Special forms or reports which occasionally would be required under provisions of § 210.203 involve less than 10 respondents annually and consequently do not require OMB approval.

National Environmental Policy Act of 1969

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

List of Subjects

30 CFR Part 210

Government contracts, Reporting and record keeping requirements, Minerals royalties, Continental shelf, Public lands-mineral resources, Geothermal energy.

30 CFR Part 218

Government contracts, Mineral royalties, Continental shelf, Public lands-mineral resources, Coal, Geothermal energy.

Chapter II, Title 30, Subchapter A, Parts 210 and 218 of the Code of Federal Regulations are proposed to be amended as set forth below.

Dated: May 1, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Mangement.

1. The authority for Parts 210 and 218 continues to read in part as follows:

Authority: * * * Mineral Leasing Act of 1920, as amended, (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the Tribal Land Mineral Leasing Act of 1938 (25 U.S.C. 396a, *et seq.*); the Allotted Indian Land Mineral Leasing Act of 1909 (25 U.S.C. 396); the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), the Federal Oil and Gas Royalty Mangement Act of 1982 (30 U.S.C. 1701 *et seq.*)* * *

PART 210—[AMENDED]

1a. 30 CFR Part 210, Subpart A, is amended by adding Form MMS–4014 and Form MMS–4030 to the table in § 210.10 so that it reads as follows:

§ 210.10 Information collection.

Form No., Name, and filing date	OMB No.
MMS–4025—Payor information form-due 30 days after issuance of a new lease or a change to an existing lease	1010–0033
MMS–2014—Report of sales and royalty remittance-due by the end of month following production month for royalty payments and for rentals no later than anniversary date of the lease	1010–0022
MMS–4030—Solid minerals payor information form-due 30 days after issuance of a new lease or change to an existing account established by an earlier form	1010–0064
MMS–4014—Report of sales and royalty remittance-solid minerals-due by end of month following sales or production month (unless lease terms specify otherwise) and for rentals no later than the date specified in the lease terms	1010–0064

* * * * *

2. 30 CFR Part 210 is amended by adding Subpart E, consisting of §§ 210.200, 210.201, 210.202, and 210.203 to read as follows:

Subpart E—Solid Minerals, General

Sec.

210.200 Required recordkeeping.
210.201 Solid minerals payor information form.
210.202 Report of sales and royalty remittance—solid minerals.
210.203 Special forms and reports.

* * * * *

Subpart E—Solid Minerals, General

§ 210.200 Required recordkeeping.

Information required by the Minerals Management Service (MMS) shall be filed using the forms prescribed in this subpart, copies of which are available from MMS at the following address: Minerals Management Service, P.O. Box 25165, Mail Stop 653, Denver, CO 80225. Instructions on the completion of these forms are provided in the Payor Handbook—Solid Minerals, available from MMS. Records and supporting data submitted may be maintained in hardcopy, microfilm, microfiche, or other recorded media that is readily available and readable.

§ 210.201 Solid minerals payor information form.

A Solid Minerals Payor Information Form (Form MMS–4030) must be submitted to MMS for each Federal and Indian solid minerals lease on which royalties, including minimum or advance royalties, are paid. The Form MMS–4030 shall identify the payor of rent, minimum royalty, advance royalty and production royalty, and identify revenue sources and selling arrangements for all lease products. The completed form must be filed by each royalty payor no later than 30 days after conversion to the Auditing and Financial System (AFS). In addition, the form must be filed no later than 30 days after the occurrence of any of the following:

(a) Assignment of all or any part of the lease.

(b) Adoption of a new mining method.

(c) Production of a new product.

(d) A change in a selling arrangement.

(e) Execution of an operating agreement.

(f) Execution of a joint venture or cooperative agreement.

§ 210.202 Report of sales and royalty remittance—solid minerals.

A completed Report of Sales and Royalty Remittance—Solid Minerals (Form MMS–4014) must accompany all payments of rents (other than first year) and royalties for Federal and Indian solid minerals leases. The Form MMS–4014 shall identify the payor and the lease subaccounts, contain production, sales, and royalty data, and identify the time period applicable to the data. Completed forms are due at the end of the month following the production or sales period as applicable. Unless the lease terms specify otherwise, all reports and payments are due monthly. The Form MMS–4014 for rental payments are due no later than the rental payment date specified in the lease terms.

§ 210.203 Special forms and reports.

The MMS may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this subpart are necessary, instructions for the filing of such forms or reports will be given by MMS. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

* * * * *

PART 218—[AMENDED]

3. 30 CFR Part 218 is amended by:

§ 218.56 [Redesignated as § 218.40]

A. Redesignating § 218.56 of Subpart B as § 218.40 of new Subpart A, General Provisions.

B. Adding paragraph (d) newly to designated § 218.40 to read as follows:

§ 218.40 Assessments for incorrect or late reports and failure to report.

(d) For purposes of solid minerals sales and royalty remittance reports required for the AFTS, a report is defined as each line item on a Form MMS–4014. The line item consists of the various information, such as production code or selling arrangement code, relative to each AID.

* * * * *

§ 218.57 [Redesignated as § 218.56]

C. Redesignating § 218.57 of Subpart B as § 218.56.

[FR Doc. 85–14726 Filed 6–19–85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 7–85–23]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

Correction

In FR Doc. 85–13925 beginning on page 24238 in the issue of Monday, June 10, 1985, make the following correction:

On page 24239, first column, fourth line, "July 5, 1985" should have read "July 25, 1985".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300121; FRL–2793–8]

Aldrin and Dieldrin; Proposed Revocation of Tolerances

Correction

In FR Doc. 85–5705 beginning on page 10080 in the issue of Wednesday, March 13, 1985, make the following corrections:

On page 10081, in the first column, in Table 1, in the entries for "Alfalfa" and "Beets, garden, tops", in the second column the footnotes should read "2".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 85–172; RM–3975; RM–4829; FCC 85–289]

Further Sharing of the UHF Television Band by Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Federal Communications Commission has proposed revision of its Rules to provide additional sharing of UHF television channels by land mobile radio stations. The sharing is necessary to help accommodate future growth in private land mobile radio services in major urban areas. The action proposes that certain TV channels in each of eight major urban areas be made available for use by private radio users.

DATES: Comments are due April 11, 1986. Reply comments are due May 16, 1986.

ADDRESS: Federal Communications Commission, 2025 "M" Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea/Mr. Rodney Small, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653–8167/8169.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Notice of Proposed Rulemaking

In the Matter of Further sharing of the UHF Television Band by Private Land Mobile Radio services. General Docket No. 85–172; RM–3975, RM–4829.

Adopted: May 31, 1985.

Released: June 10, 1985.

By the Commission: Commissioners Quello and Rivera issuing separate statements.

Introduction

1. In recognition of the Commission's responsibility to promote the most efficient use possible of the limited spectrum resource, and in order to accommodate some of the identified communications needs of the private land mobile radio services through the 1990's we are commencing a proceeding with this *Notice of Proposed Rulemaking* to provide for further sharing between the private land mobile services and the UHF television broadcast service. This proposal would make additional spectrum available to land mobile services where most

required, with minimal impact on TV broadcast service.

Background

2. The private land mobile radio services represent the largest group of licensed radio users regulated by the Commission. These services provide for the communications needs of a broad community of users, from police departments to small businesses. The expanding use of mobile communications since the 1960's has led to increased demands for, and congestion in, the private land mobile frequency bands, particularly in the nation's largest metropolitan centers.

3. On January 13, 1982, the Commission adopted a *Notice of Inquiry* in PR Docket No. 82-10 to examine the future trends and requirements of the Private Land Mobile Radio Services (PLMRS) and the land mobile user community. A staff report entitled *Future Private Land Mobile Telecommunications Requirements* (hereinafter the *Future Requirements Report*) was included in that docket in August 1983 and concluded that private land mobile radio services will experience substantial growth through the remainder of the century, resulting in a need for significant additional communications capacity.[1] Additionally, in October 1983, the Commission's Office of Science and Technology released a report entitled *Analysis of Technical Possibilities for Further Sharing of the UHF Television Band by the Land Mobile Services in the Top Ten Land Mobile Markets* (hereinafter *Further Sharing Report*).[2] This report showed that sharing opportunities vary from market to market, depending on the selection and size of the land mobile operating area in each market, the existing TV broadcast stations, and the protection criteria for sharing land mobile with broadcast services.

4. The *Future Requirements Report* suggested a combination of more efficient technologies and additional spectrum allocations as the best means available for providing the relief needed in these services. The report concluded that considering some implementation of new narrowband technologies, and assuming an additional spectrum release from the land mobile reserve in the 900 MHz band,[3] the private land mobile radio services would suffer serious shortfalls of communications capacity by the year 1990 in a number of major urban areas. For example, assuming that 17 megahertz of the reserve spectrum was released for private land mobile use and that narrowband technologies were developed on interstitial channels in the existing 150–170 MHz band, the report projected shortfalls from 3 to 109 megahertz in the top markets by the year 1990.[4] A petition filed by the Land Mobile Communications Council (LMCC) provided information that agreed with the *Future Requirements Report* findings concerning projected spectrum shortfalls.[5] Another petition filed by LMCC proposed further sharing of UHF TV channels 14–69 as a solution to the projected shortfall.[6] Likewise, a petition filed earlier by the Los Angeles County Sheriff's Department proposed that further sharing of TV Channels 14–20 be allowed in major metropolitan areas.[7]

5. The *Further Sharing Report* examined land mobile sharing of UHF TV broadcast channels in Boston, Chicago, Dallas-Ft. Worth, Detroit, Houston, Los Angeles, New York, Philadelphia, San Francisco and Washington, D.C. The report indicated that with no changes to the interservice sharing criteria currently governing land mobile sharing of the UHF TV band, possible additional sharing would not significantly contribute to satisfying the projected land mobile requirements.[8] However, with some changes to these rules, at least one TV channel in all the major cities except Detroit was considered available for land mobile sharing.

6. While we are considering in this proceeding additional sharing of spectrum currently allocated for TV broadcasting service, the improved utilization of existing land mobile spectrum through the implementation of improved technology is also being vigorously pursued. In this regard, the Commission recently adopted a *Report and Order* which permitted narrowband technologies in the 150–170 MHz private land mobile band.[9] We have also adopted a *Notice of Proposed Rule Making* proposing to release twelve megahertz of the 900 MHz land mobile reserve spectrum for private land mobile use. And, with the increasing demand of private land services in mind, the Commission proposed that more efficient use be made of this spectrum by employing narrowband technologies.[10] The Commission believes that new technologies will play an essential part in satisfying the projected growth of private land mobile services.[11] Cost and implementation considerations, however, argue aganist relying totally on new technologies to provide capacity through the end of the century. Even assuming the eventual adoption of the proposal for new 900 MHz spectrum and the implementation of other developing technologies, such as digital techniques, narrowband techniques, and adaptive antennas, it appears that the capacity of the spectrum allocated to private land mobile services will in some areas fall

[1] "Future Private Land Mobile Telecommunications Requirements": Final Report, Planning Staff, Private Radio Bureau, FCC, Washington, D.C., August 1983. This study examined the future spectrum needs of the following major urban areas: Atlanta, Baltimore/Washington, Boston, Chicago, Cleveland/Detroit, Dallas, Denver, Houston, Kansas City, Los Angeles/San Diego, Miami, Minneapolis/St. Paul, New Orleans, New York, Philadelphia, Phoenix, Pittsburgh, St. Louis, San Francisco, Seattle, and Tampa/St. Petersburg.

[2] "Analysis of Technical Possibilities for Further Sharing of the UHF Television Band by the Land Mobile Services in the Top Ten Land Mobile areas." FCC/OST R83-3, October 1983.

[3] For simplicity we will refer to the spectrum between 806-947 MHz as the 900 MHz band.

[4] These figures assumed an annual private land mobile growth rate of 6.2%.

[5] Petition for Rule Making filed by the Land Mobile Communications Council, RM-4629, received June 18, 1984.

[6] Petition for Rulemaking filed on October 29, 1984, to allow expanded sharing of the 470-806 MHz Television band by Land Mobile stations in the twenty-one largest metropolitan areas. In view of the petition's relevance to the issues considered herein, it will be included as comments in the Docket file in this proceeding.

[7] A Petition for Rulemaking was filed on September 1, 1981, requesting the use of Channel 15 and 16 in Los Angeles, California. A Supplement To Petition For Rule Making was filed on November 4, 1983, requesting the immediate assignment of TV Channel 19 in the Los Angeles area as well as expanded sharing of the UHF TV band in metropolitan areas. A *Notice of Proposed Rule Making* in Docket 84-902, 49 FR 45875, November 21, 1984, addressed the immediate request for Los Angeles County. The remainder of that petition, because of its relevance to the issue considered herein, will be included in the docket file in this proceeding.

[8] *First Report and Order*, Docket No. 18261, 23 FCC2d 325 (1970). The action enacted a 50 dB co-channel and 0 dB adjacent channel protection ratio for UHF TV stations at a 55 mile grade B service contour. A 40 dB co-channel ratio was adopted for some New York, Cleveland and Detroit channels.

[9] *Report and Order* Docket No. 84-279, adopted on March 1, 1985, 50 FR 13396, April 5, 1985.

[10] *Notice of Proposed Rulemaking* in Gen. Docket 84-1233 adopted on November 21, 1984, 50 FR 1582, January 11, 1985. The Notice proposes a narrowband channelization plan for the frequencies 896-902 and 935-941 kHz using 12.5 kHz channels. Also, comments were requested regarding the use of 5, 6.25, 7.5, 10 and 15 kHz channels.

[11] Dale N. Hatfield Associates has developed projections claiming that all capacity requirements could be satisfied in existing spectrum if we could take advantage of the multiplicative effects of frequency reuse, channel splitting and increased loading afforded by new technologies. The information is contained in a report entitled "The Role of New Technologies and Spectrum Management in Meeting the Demand for Private Land Mobile Radio Telecommunications Capacity", D. Hatfield, G. Ax and A. Miller, Dale N. Hatfield Associates, Boulder, CO, November 1982.

short of the demands projected through the end of this century. Since part of these demands involve essential public services such as police and fire protection, medical assistance, transportation, and energy generation and distribution, as well as many other services needed by the public, it is desirable to find solutions to these projected shortages.

7. Since 1970, spectrum sharing between land mobile and UHF television has helped to accommodate a significant portion of the demands of private land mobile service in major metropolitan areas. Under the rules adopted in Docket No. 18261,[12] specific televison channels were reallocated for land mobile use within a limited area surrounding each of thirteen major urban centers.[13] Such a geographical sharing arrangement still appears to offer the best near-term possibility for addressing land mobile needs in the larger urbanized areas. However, it has been over fourteen years since the Commission established standards for land mobile services to share UHF television spectrum on a geographical basis. Since that time, modifications have been made in the table of TV assignments and a number of new UHF television stations have been authorized. Additionally, in 1982 the Commission adopted rules implementing provisions for Low Power Television (LPTV) stations.[14] Approximately 40,000 applications, many for LPTV stations near major markets, have been filed. To date over 700 LPTV stations have been authorized. As noted above, the *Further Sharing Report* shows that, assuming the current interference protection criteria and land mobile operating parameters are unchanged, few, if any, channels could be made available for land mobile sharing in some of the larger metropolitan areas without having a significant impact on TV service. We believe that reexamination of our protection criteria and other rules may lead to the availability of spectrum to private land mobile services where most required, while minimizing the impact of TV broadcast services.

8. Accordingly, the objective of this proceeding is to propose additional spectrum to provide additional communication capacity for land mobile services. We propose to permit further land mobile use of the UHF TV spectrum for several reasons. First, interservice use of TV channels 14 to 20 in major metropolitan areas, as provided for in Docket 18261, has proven practicable. Second, we have evaluated possibilities for further use of the UHF–TV band by land mobile and consider our proposal to be technically feasible. Third, preliminary review of other spectrum, such as the 216–225 MHz band or bands above 1 GHz, indicates that no choice offers such promising possibilities for land mobile use as does the UHF–TV band. Furthermore, we propose to allow land mobile use of UHF–TV channels on a shared basis because the impact on broadcast users would be less than if we reallocated the spectrum for land mobile use only, which would require repacking of existing broadcast stations. Repacking would involve the relocation of existing UHF–TV stations into the remaining portion of the UHF–TV spectrum—an action that would be costly and would cause major disruption of existing TV service.

Geographical Areas Needing Additional Capacity

9. The *Future Requirements Report* projected that there would be private land mobile spectrum shortfalls in twenty-one urban areas by the year 1990. A part of these shortages will be satisfied through recent Commission actions. As noted above, the *Report and Order* in Gen. Docket 84–279 implemented a 5 kHz channeling plan in the 150 MHz band. The number of channels that will ultimately be used is still uncertain, since this will be determined by the extent of the ability to use interstitial narrowband channels in loaded areas and by the extent of conversion of existing authorizations to narrowband. An analysis undertaken by Sacks/Freeman Associated[15] indicates that only about 50 interstitial channels will be usable in the New York market, with the number increasing in less congested markets where there are less restrictions due to the need to protect existing authorizations. Also, the Commission has recently taken other steps to increase spectrum available for private land mobile services. The *Notice* in Gen. Docket 84–1233 proposes that the 896–902 MHz and 935–941 MHz bands be allocated to private land mobile, with a 12.5 kHz channeling plan the preferred alternative. Adoption of such a plan would mean an additional 480 channel pairs for private land mobile use. Thus, recent actions taken by the Commission could mean that over 530 additional channels may become available in major areas before 1990.

10. While additional channels will be established, we note that the increasing use of digital, trunking and cellular technologies will reduce private spectrum requirements to some extent in the same time period. Nonetheless, based upon information developed in the *Future Requirements Report*, substantial shortages may remain in at least nine urban areas. These areas are Los Angeles/San Diego, New York, Baltimore/Washington, Philadelphia, Cleveland/Detroit, Chicago, San Francisco, Dallas, and Houston.

11. In eight of these urban areas, we have identified several UHF television channels in each area which can be made available to private land mobile radio with minimal impact on existing full service television. This can be achieved by modifying existing LM/TV interservice sharing rules and deleting some vacant UHF television allotments. Making these channels available would aid the private land mobile services in the areas of greatest need. However, this action may not totally satisfy communication needs in the New York and Los Angeles/San Diego areas. To attempt to make additional channels available in these two areas would be desirable from the point of view of the land mobile services, but would adversely affect existing full service TV stations, not to mention have a further impact on LPTV and translator services. We do not foresee any significant UHF sharing opportunities in the New York and Los Angeles areas beyond that provided in this rulemaking. Therefore, in these two cities, additional communications requirements may need to be met by other means such as employing new technology or accepting heavier loading on the available channels. Regarding one of the nine areas with projected shortages—Cleveland/Detroit—international coordination is a concern. Due to the differences in U.S. and Canadian allocations, shortages of broadcasting as well as private land mobile spectrum exist in this area, requiring other spectrum resources to be used to provide relief. In this regard, it should be noted that some spectrum relief for land mobile services in the Cleveland/Detroit

[12] Reference Docket 18261, *First Report and Order*. See footnote 8 *supra*. The action identified 10 urban areas; three areas were added later in the proceeding.

[13] The designated urban centers were Boston, Chicago, Cleveland, Dallas/Fort Worth, Detroit, Houston, Los Angeles, Miami, New York/N.E. New Jersey, Philadelphia, Pittsburgh, San Francisco/Oakland, and Washington, D.C/Maryland/Virginia.

[14] *Report and Order*, Docket No. 78–253, 47 FR 21468, May 18, 1982.

[15] "Final Report of Evaluation of the Use of New Narrowband Technologies in the Existing Private Land Mobile Radio Frequency Allocations," Stanley I. Cohn and Ernest R. Freeman, Sachs/Freeman Associates, Inc., Bowie, Maryland, August, 1984.

area was recently proposed in the 421–430 MHz band.[16]

Technical Considerations for Sharing

12. The amount of sharing between the television and land mobile services possible in a given geographical area depends on the values assumed for various technical parameters, the degree of protection intended for TV service, the permissible locations of land mobile base stations, and the permitted operating range of mobile stations. The sharing arrangement adopted in Docket 18261 provided protection for co-channel and adjacent channel full service TV stations and pending full service TV applications.[17] Co-channel protection was based on a 50 dB desired-to-undesired (D/U) field strength ratio at a hypothetical 55-mile Grade B contour, except in New York, Cleveland and Detroit, where a 40 dB ratio was used for some stations.[18] [19] Adjacent channel TV protection was based on a 0 db D/U ratio.[20] Land mobile fixed stations were not permitted within one mile of a TV station operating on a channel 2, 3, 4, 5, 7, or 8 channels removed from the land mobile channel.[21] [22] The sharing criteria used in Docket 18261 were based on limited measurement data and estimated values of pertinent parameters. Because of the uncertainties concerning many of these parameters, the criteria used were deliberately conservative. Based on the following considerations, we are proposing in the instant proceeding to modify some of these criteria.

Receiver Susceptibility

13. For purposes of this proceeding, receiver susceptibility will be defined by the TV-to-LM signal ratio at the TV receiver antenna terminals which will produce a given degree of degradation to the TV reception, which is usually expressed as either perceptible or objectionable interference. The measured ratio varies from TV receiver model to model, and for a given receiver depends on the frequency of the interfering signal with respect to the TV visual carrier. It may be also influenced by the desired signal levels, picture content and viewing conditions, such as ambient lighting and distance of the viewer from the screen.

14. In support of the Commission proceeding in Docket 18261, the FCC Laboratory conducted a number of tests to determine typical co-channel and adjacent channel receiver susceptibility ratios.[23] Ten different models of TV sets were tested at VHF and the ratios were determined based on the same degree of objectionable interference for the co-channel and adjacent channel cases.[24] The co-channel susceptibility ratio ranged from 42 dB to 48 dB with a median value of 43 dB. The adjacent channel susceptibility ratio ranged from 20 dB to −40 dB, depending on the frequency separation between the undesired LM signal and the TV channel edges, on the power of the TV desired signal and on whether the upper or lower adjacent channel was being considered. For example, the ratio was as much as 40 dB lower when the undesired signal was at the far edge of the adjacent TV channel; and it was as much as 20 dB lower when the power of the desired signal was a lower value equal to grade B service then when the power of the desired signal was equal to city grade service. The adjacent channel susceptibility ratio was higher when the interfering signal was on the lower adjacent channel than when on the upper adjacent channel. Similar tests were conducted in 1976 by the Canadian Department of Communications (DOC).[25] The DOC tests involved sampling 52 different TV models at UHF. The co-channel receiver susceptibility ratios for 50% and 90% of the receivers tested did not exceed 40 dB and 45 dB, respectively. The adjacent channel ratios varied in a similar fashion as in the FCC tests.

Antenna Characteristics

15. The directional characteristics and polarization of UHF-TV receiving antennas discriminate against land mobile interference. While receiving antennas in the TV services used near Grade B contours are generally horizontally polarized and receive efficiently in one specific direction, antennas used in the land mobile services are generally vertically polarized and radiate in all directions. Most, if not all, outdoor antennas used to receive TV signals at or near the grade B service contour are highly directional with an average gain on the order of 8 dB and a front-to-back ratio of 10 to 20 dB.[26] While an antenna's front-to-back ratio is a fairly good indicator of the level of discrimination achievable against land mobile interference, the net discrimination effect varies significantly, depending upon the configuration, installation and age of the entire TV receiving antenna system.

16. With regard to the polarization discrimination between land mobile transmitting and TV receiving antennas, a number of studies have indicated that under certain conditions, a polarization discrimination factor of 20 to 30 dB is achievable. However, an average polarization discrimination factor on the order of 10 dB is commonly cited.[27] In general, polarization discrimination is higher in open areas and lower in thickly wooded areas and other areas where the reception is poor.

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[16] *Notice of Proposed Rulemaking* in Gen. Docket 85–113, adopted on April 15, 1985.

[17] Land mobile stations operating within the six megahertz occupied by a TV channel were considered to be co-channel. A land mobile station operating within the 6 megahertz band directly above or below a TV channel was considered to be adjacent channel.

[18] A 50 dB protection ratio means that the amplitude of the desired signal is more than 300 times greater than the amplitude of the undesired signal at the grade B service contour. A 40 dB protection ratio means the desired signal is 100 times greater. From this, it follows that the undesired signal can be 3 times as great with a 40 dB protection ratio than with a 50 dB protection ratio. The 55-mile grade B service contour was based on a hypothetical TV station with an effective radiated power of one megawatt and a transmitting antenna height above average terrain of 2000 feet.

[19] The selection of a 40 dB as a criterion for land mobile use of Channel 15 in New York and Cleveland and Channel 16 in Detroit was based on particular circumstances. For channels 15 in both New York and Cleveland, terrain features in the direction of the co-channel protected TV stations provided additional protection to TV co-channel viewers from land mobile operation. For Detroit, the predicted grade B of the co-channel facility to be protected extended only to 44 miles—11 miles less than the 55 mile criterion established in Docket 18261.

[20] A 0 dB D/U ratio means that the undesired signal can be as great as, but no stonger than the desired signal at the grade B service contour.

[21] The term "fixed" refers to a base, control or mobile relay station.

[22] These prohibitions are referred to as the "IM & IF Taboos" in UHF Television allocations. These "Taboos" are set forth in § 73.610 of the Commission's Rules

[23] FCC Report entitled "Interference to TV by Other Services." Project No. 2229–45, Part I, II, III [1968, 1969].

[24] The staff's investigations tend to confirm that results are the same at UHF.

[25] DOC Report intitled "Task Force on UHF–TV Taboos." Project 6, Assessment of Potential Land Mobile Interference to/from UHF Television. [1976]

[26] Report entitled "Program to Improve UHF TV Reception." Project No. A–2475 Georgia Institute of Technology. [1980]. The gain of an antenna is a rating expressing how much better one transmitting or receiving antenna is with respect to a reference antenna. The front-to-back ratio is the ratio of the maximum power received in the main lobe and the power received in the back 180° of the antenna pattern.

[27] See the following Reports: FCC report entitled "Polarization Discrimination in Televison Broadcasting". FCC Report T.R.R. 4.3. 10 [1958]; FCC Technical Memorandum entitled "Options for Relief of Interference to TV Channel 6 from Educational FM Broadcast Stations." OST TM 82–3 [1982]; BBC Report entitled "Aerial Discrimination against Orthogonally-Polarized Transmissions at UHF." [1964]; CCIR Volume V [1982], Report 239–5 Section 4.5, Report 567–2 Section 4, and Report 722–1; and NBS Report No. 6099, entitled "Performance of VHF Receiving Antennas Propagation".

Propagation

17. The relative field strength of TV and LM signals at an antenna is influenced by atmospheric conditions, terrain and obstacles along the propagation path, and by reflection from objects such as buildings and trees. In Docket 18261, the R-6602 propagation curves [28] were used to predict service areas of TV broadcast and land mobile operations and to determine minimum separation distances needed between land mobile and television stations. In making these calculations, no allowances were made for the variability in field strength from location to location—known as location variability—or for special situations such as attenuation from major obstacles or enhanced propagation due to superefraction and ducting. At UHF, location variability varies from area to area, and usually ranges between 10 and 18 dB.[29] An average value of 12 dB is commonly used.[30]

Sharing Criteria

18. In this proceeding, we propose to make several modifications to the sharing criteria used in Docket 18261. These modifications include changes in the co-channel D/U ratio, the computation of the TV protected service contour, and the land mobile operating parameters.

19. We propose to reduce the field strength D/U ratio for co-channel operation from 50 to 40 dB.[31] It was recognized during the Docket 18261 proceedings that the 50 dB ratio was conservative. Based on the information discussed above, we believe the 40 dB ratio is more appropriate and would result in minimal impact on co-channel TV service. For example, if we assume a median receiver susceptibility ratio of 40 dB,[32] an average TV receiving antenna discrimination of 10 dB (due to the antenna pattern and cross-polarization), and a location variability of 12 dB for both the TV and LM signals, a 50 dB D/U ratio would provide protection for 95 percent of the potential TV viewers at the Grade B contour. For the same assumptions, a 40 dB ratio would provide protection for 88 percent of the potential viewers.[33] However, we are aware that significant uncertainties still exist concerning many of the factors that go into determining the appropriate ratio, including the receiver susceptibility as affected by noise and other interference, antenna characteristics (cross polarization discrimination and front-to-back ratio) as affected by installation and local environment and propagation variabilities. We, therefore, solicit comments concerning the appropriate value of the field strength ratio as well as on these factors. We also request comments on the acceptable degree on TV reception degradation for appropriate percentages of time and location and on the relationship between this and the above factors.

20. Also, while we are not proposing any changes with regard to the adjacent channel protection ratio at this time, we solicit comments on the appropriateness of maintaining the Docket 18261 criterion of 0 dB D/U ratio for adjacent channel operation, on whether land mobile should be allowed to operate in the same area on portions of the adjacent channel, and on whether mobile units should be allowed to operate inside the predicted Grade B contour on an adjacent TV channel.[34] In addition, we solicit comments on whether the one mile separation requirement for certain channel separations (2, 3, 4, 5, 6, 7, and 8) should be imposed and on whether protection criteria should be introduced for TV stations 14 and 15 channels below proposed land mobile operations.[35]

21. In determining the necessary separation distances between LM operations and existing TV stations, we propose to base the protected Grade B contours on the licensed power and antenna height above average terrain of the TV stations rather than use the 55-mile hypothetical contour used in Docket 18261. The service contours are determined in accordance with § 73.684 of the FCC rules. We are aware, however, that adoption of these proposals might have an impact on future modification of existing licensed TV facilities. An affected TV station could increase its power and/or antenna height at a later date, but the resulting service area might be less than expected in the direction of land mobile operations provided for in this proceeding.[36]

22. For the land mobile base station operating parameters, we assumed a reference base station effective radiated power of one kilowatt and a reference antenna height of 500 feet HAAT (height above average terrain elevation from 2 to 10 miles in the pertinent direction). For mobile units, an effective radiated power of 100 watts and an antenna height of 100 feet above average terrain were assumed. These reference values were used to identify approximate areas of operation in each city. In addition, we are proposing to restrict the location of base stations to within 30 miles and mobile operation to within 50 miles of the center of a city.[37] In addition, base station locations must be chosen to provide protection to television facilities, as directed in the previous paragraphs. The actual areas of operation will also depend on specified power and antenna height limitations, which will be the subject of a subsequent rulemaking proceeding. However, we now solicit comments on whether these assumptions concerning operating parameters and these restrictions on operations are appropriate for typical land mobile operations.[38] We assume that, in general, the separation distances required to protect existing TV stations from land mobile interference will result in adequate protection of land mobile service from TV interference. We realize that channelization plans for specific areas will have to avoid frequencies near the visual, aural and color carriers

[28] FCC report entitled "Development of VHF & UHF Propagation Curves for TV and FM Broadcasting." FCC Report No. R-6602 [1966].

[29] CCIR Volume V (1982), Report 239-5 Section 4.3 & Report 567-2 Section 6.

[30] FCC Report T.R.R. 2.4.16 "UHF Propagation Within Line of Sight" [1951].

[31] On April 28, 1985, the Association of Maximum Service Telecasters and the National Association of Broadcasters requested, by letter to the Chairman, that the Commission establish a joint industry-government advisory committee to investigate and advise the Commission as to the protection criteria necessary to prevent interference to UHF television stations from land mobile stations operating in the UHF spectrum. We believe that advice from such a committee would be useful in developing final rules. Formation of an advisory committee and its terms of reference will be the subject of an Order to be released in the near future.

[32] Based on the DOC study, a 40 dB co-channel receiver susceptibility ratio applies to 50% of the TV sets.

[33] The term "potential TV viewers" refers to the percentage of locations at the grade B contour where viewers receive a signal level of 64 dBu or greater for at least 50% of the time. This is defined in the broadcast rules as 50% of the locations.

[34] Testing has been performed to determine the feasibility of utilizing UHF-TV Channel 19, or a portion of that channel, to provide near term relief for public safety operations in Los Angeles area. See Notice of Proposed Rulemaking in Docket 84-902, 49 FR 45875, November 21, 1984.

[35] Channels 14 and 15 are referred to as the sound image and picture image taboos. These taboos are set forth in § 73.610 of the Commission's Rules.

[36] In Docket 18261, no provisions were made to protect existing full service facilities from LM interference beyond the 55 miles grade B contour.

[37] Docket 18261 assumed the use of 200 watt and 100 feet as reference values. In this proceeding, since the mobile operating area is reduced from 30 miles to 20 miles around the base station, we have selected a 100 watt limit.

[38] In urban areas such as Los Angeles and San Francisco, this 30 mile restriction may preclude utilization of some commonly used private land mobile antenna sites. We request comments on whether a larger radius should be used in these cases, and if so, what the radius should be and what impact on TV service would result from its use.

of nearby co-channel TV stations. Since in some situations the possibility may exist for interference to land mobile from TV intermodulation products, local oscillator radiation or adjacent channel spillover, we solicit comments on whether these land mobile protection criteria are appropriate.[39]

Channels Available for Land Mobile

23. In considering further use of the UHF–TV spectrum for land mobile services, the Commission analyzed two alternative approaches to selecting UHF–TV channels that could be made available for land mobile. The alternatives considered were a channel repacking approach and a channel sharing approach. Each has benefits and liabilities associated with manufacturability of land mobile equipment and impact on TV broadcasting. For reasons discussed in the following paragraphs, we have settled on the channel sharing approach.

24. In determining which TV channels were feasible to be made available for land mobile use, we considered the manufacturability of reasonably priced land mobile equipment and the impact of land mobile use on TV broadcasting service. Two factors of importance in the manufacturability of land mobile equipment are the frequency range over which the equipment must tune and the frequency separation between base and mobile units. There are practical limits for each of these factors which enable the building of reasonably priced equipment. Based on characteristics of existing land mobile equipment and discussions with manufacturers, we concluded 70 to 100 MHz to be the practical tuning range limit. The necessary base/mobile frequency separation is dependent on where in the spectrum the land mobile equipment operates. For example, current 470–512 MHz equipment employs a separation of 3 MHz while current 800 MHz equipment employs a separation of 45 MHz. For our purposes, we considered separations of 20 to 60 MHz to be practical. In order for land mobile equipment to be reasonably priced, there must be some standardization of these two parameters. Requiring different equipment to be manufactured and marketed for each area of interest would reduce the likelihood that manufacturers would be able to produce new equipment economically. In Dockets 18261 and 18262, the Commission identified sufficient channels within a relatively narrow frequency range and made them available to a large enough segment of the land mobile community so that mobile radio equipment could be obtained at reasonable prices (e.g., Docket 18261 made two channels out of channels 14–20 available for land mobile in each of 10 cities or one channel in 3 cities).

25. In order to identify spectrum for land mobile use in the areas of interest, we first considered "repacking" the UHF–TV band. Repacking would entail the reallocation of a number of UHF–TV channels for land mobile services, as was accomplished in Docket 18262.[40] Existing TV stations in the reallocated spectrum would be moved to other allotments, i.e., "repacked" into remaining TV spectrum. Any repacking scheme, whether to provide land mobile with contiguous channels or a set of channels with a convenient base/mobile separation, burdens those broadcast stations on the channels to be reallocated with the task and possibly the expense of rechannelization. Some schemes could have significant cascading effects on the Table of TV Allotments, necessitating rechannelization by other broadcast stations and further disrupting TV service. In some markets finding alternative TV channels might be extremely difficult unless there were some relaxation of the UHF–TV taboos to remove the channel separation requirements imposed on TV stations.[41] This could entail awaiting the implementation of new, more expensive kinds of TV receivers. Given our desire to minimize impact on TV services we elected not to use the channel repacking approach.

26. Then, in order to identify TV channels which could be candidates for land mobile use in the areas of interest, we considered those channels which are not allowed in the areas and on which land mobile operations would cause no disruption to existing full service TV stations or pending full service applications, according to the proposed criteria. However, this set of channels would not provide sufficient spectrum in some areas; and, further, they are so widely dispersed throughout the UHF band that, for the reasons discussed above, it would be impractical to manufacture and market land mobile equipment. To obtain sufficient numbers of channels to meet the requirements of land mobile, we also considered using vacant TV channels that are allotted in the areas but do not currently have licensed assignments or pending applications.[42] Including use of this set of channels, we were able to develop a practical channel sharing plan. This approach, which makes use of unaffected channels or vacant allotments, will not displace any full service TV stations. However, some vacant allotments would be lost if no substitutions for them could be made and some translators and low power operations would be affected, as discussed later herein.

27. Our proposal accounts for the need to provide a practical land mobile equipment tuning range by dividing the UHF–TV spectrum into several bands, each of a reasonable frequency range. Analysis of the candidate channels indicated that an 84 MHz wide range would make good use of the channels while falling within the 70–100 MHz range limit considered practical. We designated three operating ranges or bands as follows:

Band I: Channels 23 to 36 (84 MHz)
Band II: Channels 35 to 48 (84 MHz)
Band III: Channels 56 to 69 (84 MHz)

We referred to the existing 470–512 MHz band, channels 14–20, as Band 0. Channel pairs within these bands were analyzed for base/mobile separations between 20 to 60 MHz to determine what common separation would make best use of the candidate TV channels. The majority of the possible pairs within these bands occur with either a four or six channel separation. Accordingly, we developed a proposal based on using candidate TV channels to form pairs with either four or six channel separations.

28. The table below lists candidate channels selected from bands 0, I, II and III which we propose to make available for land mobile operation in the cities shown. The channels in band 0 would be used with a 3 MHz base/mobile separation as is currently done in this band. Channel pairs in Bands I, II and III have a separation of from 4 to 6 channels, with most pairs having a 6 channel spacing. The channel proposed for base operation is followed by the channel proposed for mobile operation

[39] OST Report entitled "Analysis of Technical Possibilities for Further Sharing of the UHF Television Band by the Land Mobile Services in the Top Ten Land Mobile Markets." FCC/OST R83–3. Pages 10 & 11 contain a discussion of the possibilities for interference from TV to land mobile.

[40] *First Report and Order and Second Notice of Inquiry* in Docket No. 18262, 35 FR 8644, June 4, 1970. In this proceeding the Commission reallocated UHF–TV channels 70–83 to the Land Mobile Service.

[41] The "taboos" set forth minimum mileage separations for TV stations assigned to the same channel, those assigned to adjacent channels and those assigned to certain other channels affected by design of TV equipment. See Footnote 22, *supra*.

[42] While this analysis was in progress, an application was filed for Channel 46 in Bakersfield, California.

(i.e., base/mobile). We propose to permit the use of 1 to 3 channel pairs, making 12 to 36 megahertz of additional spectrum available, for land mobile in each major area. In San Francisco and Los Angeles, we have identified two alternative pairing schemes using a common channel, Channel 28 in San Francisco and Channel 32, in Los Angeles. Only one of the pairs with a common channel can be selected in those areas and comments are invited on which is the better choice, considering both land mobile needs and broadcast impact. Also, in all areas except New York, Chicago and Houston, we identified alternative channel pairs with either 4 or 6 channel spacings and comments on the choice of spacing are invited. The column labeled "Amount of Spectrum" shows the proposed total amount of frequency spectrum to be made available for land mobile in each area from the candidate channels, according to the expressed preferences. Comments, likewise, are invited on this aspect of the sharing proposal.

29. Under the column of the table headed "Impact", we have identified the vacant allotments or translator stations which are affected by the proposal. We believe that substitute allotments may be found to prevent loss of some of these vacant slots, and this will be the subject of a further proceeding. However, regarding the identified translators, we do not propose to protect them and their operation would become secondary to land mobile operation. This means that some translator operations might have to be terminated. In addition, Appendix C contains tables indicating the number of pending low power television and television translator applications affected within 50 miles of the center of each of the urban areas. (The processing of low power applications is discussed below at paragraph 35) The number of LPTV construction permit authorizations that may be precluded or delayed by this proceeding will depend on the outcome of lotteries in these areas. However, it is estimated that from 19 to 24 LPTV construction permits could be affected. Significantly, a candidate channel appears to afford the only opportunity for a low power television station in New York (Channel 19), Los Angeles (Channel 26) and Philadelphia (Channel 42). In Los Angeles and Philadelphia, alternate channel choices for land mobile sharing are being proposed. The record in this proceeding will guide us in determining how many and which channels to make available for private land mobile operations, taking into account the public's expressed need for land mobile and low power television services. In this regard, we note that while there will be substantial shortages of land mobile communications capacity in the eight areas, they are already served by a number of full service television signals. For instance, it appears that about 12 signals can be received over the air in New York City. Apparently, about 18 signals are available in Los Angeles, 7 in Philadelphia, 13 in Chicago, 15 in San Francisco, 18 in Washington, 7 in Houston, and 10 in Dallas.

Urban area	Candidate channels	Operating band	Amount of spectrum	Impact
New York	19	0	30 MHz	None.
	27/33	I		One translator on Channel 28 (W28AB).
	34/28	I		
Los Angels	26/32 or 32/36	I	36 MHz	Vacant allotment on Channel 32, Sanata Barbara.
	48/42	IL		Vacant allotments on Channel 41, Ventura and Channel 48, Bakersfield.
	60/66	III		Two translators on Channel 60 (K60BB, and K50BD) one on Channel 66 (K66BL).
Chicago	41/47	II	24 MHz	None.
	64/68	III		Vacant allotment on Channel 64 in Streator, Il.
San Francisco	18	0	18 MHz	One translator on Channel 19 (K82BC)
	24/28 or 34/28	I		None.
Philadephia	26/32 or	I	12 MHz	One translator on Channel 26 (W28AD).
	42/46	II		None.
Washington, DC	36/30 or	I	12 MHz	Do.
	39/35	II		Do.
Houston	16	0	18 MHz	Do.
	41/35 or	II		Do.
	63/69	III		Do.
Dallas	17	0	18 MHz	Do.
	41/35 or	II		Do.
	66/62	III		Do.

30. Appendix B contains tables which identify the proposed full service TV facilities to be protected by private land mobile stations. It shows the call signs and distance to the predicted grade B contour of the affected TV stations. Maps displaying the proposed land mobile operating areas for each urban area and candidate channels have been included in the docket file for reference. The actual area of land mobile operation will depend on specified land mobile power and antenna height limitations. These operating parameters will be the subject of a separate rulemaking proceeding concerning land mobile technical standards and procedures after the allocation issue is resolved. (Coordination procedures with Canada and Mexico will be developed prior to licensing.)

31. In proposing this sharing arrangement, the Commission recognizes a number of concerns and considerations important to the final outcome of this proceeding. First and foremost is the objective of providing an opportunity for greater use of the UHF spectrum for private land mobile services while minimizing the impact on broadcast services. To achieve this objective we have relied significantly on the work performed in developing the *Future Requirements Report* and the *Further Sharing Report* for guidance. The *Future Requirements Report* projected that in 1990 private land mobile spectrum requirements would be severe in the markets for which we are proposing additional spectrum. Given the likelihood of additional frequencies for private land mobile use in the 900 MHz band and the potential for more spectrum efficient technologies in all portions of the spectrum, we do not believe it necessary to proposed sharing of the UHF–TV spectrum beyond those areas discussed above. We expect that requirement projected for areas outside of these major markets will be accommodated through other means.

32. On the other hand, the *Future Requirements Report* projected spectrum requirements in some areas, such as New York and Los Angeles, substantially in excess of the additional 30 and 36 megahertz, repectively, proposed herein. However, TV broadcast needs are very significant in

these areas. We believe it necessary, therefore, to restrict the number of channels available for sharing so as not to reduce private land mobile shortages at the undue expense of UHF-TV in any area. In these areas capacity shortfalls will probably have to be accommodated through applications of high technology or through accepting heavier loading on available channels. The primary issue here is the appropriate balance between TV broadcast and private land mobile services. We believe this NPRM strikes a balance between the important needs of both services.

33. In the Federal Communications Commission Authorization Act of 1983, Pub. L. 98-214, enacted December 8, 1983, 97 Stat. 1467, Congress directed the Commission to review the current and future spectrum needs of the nation's public safety authorities and to develop a plan which assures that the needs identified by the public safety community are met. In response to this legislation, on March 1, 1984, the Commission adopted a *Notice of Inquiry* to seek comments regarding current and future spectrum needs. Almost 300 comments were submitted by interested parties in response to the *Inquiry*. Based on this record, a report will be issued in the near future. That will be followed by an effort to develop a plan to meet the identified needs. While this proposal is not specifically designed to meet public safety needs, we expect it to provide relief for public safety as well as other land mobile use. If early consideration of comments addressing public safety interest in this spectrum is useful, we welcome such comments.

34. As noted in paragraph 6 above, narrowband channeling was part of the proposal to release 900 MHz spectrum for private land mobile services. The Commission here would also like to require or encourage more efficient technologies, but is aware of the possibility of some delay associated with incorporation of new technologies into equipment. We note, however, that there is not at present any land mobile equipment designed for the frequency bands proposed here. The process of designing, building, and marketing new equipment typically seems to require two to three years, when the basic technology is already at hand. We expect that additional delay for incorporating spectrum efficient modulation or operational features into the new equipment will be modest compared to the basic development time for the new equipment, whether those techniques be single sideband, narrowband FM, digital voice, trunking, or other improvements for which the basic approaches are reasonably well understood. Commenters are requested to address the feasibility of employing more spectrum efficient technology in this shared UHF spectrum. This issue will be treated further in the separate rulemaking proceeding concerning land mobile technical standards and procedures.

Other Related Matters

Interim Procedure for Low Power TV

35. The processing of Low Power Television (LPTV) applications is proceeding in a routine and satisfactory manner, and it is our desire to disturb that as little as possible. We will continue to conduct lotteries, release proposed grant lists, accept and address petitions to deny, and complete all other administrative procedures without regard for the proposals made in this docket, with one important exception. If at the time of grant of a construction permit the LPTV application chosen by lottery could cause predicted interference to the land mobile operations proposed herein, we will withhold the grant. Mutually exclusive applications that were not chosen in the lottery will be dismissed. If the LPTV applicant can eliminate the protential for interference by a minor amendment we will permit the applicant to do so, and we will then issue a construction permit. If the LPTV application cannot be amended (or the applicant chooses not to amend) the grant of a construction permit will be held in abeyance until we have decided which channels are to be reallocated to the land mobile services. At that time the applicant will be given a chance to amend to meet the adopted land mobile protection stadards. If the LPTV application is still in conflict with any of the choices we have made, it will be dismissed. Lotteries will not be reconstituted or repeated simply because a winning application is denied as a consequence of the exeception described above. Any opportunities created as a result of such dismissals will be available for new applications when we resume accepting LPTV applications. Further, with this rule making proceeding the coordination procedure referred to in paragraph 46 of the *Low Power Report and Order* will be terminated.[43]

[43] " . . . Specifically we shall examine all low power TV applications within at least 100 mile radius of the 10 largest U.S. metropolitan areas to determine what accommodation, if any, is possible if we decide to provide some land mobile spectrum . . ." The ten areas were: Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, New York, Philadelphia, San Francisco, and Washington, D.C. See *Report and Order, Docket No. 78-253, 47 FR 21468 (May 18, 1982), para. 46.*

36. LPTV operation would be secondary to land mobile in the urban areas discussed and to determine whether a particular LPTV application could cause interference to land mobile operation, we have developed interim technical standards that LPTV applicants will have to comply with prior to the issue of a construction permit while this proceeding is open. We have developed a number of field strength values for different transmitting antenna heights above average terrain (HAAT) which low power stations would not be permitted to exceed at a 50 mile protected land mobile contour.[44] Specifically, the F(50, 10) field strengths of co-channel LPTV stations would not be permitted to exceed 47 dBu for transmitting antenna heights of 400 feet or less above average terrain, 37 dBu for transmitting antenna heights of between 400 and 1000 feet above average terrain and 27 dBu for transmitting antenna heights more than 1000 feet above average terrain. For adjacent channel operation, we intend to limit the F(50, 10) signal level of low power TV stations to 76 dBu at the protected land mobile contour.[45] Comments are invited on these low power limitations to protect the land mobile allocation. A factor to consider is that low power TV must accept interference from full service TV stations and existing land mobile stations and will not be assured protection from future land mobile interference.

Applications for New and Modification of Full Service TV Stations

37. We will continue to accept and process applications for new full service stations or authority to modify the facilities of existing stations. However, we will protect full-service television stations on the basis of existing facilities, i.e., those for which a license or a construction permit was issued before the date this *Notice* is adopted. If an application for a new station is inconsistent with one of the proposed land mobile allocations, we will determine the degree of protection, if

[44] In paragraph 21 we proposed a land mobile operating area of 50 miles from the center of the city. This area is defined as the land mobile protected contour. The field strength values were derived from the low power restrictions of § 74.709 of the Commission's rules, modified to avoid the possibility of interference from a low power TV site at high elevation to a land mobile base site.

[45] The F(50, 10) signal values are obtained using the curves in § 73.699 of the FCC rules. Where the distance using F(50, 10) curves is less than 10 miles, the F(50, 50) curves should be employed. The antenna height to be used is the height of the center of radiation above the average terrain from 3 km to 16 km for each radial.

any, to be afforded the proposed television facility on a case-by-case basis in this rule making. New service resulting from the approval of applications received after adoption of the *Notice of Proposed Rulemaking* in this proceeding, whether for new stations or authority to modify the facilities of existing stations, must accept such interference as may result from the operation of land mobile facilities permitted under the rules adopted in this proceeding. We believe this policy is essential to preserve the limited opportunities remaining to relieve land mobile congestion in the major markets. Comments are invited.

Developing Use of Vacant Channels

38. Various ideas for the use of vacant UHF–TV channels are under development. For example, we are aware that the Advanced Television Systems Committee [46] is currently investigating the possibility of improving existing television standards and providing some form of high definition television. These enhancements may require more spectrum, contiguous channels, or greater protection. Unused channels may also provide capacity for expanded remote pickup broadcasts and studio-to-transmitter links. The Commission requests comments on the effect that land mobile and UHF–TV sharing might have on alternative uses of the spectrum for broadcast-related services.

Flexible Spectrum Use Proposal

39. The preceding proposal reflects our effort to meet the expected future demands for land mobile communications capacity in the largest cities while minimizing the impact on TV broadcast service. However, as discussed in paragraphs 31 and 32, this sharing proposal does not address land mobile requirements outside of the major areas and may not satisfy the total land mobile capacity needs in the two largest areas. Furthermore, the proposal does not address the potential demands of existing and new services other than land mobile that could practically and economically operate within this part of the spectrum.

40. Consequently, we are including herein a supplemental proposal to permit additional use of a portion of the UHF–TV band by expanding the scope of services that may be provided by television licensees. By broadening the communications permitted and establishing well defined interference rules, we propose to allow full service and low power television broadcast licensees on certain channels to decide on their own initiative the types of communications offered on their assignments. Licensees could choose, for example, to distribute video entertainment, provide point-to-point communications (*e.g.*, STL's), land mobile communications, or a combination of these.

41. Authorizing flexible spectrum usage on these channels would, in effect, shift a portion of spectrum usage decisions to individual licensees. It is our tentative belief that such flexible usage would provide an efficient mechanism for adjusting our general allocation plans to locally varying requirements, because local operators will be in an excellent position to evaluate local demand for communications services and have an incentive to act quickly to meet those demands. We, therefore, believe that allowing licensees more flexibility in choosing services will serve the public interest.

42. Communications services provided under this flexible allocation structure would be classified as either broadcasting, common carrier or "general" and would be subject to the same non-technical, service-related regulations normally applied to those categories of service.[47] Licensees would also be required to submit technical data and other information necessary to verify compliance with applicable rules.

43. Our experience to date with flexible spectrum usage in the broadcast services has been limited to secondary and ancillary services where the primary services provided by licensees remain unchanged. This would not be the case under the instant proposal. Therefore, we have kept its scope modest to allow us to fully assess its value as a spectrum allocation tool. We are proposing to grant flexibility only to existing and future full service and low power television broadcast licensees authorized on channels 50 to 59 (686–746 MHz).[48] We have selected these particular channels to avoid any potential conflict with our land mobile sharing proposal. These channels are the only contiguous group of ten that are neither already allocated nor proposed for land mobile sharing. A ten channel block is a sufficiently large allocation to provide some flexible communications capacity in all markets, but small enough to be manageable in the event of unforeseen technical or other problems.

44. The protection afforded broadcast licensees would not be altered by this flexibility rule. thus, for example, LPTV authorizations would still be secondary to full service TV stations regardless of the services offered. Also, to the extent licensees continued to provide some broadcast services, they would be required to abide by the applicable Part 73 rules, except to the extent such rules conflict with the exercise of technical and service flexibility.

45. To realize the benefits of flexibility it is important that licensees by free to select services without being unduly restricted or influenced by the Commission. In particular, our licensing policies should be neutral to the type of service proposed or provided. Thus, we propose not to consider service type as an issue in any comparative evaluation of assignments on these channels, both in renewals and in issuing new licenses.

46. Licensees who operate under the flexibility option would, at license renewal time, be judged based on overall performance with no preference given to any particular service. Also, the standards used to evaluate performance would be applied independently to each service category as are relevant to the type of service. Thus, a standard that is relevant only to broadcast performance would not be used to judge a licensee's performance in providing other services, such as land mobile.

Interference Rules for Flexible Operations

47. Our proposed rules would include a number of technical and geographic restrictions on flexible operations designed to prevent interference conflicts. Because of the flexibility to be afforded licensees under this proposal, the interference rules would be somewhat different from those proposed for land mobile sharing. First, we would require that all transmitters operated by a licensee under the flexibility option be confined within a defined geographical area which we would refer to as the licensee's flexible service area. The flexible service area for full service licensees would consist of all of the area within a licensee's calculated maximum

[46] The committee is composed of electronic industry members, with the National Association of Broadcasters as Secretariat, and seeks to promote standardization of advanced television systems.

[47] Used here the term "general" refers to any service which is not classified specifically as broadcasting or common carrier. Any communications service in support of lawful activities and any system design would be permitted, excluding airborne or satellite-borne transmitters, that meet the proposed technical limits.

[48] A footnote would be added to the allocation table in § 2.106 indicating the broader range of permissible uses on these channels and any limitation applicable near the borders due to international agreements.

facility 64 dBu contour [49] excluding any area within the distances specified in Table IV of § 73.698 from other full service stations on adjacent or taboo channels.[50] We have chosen to use maximum rather than actual facilities to make flexible service areas as large as possible within the confines of our current channel allotment policies. This will enable licensees to reach communities that would otherwise not be served. In the case of low power stations, the flexible service area would be bounded by the station's actual 74 dBu contour and exclude areas within the 74 dBu contours of adjacent and taboo channel [51] low power stations. Low power licensees would not be required to exclude areas overlapped by full service stations' protected contours since all low power operations are secondary to those of full service licensees in the event of interference.

48. Full service licensees wishing to operate under flexibility would be required to exclude only those overlap areas of other full service stations licensed prior to the initiation of flexibile operation. The same rule would apply among low power licensees. In both cases (*i.e.*, full and low power), extension of the flexible service area to include protected overlap areas of other stations would be permitted if the affected licensees agree in writing.

49. Licensing of new full service and low power stations on these channels would be carried out in accordance with existing rules. Thus, full service stations would be authorized only on those channels and at locations specified in § 73.606(b). Also, the protected contours of full service stations referenced in our low power licensing rules in § 74.705 would be based on the full service station's actual rather than maximum facilities. Low power stations located within the maximum facility contours of protected full service stations would be affected only in the event of interference. This is consistent with the secondary status of low power stations and is the policy that now applies if a full service station increases its facilities and causes interference to, or receives interference from, a previously licensed low power station.

50. In addition to the geographical restrictions on flexible operations, we would require that the calculated aggregate field strength of all fixed transmitters operated within the flexible service area of a licensee be maintained below the following levels at the indicated contours:[52]

For full service licensees:
- At licensee's own maximum facility 64 dBu contour—64 dBu
- At the maximum facility 64 dBu contours of adjacent channel full service stations—64 dBu
- At the maximum facility 64 dBu contour of co-channel full service stations—19 dBu

For low power licensees:
- At licensee's own actual 74 dBu contour—74 dBu
- At the maximum facility 64 dBu contours of co-channel full service stations—19 dBu
- At the 74 dBu contours of co-channel low power stations—29 dBu

51. The co-channel protection proposed here is 5 dB greater than proposed above for land mobile sharing. While a 40dB protection ratio has been found to be adequate for land mobile sharing, we believe the more conservative ratio is warranted here because of the wider range of services and system designs to be permitted. However, greater field strengths would be allowed at the contours of protected co-channel stations if the licensees of affected stations agree in writing.

52. Field strength calculations would utilize the propagation curves in § 73.699.[53] For multiple fixed transmitters, we would define the aggregate field strength as the square root of the sum of the squares of the field strengths of the individual transmitters.[54] The power used in these calculations would be each transmitter's *peak* radiated power in the relevant direction, increased by a power adjustment factor to account for the emission's location within the channel. This adjustment factor "A" (in dB) is calculated using the following equations, where f is the frequency separation (in MHz) from the lower edge of the channel to the center of the emission:

$A = -48f + 60$ for $0 < f < 1.25$
$A = 0$ for $1.25 < f < 5.75$
$A = 240f - 1380$ for $5.75 < f < 6.00$

53. The effect of the power adjustment factor is to reduce the permissible power in emission near the channel edge to approximate the power roll-off that occurs within a standard television emission at frequencies below the visual carrier and above the aural carrier.

54. The field strength rule and its associated power adjustment factor would apply to fixed transmitters only. We are not proposing them for mobiles because of the difficulty in estimating the field strength of moving transmitters which could be used in large numbers. Also, as a practical matter, mobiles normally operate with less power than fixed transmitters and their operating range is practically limited by the facilities of their associated base station. Therefore, if we specify a suitably low output power limit for mobiles, restrict their operation to within a licensee's flexible service area, and maintain the facilities of fixed stations as described above, the interference potential of mobiles, even in large numbers, should be reduced to an acceptable level without the need for field strength calculations. Consequently, we are proposing to limit mobile transmitters to a maximum of 100 watts peak output power in lieu of the more detailed power and field strength limits discussed above for fixed transmitters.

55. The proposed power limits apply only to in-band emissions. To prevent excessive out-of-channel emissions by flexible operations, we propose to require that no more than 0.5% of the power in any emission fall either above or below the channel. To comply with his rule, licensees would have to take into account not only the frequency spread of the emission but also the frequency tolerance of the transmitters.[55] This rule would apply both to mobile and fixed transmitters. Transmitters which are type accepted for standard television service and which are positioned normally within the channel would be considered automatically to comply with this out-of-band emission limit.

56. Subject to these proposed technical rules, there would be no limit

[49] Service contours are established by using the F(50,50) propagation curves. The service contour for flexible operations by a full service station would be its 64 dBu contour calculated using the maximum power and antenna height permitted in Part 73; for a low power station, the service contour would be its 74 dBu contour calculated using actual power and antenna height.

[50] The protected taboo channels for full service station are ±2, ±3, ±4, ±5, +7, −14, −15 channels removed from the license's channel.

[51] The protected taboo channels in the low power case are +7, −14, and −15 channels removed from the licensee's channel.

[52] To verify compliance, a licensee proposing to operate one or more fixed transmitters would be required to submit to us a map showing the calculated aggregate field strength produced by those transmitters at specified intervals along the indicated contour. This information would be required each time a new fixed transmitter is added or removed or when changes are made in system design that affect field strength.

[53] Calculations of field strength at the contours of co-channel stations would use the F(50,10) curves. All other calculations would use the F(50,50) curves.

[54] Aggregate field strength is used here to avoid imposing a maximum power limit on fixed stations and thereby reducing licensee technical flexibility. In the land mobile sharing proposal, because of the narrower range of system designs contemplated, a power limit is reasonable and obviates the need for more complex aggregate field strength calculations.

[55] For example, at 700 MHz a frequency tolerance of .0005% would add 3.5 kHz to the required frequency separation between the transmitter's emission and the channel edges.

on the number, location or elevation [56] of fixed transmitters or the number of mobiles that could be operated within a flexible service area. However, operation of any transmitters outside the flexible service area would not be permitted.

Notification of Facilities and Services

57. We propose that we be notified at least 30 days prior to implementation of any new or modified transmitting facilities (transmitters and antennas) or of any new services to be operated under the flexibility option.[57] We would likewise require notice of transmitters taken out of service or of services that are discontinued.

58. Because of the potential for large numbers of mobiles and portables, we would take special precautions to reduce the risk of interference that might be caused by either intentional or unintentional rule violations. In particular, we would require that all such transmitters be type accepted to verify compliance with the maximum 100 watt power limit and to ensure that the design is such that the frequency range of operation, once set for a particular licensee's channel, could not be changed with controls that are readily accessible to the user. Requiring type acceptance would also simplify the notification procedure for moblies and portables by avoiding the need for detailed technical data such as required for fixed transmitters.

59. For mobile facilities the only data we would require would be the number of units to be put into service, manufacturer's name, type acceptance number and the specific frequencies of operation. How close to the channel edge a mobile could operate without violating our proposed out-of-band limit would depend upon its emission bandwidth and frequency tolerance. Licensees would make these calculations and submit the data to us as verification of compliance with the rules.

60. In notifying fixed transmitting facilities, licensees would be required to submit sufficient technical data and calculations to verify compliance with the aggregate field strength limit. Even though the rules would require that the field strength limits not be exceeded at any point on the protected contours, for purposes of notification we would require that calculations be made only at ten equally spaced intervals around the flexible service contour and at the closest point on each protected co-channel contour within 200 miles of the licensee's flexible service contour. Other data required for fixed transmitters would include manufacturer's name, model number, rated output power, operating frequency, frequency tolerance, modulation type, emission profile, and antenna location, elevation, orientation and pattern.

61. Along with the technical information, licensees would be required to describe and classify the services to be provided under the flexibility option. All services would be classified as either broadcasting, common carrier or general. Evidence of rule compliance and other documents normally required in connection with these service categories (*e.g.*, State common carrier certificates) would be filed along with the notification. Absent any notice from us to the contrary, operation of the notified facilities and services would be permitted to commence at the end of the 30 day period.

Service-Related Regulation

62. As indicated, services provided under flexibility would be regulated according to their classification. Subject to our review, applicants would make the initial service classifications in accordance with accepted definitions.[58] Services classified as common carrier would be subject to appropriate State and Federal regulation. Broadcasting services would be subject to the same non-technical regulation as existing broadcasting services. Services classified as neither common carrier nor broadcasting would be classified as general and would not normally be subject to service-related regulation.

63. Any broadcasting service provided by licensees on these channels would be subject to the usual service-related regulations and statutory requirements previously applicable to those licensees. However, the only technical standards that we would apply to broadcasting operations are those related to interference control, as discussed above. Licensees no longer providing any broadcast service would no longer be eligible to operate in the broadcast auxiliary service. Obviously, non-broadcast operation would not be subject to cable television must-carry provisions.

Additional Flexibility Options

64. The rules we have proposed would give a considerable degree of flexibility to low and full service television broadcast licensees to explore a variety of services and system designs not permitted under existing rules. However, a licensee's options would still be limited to the existing channel assignment and service area. There would be no provision for licensees to acquire bandwidths in excess of 6 MHz nor to extend their coverage areas beyond their presently defined maximum facility Grade B contours. These restrictions could hinder the development of services requiring regional or national coverage and technologies such as high definition television potentially requiring bandwidths wider than a standard television channel. Commenters are therefore invited to discuss the need for additional flexibility and to suggest additional measures to increase flexibility beyond what we have proposed. One possibility might be to allow licensees to exchange channels or move their service areas by coordinating with other licensees who might be affected. We might also consider allowing a single licensee to acquire two or more channels, adjacent or otherwise, in the same market for technically enhanced television service or some other service requiring a wider bandwidth.

Legal Issues

65. The issue has been raised as to whether *Ashbacker* and subsequent cases could require that the Commission entertain competing applications and conduct comparative hearings whenever an existing authorization is being modified to permit significantly expanded uses.[59] We seek comment on whether allowing existing licensees to, at their option, exercise additional operational and technical flexibility in the way they use their assignments would necessarily require the acceptance of competing applications and comparative hearings. However, for the reasons discussed below, our preliminary view is that as a matter of law we need not, and that as a matter of policy we should not, entertain competing applications in these cases.

[56] It may be necessary to place a maximum limit on antenna height because of the difficulty of predicting propagation effects at very high elevation.

[57] The usual prior FAA notifications of antenna structures required under Part 17 would also apply here.

[58] The generally accepted definition of broadcasting service is given in Section 2.1 of our Rules. For a definition of common carrier service we would rely on the *NARUC I* guidelines. See, *National Association of Regulatory Utility Commissioners* v. *F.C.C.*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[59] See, *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945); *New South Media Corp.* v. *F.C.C.*, 685 F.2d 708, 714–715 (D.C. Cir. 1982); *Citizens Communications Center* v. *F.C.C.*, 447 F.2d 1201, 1210–11 (D.C. Cir. 1971); *Community Television Co.* v. *F.C.C.*, *225 F.2d 871, 893 (D.C. Cir. 1958).*

66. First, the *Ashbacker* line of cases is not precisely on point when applied to the instant proposal. That is, such cases generally involve already filed mutually exclusive applications and they have never been applied in either an allocation or a rule making.

67. Secondly, in a series of recent actions, we have established the principle of flexible spectrum usage at the licensee's option, without consideration of accepting competing applications. See, for example, our TV auxiliary broadcast, FM–SCA, teletext, and TV stereo proceedings [60] where we authorized *existing* as well as new licensees to increase use of their assignments and to utilize excess capacity for non-broadcast purposes. And as part of the reallocation of a portion of the ITFS spectrum, we permitted remaining ITFS assignments to be used for non-instructional purposes.[61] Further, we recently authorized existing and new private microwave licensees to sell capacity on their systems.[62] This issue was also treated in our recent proposal to permit exchanges between commercial and non-commercial television stations.[63] We there tentatively concluded that it would not be in the public interest to entertain competing applications, stating:

[d]espite the hearing requirements of *Ashbacker*, the law is clear that the Commission may promulgate rules limiting applicants' eligibility to apply for channels if, in the Commission's judgment, such action would promote the public interest, convenience and necessity. Storer Broadcasting v. *F.C.C.*, 351 U.S. 192 (1956); *Malrite of New York, Inc.*, F.C.C. 84–338, released July 31, 1984. Applications violating such eligibility requirements may be dismissed without a hearing.[64]

68. Finally, from a policy standpoint, it seems clear that the possibility of a comparative hearing would discourage existing licensees from electing to provide non-broadcast services on their assignments. Comparative hearings would reduce the expected value of future non-broadcast earninings by interjecting an additional element of uncertainty (*i.e.*, the outcome of the hearing) into the business calculus. Only in those cases where there is the possibility of substantially higher profits from non-broadcast operations is it likely an existing licensee woudl risk losing a comparative hearing.

69. Moreover, comparative hearings impose significant costs and delays upon the participants. Because the possibility of a comparative hearing would increase the costs of switching from a broadcast to a non-broadcast service, licensees would be less inclined to do so even if they were confident they could win a hearing. Therefore, there are strong policy reasons for avoiding *Ashbacker* type hearings.

Proposals

70. Accordingly, it is proposed to amend Part 2 of the Commission's Rules and to:

a. Provide for the sharing of additional UHF TV channels as set forth in paragraph 29 in each of the eight urban areas named. This sharing plan is based on 40 dB co-channel and 0 dB adjacent channel TV protection criteria and on computed grade B contours for currently authorized TV station parameters.

b. Provide for flexible spectrum usage for existing and future full service and low power television broadcast licensees authorized on channels 50 to 59.

During this proceeding we will terminate the procedure of reviewing all low power TV applications within 100 miles of the ten largest U.S. metropolitan areas and we will continue to process all pending applications. However, no final low power construction permits will be issued that conflict with the sharing set forth herein, pending completion of this proceeding.

71. In addition to the issues which have been specifically addressed in the *Notice*, any other comments related to the subject of further geographical sharing of broadcast spectrum by the private land mobile services or to the subject of flexible spectrum use are invited.

Regulatory Flexibility Analysis

72. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reasons for Action

This proposal would provide additional frequencies for use by the private land mobile radio services. This will increase the number of radio channels available to applicants and licensees in these services.

II. Objective

The Commission is advancing this proposal to accommodate continued growth in the private land mobile radio services.

III. Legal Basis

The proposed action is authorized under section 4(i), 303(f), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use and to increase interservice sharing opportunities between private land mobile services and other services.

IV. Description, Potential Impact and Number of Small Entities Affected

The release of additional spectrum to private land mobile radio services will result in increased opportunities for radio users and manufacturers, some of which are small businesses. However, land mobile use of the channels proposed may reduce the number of channels on which small businesses could establish TV stations. Any impact would be limited to the eight cities and the TV channels (plus adjacent channels) identified. The flexible use proposal would enable individual licensees to provide a wider range of local services, some of which may involve small businesses and entrepreneurs. Beyond this, we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties. Additionally, IT IS ORDERED That the Secretary shall serve a copy of this *Notice* on the Small Business Administration.

V. Reporting, Recordkeeping, and Other Compliance Requirements

No new requirements will be imposed.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

To our knowledge, there are no other Federal rules that overlap, duplicate or conflict with those contained in the *Notice*.

VII. Significant Alternatives

A variety of sharing alternatives could be set forth based upon different cochannel and adjacent channel protection ratios between the desired television signal level and the undesired land mobile radio signal at the grade B service contour. The proposal would reduce the cochannel protection ratio from 50 dB to 40 dB. Other proposals could reduce the protection ratio by a greater or lesser amount. A greater

[60] See, *Report and Order* in Docket 81–794 (TV Auxiliary Broadcast), 48 *FR* 17081 (April 21, 1983); *First Report and Order* in Docket 82–536 (FM SCA's), 48 *FR* 28445 (June 22, 1983); *First Report and Order* in Docket 81–741 (teletext), 48 *FR* 27054 (June 13, 1983); and *Second Report and Order* in Docket 21323 (TV Stereo), 49 *FR* 18000 (April 27, 1984).

[61] *Report and Order* in Docket 80–112 (MMDS/ITFS), 48 *FR* 33873 (July 26, 1983).

[62] *Report and Order* in Docket 83–426, 50 FR 1338 (April 4, 1985).

[63] *Notice of Proposed Rulemaking* in Docket 85–41, FCC 85–73, released March 8, 1985.

[64] *Id.* at para. 9.

reduction would allow for additional land mobile service, but would afford lesser protection to TV service. A lesser reduction would provide less land mobile service, but would afford greater protection to television service. We believe the sharing proposal strikes the proper balance between the two services, but comments are solicited on alternative protection ratios. As discussed in paragraph 25 alternative channels could be obtained by the repacking of UHF TV channels as a possible alternative scheme to the proposed sharing approach. This alternative was dismissed principally because of the significant impact such would have on TV licensees.

73. For purposes of this non-restricted notice and comment rule making, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, and *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* persentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addresssing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, § 1.231 of the Commission's Rules, 47 CFR § 1.231.

74. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332. Interested persons may file comments on this proposal on or before April 11, 1986 and reply comments on or before May 16, 1986 All relevant and timely comments filed in accordance with §§ 1.415 and 1.419 of our rules and regulations (47 CFR § 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

75. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an orginal and five copies of their comments. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

76. For further information concerning this rulemaking, contact Rod Small (202) 653-8169, Victory Tawil (202) 653-8114, Gordon Godfrey (202) 632-6495, Herb Zeiler or Stuart Overby (202) 634-2443 and John Williams (202) 653-5940.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation in Part 2 continues to reads:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 157, 303.

1a. In § 2.106, columns 5 and 6 of the allocation table for the bands, 470–512 MHz, 512–608 MHz, and 614–806 MHz are revised as set forth below.

§ 2.106 Table of frequency allocation.

United States Table		FCC USE DESIGNATORS	
Government	Non-Government		
Allocation MHz	Allocation	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
470–512	470–512 BROADCASTING LAND MOBILE NG66 NG114 NG127 NG146	RADIO BROADCAST (TV) (73) DOMESTIC PUBLIC LAND MOBILE (22) PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
512–608	512–608 BROADCASTING LAND MOBILE NG146	RADIO BROADCAST (TV) (73) PRIVATE LAND MOBILE (90) AUXILIARY BROADCASTING (74)	
•	•	• • • • •	
614–806	614–806 BROADCASTING LAND MOBILE NG30 NG43 NG134	RADIO BROADCAST (TVB) (73) PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
•	•	• • • • •	

2. In § 2.106, a new footnote is added to the list of Footnotes following the Table of Frequency Allocations as follows:

§ 2.106 Table of frequency allocations.

* * * * *

NON-GOVERNMENT

* * * * *

NG146 The frequency bands 470–512, 512–608 MKz, and 614–806 MHz are allocated for use in the broadcasting and land mobile radio services. In the land mobile services they are available for assignment in the domestic private land mobile radio services at, or in the vicinity of 8 urbanized areas of the United States, as set forth in the table below, and subject to the standards and conditions set forth in Part 90 of this Chapter. CFR 47.

Urbanized area	TV channels
New York, N.Y	[To be decided.]
Los Angeles, CA	[To be decided.]
Chicago, IL	[To be decided.]
Philadelphia, PA	[To be decided.]
San Francisco, CA	[To be decided.]
Washington, DC	[To be decided.]
Houston TX	[To be decided.]
Dallas, TX	[To be decided.]

Note.—Appendices B and C will not be shown in the Code of Federal Regulations.

Appendix B

The attached tables identify the proposed full-power television facilities to be protected by private land mobile stations. Maps displaying the proposed land mobile operating areas for each urbanized area on the proposed candidate channels have been included in the docket file for this proceeding. The file is available for review in the Commission's Public Reference Room.

TELEVISION FACILITIES TO BE PROTECTED BY PRIVATE LAND MOBILE STATIONS

[Proposed]

Urbanized area	Frequencies available for land mobile use (MHz)	Television facilities protected					TV station site coordinates		Distance from city to TV (miles)
		TV call	CH. No.	CO. CH., ADJ. CH., TABOO	TV station location	Grade B (miles)	N. Latitude	W. Longitude	
New York, NY	19,500-506	WLIW	21	IM	Garden City, NY		40-47-19	73-27-09	29
		WCDC	19	CO. CH.	Adams, MA	51	42-36-14	73-10-07	137
		WHCT	18	ADJ. CH.	Hartford, CT	32	41-45-39	72-45-08	93
	27,548-554	WNYE	25	IM	New York, NY		40-41-21	73-58-37	4
		WNYC	31	IM	New York, NY		40-44-54	73-59-10	1
		CP	26	ADJ. CH.	New London, CT	45	41-23-45	72-33-31	87
	28,554-560	WBRE	28	CO. CH.	Wilkes Barre, PA	61	41-11-01	75-52-02	102
		WTAF	29	ADJ. CH.	Philadelphia	55	40-02-26	75-14-20	82
	33,584-590								
	34,590-596	WNYC	31	IM	New York, NY		40-44-54	73-59-10	1
		WIMGC	34	CO. CH.	Binghamton, NY	40	42-03-38	75-58-33	136
		CP	35	ADJ. CH.	Philadelphia, PA	45	40-02-21	75-14-13	62
		WXTV	41	IF	Secaucus, NJ		40-42-22	74-00-28	3
Los Angeles, CA	26,542-548	KMPH	26	CO. CH.	Visalia, CA	69	36-17-12	118-50-20	156
		KCET	28	IM	Los Angeles, CA		34-13-26	118-03-44	16
		KMEX	34	IF	Los Angeles, CA		34-13-35	118-03-56	16
		KWYT	22	IM	Los Angeles, CA		34-13-36	118-03-59	16
	32,578-584	KCET	28	IM	Los Angeles, CA		34-13-26	118-03-44	16
		KMEX	34	IM	Los Angeles, CA		34-13-27	118-03-44	16
		KTBN	40	IF	Santa Ana, CA		34-13-27	118-03-44	16
	36,602-608	KMIR	36	CO. CH.	Palm Springs, CA	36	33-52-00	116-25-56	104
	42,638-644	KESQ	42	CO. CH.	Palm Springs, CA	34	33-51-58	116-26-02	105
	48, 674-680	KTBN	40	IM	Santa Ana, CA		34-13-27	118-03-44	16
		KIHS	46	IM	Ontario, CA		34-13-37	118-03-58	16
		KOCE	50	IM	Huntington, CA		33-58-19	117-56-57	19
		KBSC	52	IM	Corona, CA		34-13-27	118-03-45	16
	60, 746-752	KBSC	52	IF	Corona, CA		34-13-27	118-03-45	16
		KLCS	58	IM	Los Angeles, CA		34-13-26	118-03-45	16
		KDOE	68	IF	Los Angeles, CA		34-13-36	118-03-59	16
	66, 782-788								
Chicago, IL	41,632-638	WCFC	38	IM	Chicago, IL		41-53-56	87-37-23	2
		WUHQ	41	CO. CH.	Battle Creek, MI	48	42-34-15	85-29-11	121
		WSNS	44	IM	Chicago, IL		41-53-56	87-37-23	2
	47, 668-674	WHME	46	ADJ. CH.	South Bend, IN	43	41-35-43	86-09-38	78
	64, 770-776	WPWR	60	IM	Aurora, IL		41-52-44	87-38-10	1
		WLLA	64	CO. CH.	Kalamazoo, MI	44	42-34-41	85-26-13	123
		WDAI	56	IF	Gary, IN		41-33-10	87-47-09	23
		WFBN	66	IM	Joliet, IL		41-53-56	87-37-23	2
	68, 794-800								
San Francisco, CA	18, 494-500	KDTV	14	IM	San Francisco, CA		37-14-07	122-26-01	7
		KCSO	19	ADJ. CH.	Modesto, CA	65	38-07-07	120-43-23	95
		KTZO	20	IM	San Francisco, CA		37-41-17	122-26-07	6
		KTSZ	26	IF	San Francisco, CA		37-41-12	122-26-03	6
	24, 530-536	KTZO	20	IM	San Francisco, CA		37-41-17	122-26-07	6
		KTSF	26	IM	San Francisco, CA		37-41-12	122-26-03	6
		KQEC	32	IF	San Francisco, CA		37-45-20	122-27-05	9
	28, 554-560	KCEO	26	CO. CH.	Oroville, CA	62	39-12-21	121-49-11	104
		KCMY	29	ADJ. CH.	Sacramento, CA	46	38-21-30	121-06-37	82
	34, 590-596	KTSF	26	IF	San Francisco, CA		37-41-12	122-26-03	6
		KQEC	32	IM	San Francisco, CA		37-45-20	122-27-05	9
		KCBA	35	ADJ. CH.	Salinas, CA	65	36-45-22	121-30-05	87
		KVOF	38	IM	San Francisco, CA		37-41-15	122-26-04	6
		KFCB	42	IF	Concord, CA		37-53-34	121-53-53	29
Philadelphia, PA	26, 542-548	WNJS	23	IM	Camden, NJ		39-43-41	74-50-39	23
		WETA	26	CO. CH.	Washington, DC	43	38-57-49	77-06-18	125
		WTAF	29	IM	Philadelphia, PA		40-02-26	75-14-20	8
	32, 578-584	WNYC	31	ADJ. CH	New York, NY	61	40-42-43	74-00-49	80
		WHMM	32	CO. CH.	Washington, DC	46	38-57-49	77-06-18	124
		WITF	33	ADJ. CH.	Harrisburg, PA	50	40-20-45	76-52-06	95
	42, 638-644	CP	35	IF	Philadelphia, PA		40-02-21	75-14-13	8
		WXTV-CP	41	ADJ. CH.	Paterson, NJ	57	40-42-43	74-00-49	80
		WPMT	43	ADJ. CH.	York, PA	53	40-01-36	76-36-00	77
	46, 662-668	WBFF-CP	45	ADJ. CH.	Baltimore, MD	50	39-17-13	76-45-16	97
		WNJU-CP	47	ADJ. CH.	Linden, NJ	60	40-42-43	74-00-49	80
Washington, DC	30, 566-572	WVIR	29	ADJ. CH.	Charlottesville, VA	46	37-59-00	78-28-54	102
		WWPB	31	ADJ. CH.	Hagerstown, MD	49	39-39-04	77-58-15	73
	35, 596-602	CP	35	CO. CH.	Philadelphia, PA	45	40-02-21	75-14-13	123
		WRLH	35	CO. CH.	Richmond, VA	56	37-30-22	77-42-03	103
	36, 602-608	WHMM	32	IM	Washington, DC		38-57-49	77-06-18	7
	39, 620-626	WHMM	32	IF	Washington, DC		38-57-49	77-06-18	7
		CP	38	ADJ. CH.	Seaford, DE	49	38-43-36	75-41-33	72
		WLVT	39	CO. CH.	Allentown, PA	41	40-33-58	75-26-06	142
Houston, TX	16, 482-488	CP	14	IM	Houston, TX		29-33-17	95-28-35	16

TELEVISION FACILITIES TO BE PROTECTED BY PRIVATE LAND MOBILE STATIONS—Continued

[Proposed]

Urbanized area	Frequencies available for land mobile use (MHz)	Television facilities protected					TV station site coordinates		Distance from city to TV (miles)
		TV call	CH. No.	CO. CH., ADJ. CH., TABOO	TV station location	Grade B (miles)	N. Latitude	W. Longitude	
	35, 596–602								
	41, 632–638	KHTV	39	IM	Houston, TX		29-34-06	95-29-57	16
	63, 764–770	KZEI	67	IM	Alvin, TX		29-27-57	95-13-23	22
	69, 800–806								
Dallas/Ft Worth, TX	17, 488–494	KTXA	21	IM	Fort Worth, TX		32-35-22	96-58-10	17
	35, 596–602	KMLT-CP	35	CO. CH.	Marshall, TX	52	32-35-47	94-49-16	116
	41, 632–638	KRLD	33	IF	Dallas, TX		32-35-22	96-58-10	17
		KXTX	39	IM	Dallas, TX		32-35-07	96-58-06	17
		KLTJ	49	IF	Irving, TX		32-35-22	96-48-05	14
	62, 758–764								
	66, 782–788	KDIA	58	IF	Dallas, TX		32-35-22	96-58-10	17

Appendix C

The attached tables indicate the number of pending low power television and television translator applications proposing operation on a candidate land mobile channel and first adjacent channel within a 50-mile radius of each of the urbanized areas.

Pending Low Power Television Applications Affected by Proposed LM/TV Sharing Plan

Urbanized area	Channel	No./City	No./Surrounding area (within 50 miles)
New York, NY	19	[1]	
	27		5 (Hampstead, NY—2, Newark, NJ—1, Pompton Lakes, NJ—1, Princeton, NJ—1).
	33		5 (Plainview, NY—1, Atlantic Highlands, NJ—1, Dover, NJ—1, Hazlet, NJ—, Darien, NJ—1).
Los Angeles, CA	25		2 (Long Beach, CA—1, Van Nuys, CA—1).
	26	3	11 (Anaheim, CA—2, Beverly Hills, CA—1, Long Beach, CA—5, Santa Ana, CA—1, Santa Monica, CA—1, West Hollywood, CA—1).
Chicago, IL	42	1	10 (Naperville, IL—2, West Chalcago, IL—8).
	63		1 (Hammond, IN—1).
	68	2	1 (Arlington Heights, IL—1).
	69		3 (Aurora, IL—2, Hammond, IN—1).
San Francisco, CA	23		1 (Walnut Creek, CA—1).
	24		4 (Palo Alto, CA—2 San Jose, CA—2).
Philadelphia, PA	25		3 (Spring City, PA—3).
	27		2 (Princeton, NJ—1, Trenton, NJ—1).
	42	32	9 (Camden, NJ—7, Cherry Hill, NJ—1, Elkins Park, PA—1).
	46		2 (Allentown, PA—2).
Washington, DC	30		48 (Baltimore, MD—34, Townson, MD—1, Dale City, VA—1, Fairfax, VA—7, Manassas, VA—4, Warrenton, VA—1).
Houston, TX	36	1	
	42	2	1 (Alvin, TX—1).
	64	2	1 (Galveston, TX—1).
	69	5	1 (Jacinto City, TX—1).
Dallas, TX	61		5 (Fort Worth, TX—5).
	65		3 (Fort Worth, TX—3).
	66	13	
	67		1 (Irving, TX—1).

[1] The channel 19 application of National Innovative Programming was chosen as the tentative selectee in lottery L85-488, held on April 29, 1985.

NOTES.—The chart indicates the numbers of pending low power television and television translator applications proposing operation on the candidate land mobile channels (and first adjacent channels) in the central cities (Column Three) and additionally, within 50 miles of the reference center of the urbanized area (Column Four). As many as 50-75 other applications proposing locations at greater distances possibly could be affected because of the restrictions on LPTV signal strength at the land mobile protected contour.

The numbers of affected applications may not be inductive of the demand for LPTV stations in the major urban areas because these areas have been subject to an application filing freeze for the past four years.

Separate Statement of Commissioner James H. Quello

In re: Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.

I strongly support the Commission's creation of a government-industry advisory committee to help ensure that our sharing proposal does not result in interference to UHF television service. I look forward to carefully reviewing that committee's technical analysis and conclusions as we consider this issue.

I also believe it is important for the Commission to consider the impact of spectrum sharing on opportunities for low power television in these markets. At this time, it appears that permitting spectrum sharing as proposed here would completely preclude low power service in a few major cities. The Commission gave notice in the *Low Power Report and Order*[1] that it would be concerned about unduly diminishing the spectrum available for low power television, and therefore I believe it is essential that we consider the impact of these sharing proposals on major market low power service so that we can make an informed decision on this issue.

Finally, I want to encourage commenters to consider whether and in what ways the proposed sharing of this spectrum could help ensure that the communications needs of the public safety community will be fully met. The need for careful planning in this area has increased dramatically as the spectrum previously available for land mobile expansion has been utilized. Congress has directed the Commission to consider public safety needs in any allocation decision involving land

[1] *Report and Order*, Broadcast Do. No. 78-253, 47 FR 21468, 21479 (1982).

mobile spectrum,[2] and early input from affected public safety organizations could be important to assuring that the Commission maximizes the value of this spectrum for these services.

Statement of Commissioner Henry M. Rivera

Re: Notice of Proposed Rulemaking of Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.

This Notice of Proposed Rulemaking (NPRM) proposes to reallocate UHF spectrum to the land mobile service in large markets. Given the Private Radio Bureau's projected growth for land mobile radio needs, it seems plain that we should do something to determine how to accommodate this growth. Soliciting comment on the options proposed in this NPRM is a reasonable "something" to do toward that end. For that reason, I can support this item. Nevertheless, this NPRM is deficient because it fails to reflect the considerable harm this proceeding will have upon the low power television (LPTV) service. By failing to acknowledge that harm, the Commission unwisely sets a course that fails to explore technical alternatives that could mitigate that harm.

Initially, the item understates the demand by LPTV interests for UHF spectrum. In the eight markets identified in this NPRM, parties interested in broadcasting have been precluded from applying for new channels for a number of years because both the VHF and UHF television bands have been saturated. LPTV provided the first new television broadcast opportunities in these markets. The proposals in this item will eliminate virtually all pending LPTV applications. They will also preclude future opportunities for LPTV for as far as 100 miles from the designated cities.

The NPRM appears to take the position that this damage to LPTV is minimal because there are few pending LPTV applications in the affected markets (and, therefore, little interest in LPTV). However, the item is somewhat disingenuous in this regard. Implementation of the LPTV service has moved so slowly that the Commission cannot accurately gauge the level of interest for LPTV in these eight cities based on the number of pending LPTV applications. The partial freeze prior to formal initiation of the service,[1] the television market freeze,[2] and the still-in-effect general freeze[3] all prohibited the filing of applications in these cities. The small number of pending applications merely reflects these filing prohibitions—not a lack of interest. Given the astronomical prices for television stations in these markets, there is little question that the interest level in additional broadcast opportunities is high. All of which is to say that land mobile radio is not the only unsatisfied spectrum demand in these markets. Many potential LPTV applicants have waited patiently since 1981 to file applications, only to find that now the Commission has slammed the door in their faces without so much as acknowledging their existence and their unsatisfied need for spectrum.

Because it has seriously understated the impact of these proposals on the LPTV service, the Commission is in the unfortunate posture of having begun a proceeding that will all but preclude LPTV in the eight largest geographic markets without considering ways to mitigate that consequence. At a minimum, the NPRM should have solicited comments on various ways of liberalizing the LPTV technical rules to create new LPTV filing opportunities to replace those eliminated by the proposed reallocation.[4] Hopefully, the Commission will rectify this shortcoming during the long comment period afforded in this NPRM by initiating a rulemaking proceeding to address this concern.

[FR Doc. 85-14709 Filed 6-19-85; 8:45 am]

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[2] Federal Communications Commission Authorization Act of 1983, Pub. L. 98-214, Sec. 9, 97 Stat. 1467 (1983).

[1] *Order Imposing Freeze*, 49 FR 2902 (May 11, 1981).

[2] *Report and Order*, Docket No. 82-107, 47 FR 21468 (May 18, 1982).

[3] *Order at paragraph 46*, FCC 83-423 (September 15, 1983).

[4] There are several practical changes in the LPTV technical rules that could be investigated during this proceeding for the purpose of providing replacement spectrum for LPTV in the affected markets. For example, the LPTV-to-full power UHF television intermodulation (IM) taboos could be eliminated without cognizable interference to the protected service area of full service television stations. The existing LPTV-to-land mobile co-channel 52 dBu signal strength limit at the land mobile protected contour could be reduced and the LPTV-to-land mobile adjacent channel 76 dBu signal strength limit at the land mobile protected contour eliminated without cognizable interference to land mobile radio reception. The proposed "interim protection standards" for LPTV's stations operating from high sites seems unnecessarily conservative given the absence of any history of interference problems between existing translators and land mobile facilities on UHF channels 14 through 20 using the current protection standards. Furthermore, adjacent channel LPTV stations could operate within land mobile service areas with proper coordination between LPTV transmitter and land mobile base stations and mobile relay sites. While the resulting LPTV opportunities would suffer from occasional transitory interference to reception from land mobile unit stations, this slightly degraded service may be infinitely preferable to no LPTV service in these markets at all. While comments on these and similar technical adjustments could have gone a long way towards limiting the damage this NPRM does to the nascent LPTV service, the NPRM unfortunately understates the impact of the NPRM's proposals and ignores the effects of the proposed changes.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-80, Notice 2]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Petitions for reconsideration of final rule; request for comments.

SUMMARY: A final rule extending the applicability of existing Federal safety standards for pipelines transporting hazardous liquids in interstate or foreign commerce to those transporting hazardous liquids that affect interstate or foreign commerce was published on April 23, 1985 (50 FR 15895). MTB has received two petitions for reconsideration of that rule. MTB solicits comments on these petitions.

DATE: Comments must be received on or before July 22, 1985.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Dockets Branch, Materials Transportation Bureau, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock (202) 755-4972 regarding the content of this notice, or the Docket Branch (202) 426-3148 regarding copies of the petitions for reconsideration or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 203(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2002) requires the Secretary of Transportation to establish minimum Federal safety standards for the transportation of hazardous liquid by pipeline in or affecting interstate or

foreign commerce. The HLPSA defines interstate pipeline facilities as those used for transportation of hazardous liquids in interstate or foreign commerce and intrastate pipeline facilities as those pipeline facilities used for transportation affecting, but not in, interstate of foreign commerce. Once Federal standards are adopted, the HLPSA provides for State adoption and enforcement of the Federal standards for intrastate pipeline facilities. Although State safety regulation of interstate pipeline facilities is preempted, the HLPSA permits States to adopt, with respect to intrastate pipeline facilities, additional or more stringent safety regulations that are compatible with Federal standards.

Although, until this rulemaking, 49 CFR Part 195 has not used the term, existing Federal safety standards have been applicable only to interstate pipeline facilities. The jurisdictional reach has been described in § 195.1(a)(1) as covering pipelines "subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC)." In the notice of proposed rulemaking published on March 26, 1984, (49 FR 11116), MTB proposed to extend the applicability of the standards to intrastate pipeline transportation and proposed definitions of interstate and intrastate pipelines which closely followed the definitions of interstate and intrastate pipeline facilities in the HLPSA. There was little if any discussion concerning these definitions either by public commenters or by members of the Technical Hazardous Liquid Pipeline Advisory Committee which approved the proposed rule. Only one commenter, the Southern Pacific Pipe Lines Company (Southern Pacific), objected to the proposed definitions.

The final rule adopted definitions substantially the same as proposed. Because MTB had proposed to continue some reference to FERC jurisdiction in applying the definitions and was aware of questions that had arisen through use of this reference and of potential questions concening the definitions, MTB published a statement of agency policy and interpretation an appendix to the final rule (Appendix A). Appendix A provides guidelines on how MTB will make use of FERC jurisdictional decisions in applying the definitions.

Southern Pacific and the California State Fire Marshal have filed petitions for reconsideration of the final rule, each citing the definitions of interstate and intrastate pipeline facilities as the reason for the petitions. Because of the conflicting nature of the petitions, MTB solicits comments on the issues described below. These comments will be considered by MTB in rendering a decision on the petitions.

Although Appendix A is not part of the regulation itself, in publishing the final rule, MTB solicited comments to aid in possible future refinements of examples provided in Appendix A. Because those comments may shed light on issues raised in the petitions for reconsideration, those comments already received or which are received prior to the closing date of this notice will be placed in the docket and considered in evaluating the petitions.

Southern Pacific's Petition

Southern Pacific requests a change in the definitions that will define as interstate pipeline facilities any pipeline facilities that are physically connected to pipeline facilities used in transportation in interstate or foreign commerce. Southern Pacific claims that pipeline facilities operated by interstate pipeline companies are "indivisible units with all parts and facilities built, operated, and maintained with a commonality of design and construction features integrated and controlled from a central command point" and that additional or more stringent safety standards that might be imposed by States on intrastate portions of those "indivisible units" "will cause service disruptions and backups thoughout." Although this point is not further explained in the petition, MTB believes, from discussions with Southern Pacific subsequent to issuance of the final rule and prior to its filing of this petition, that Southern Pacific's concern in this area is the current California rule requiring periodic hydrostatic testing of hazardous liquid pipelines and the possibility of State rules requiring lower operating pressures. In the former case, Southern Pacific has received waivers from the California rule. MTB specifically seeks comments on the possible impact of state regulation of physically connected intrastate facilities on interstate pipeline transportation.

California State Fire Marshal's Petition

The California State Fire Marshal (California) claims that the definitions set forth in the final rule are difficult to apply and that the guidelines provided in Appendix A fail to correct the difficulty because they continue to use FERC jurisdictional decisions as a basis for determining DOT jurisdiction. California claims that Federal and State enforcement personnel will have difficulty in making determinations based on tariff filings and the FERC routinely accepts all tariffs filed without making jurisdictional determinations. Because the term "connect" is not used in the HLPSA, California contends that MTB's consideration of physical connection in applying the definitions is erroneous and that the degree of use of particular facilities for transportation in interstate or foreign commerce is a more appropriate consideration. California requests that interstate pipeline facilities be defined as that part of a pipeline "which is used primarily in interstate or foreign commerce, and which crosses a State line or foreign border, and is considered from point or points of product ending in one State to points of delivery in another State or foreign county." California appears concerned that an overemphasis on physical connection in describing interstate pipeline facilities will unduly limit the pipeline facilities available for state regulations. MTB specifically solicits comments on this point and on the degree of use pipline facilities for transportation in interstate or foreign commerce as the criterion for determining whether pipeline facilities are interstate.

List of Subjects in 49 CFR Part 195

Interstate pipeline, Intrastate pipeline, Pipeline safety.

(49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1)

Issued in Washington, D.C. on June 17, 1985.

Richard L. Beam,

Associate Director, Office of Pipeline Safety Regulation.

[FR Doc. 85-14902 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T85-01; Notice 1]

Procedures for Selection of Covered Vehicles; Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. It proposes procedures for selecting high theft motor vehicle lines to be covered under the proposed vehicle theft prevention standard. That standard would require the marking of major component parts on all cars in lines subject to its requirements. This notice proposes to establish the procedures to be followed in selecting those lines

which will be subject to the requirements of the standard. The procedures are divided into two different sets. One set is the procedures to be followed for selecting the high theft lines from those car lines introduced after January 1, 1983, but before the effective date of the theft prevention standard. The other set would be applied to select high theft lines from those car lines introduced after that effective date.

DATES: Comments on this notice must be received by this agency not later than July 5, 1985.

ADDRESS: Comments should refer to Docket No. T85-01; Notice 1, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-9522).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. To implement the mandate of the Theft Act, NHTSA must divide each manufacturer's passenger motor vehicles into different "lines". A "line" is a group of vehicles sold with the same nameplate, such as Mustang, Camaro, or Aries. The agency must then select those lines which are "high theft lines", and, therefore, subject to the requirements of the theft prevention standard.

Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies three different groups of lines that are designated as high theft lines for purposes of the standard. The groupings are as follows:

(1) Existing lines that are determined on the basis of actual theft data to have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 are high theft lines under the provisions of section 603(a)(1)(A). "Existing lines" are those lines introduced before January 1, 1983. (This date is predicated on publication in 1985 of the final rule establishing the theft prevention standard).

(2) Lines introduced after January 1, 1983 that are likely to have a theft rate exceeding the median theft rate are high theft lines under the provisions of section 603(a)(1)(B).

(3) Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is a high theft line, are high theft lines under the provisions of section 603(a)(1)(C). However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines pursuant to this third grouping if such low theft or likely low theft lines account for greater then 90 percent of total production of all lines containing such interchangeable parts; section 603(a)(1)(C)(i) and (ii).

Section 603(a)(3) of the Cost Savings Act specifies that not more than 14 of a manufacturer's lines introduced before the effective date of the standard can be selected as high theft lines under the first two groups listed above. This 14 line limitation does not include those vehicles selected as high theft lines under the third group listed above; i.e., car lines which have interchangeable parts with high theft lines.

Section 603(a)(2) of the Cost Savings Act states that the selection of lines as high theft lines subject to the requirements of the theft prevention standard should be accomplished by agreement between the manufacturer and NHTSA if possible. However, that section also states that the agency must unilaterally select the subject lines if no agreement is reached. In the event that no agreement is reached between the agency and the manufacturer, this section requires NHTSA to make the selections on a preliminary basis and give the manufacturer an opportunity to comment on those selections.

This notice proposes the procedures which the manufacturers and this agency would follow in attempting to agree on the lines to be selected as high theft lines for those lines introduced after January 1, 1983 and for likely low theft lines having a majority of major component parts interchangeable with high theft lines. The selection of existing lines that have a theft rate exceeding the median theft for all new passenger motor vehicles in 1983 and 1984 is being handled in a separate action. NHTSA published, for review and comment, data on passenger motor vehicle thefts at 50 FR 18708, May 2, 1985.

Additionally, this notice addresses how the 14 line limitation of section 603(a)(3) of the Cost Savings Act would be implemented. The notice also sets forth the rights manufacturers have if they disagree with the agency's preliminary determination that a specific line should be selected as a high theft line.

NHTSA emphasizes that this notice proposes only to add a procedural adjunct to the theft prevention standard. This notice does not propose any substantive requirements or restrictions. It simply sets forth the proposed procedures to be followed in determining which of a vehicle manufacturer's lines will be subject to the requirements of the theft prevention standard.

Accordingly, this notice should be considered in conjuction with the previous notice of proposed rulemaking implementing the provisions of the Theft Act, which was published at 50 FR 19728; May 10, 1985. That notice proposed a minimum performance standard for the identification of major component parts of high theft lines by affixing or inscribing identifying numbers or symbols thereto, rules specifying who may certify compliance with that performance standard, and the criteria to be used in selecting parts as "major parts" and particular lines as "high theft lines".

Overview of the Proposed Procedures

This notice sets forth two different sets of procedures which would be used to select the lines which will be subject to the requirements of the theft preventing standard. The first set of procedures, contained in sections 542.1, 542.2, and 542.3, would be applied to those lines introduced on or after January 1, 1983, and before the effective date of the theft prevention standard. The other set of procedures, contained in sections 542.4 and 542.5, would be applied to car lines introduced after the effective date of the theft prevention standard.

Under each of these proposed procedures, the manufacturer would apply the relevant criteria to its currently produced and planned vehicles, and submit its views and supporting analysis as to which of its lines should be selected as high theft lines, together with the factual information considered in reaching its conclusions. NHTSA believes this approach is appropriate because the manufacturers have ready access to detailed information on their products and can use this information easily to make the initial statement about which lines should be selected as high theft lines, using the relevant criteria. By allowing the manufacturers to submit an

initial position together with the facts supporting that position, NHTSA believes that the selection process can be expedited and that agreements can be promoted between the manufacturers and the agency as to the lines and parts which should be covered by the substantive requirements of Part 541.

The agency is requesting, instead of requiring, the vehicle manufacturers to submit these selections and evaluations. If the manufacturer does not provide this information, however, section 603(a)(2) of the Cost Savings Act requires NHTSA to unilaterally select that manufacturer's lines which will be covered by the theft prevention standard. Hence, the desirability of cooperation between the manufacturers and NHTSA in selecting the covered lines and parts is obvious and great. Section 603(c) of the Cost Savings Act (15 U.S.C. 2023(c)) directs the agency to, by rule, require each manufacturer to provide information necessary to select the high theft lines and major component parts to be covered by this standards. NHTSA anticipates, however, that the manufacturers will be forthcoming and cooperative in providing the agency with their views and supporting analyses proposed to be submitted under this new part, so that Part 542 should satisfy the mandate in section 603(c). If, of course, the agency does not receive or otherwise obtain the necessary information on which to base its decision, changes to the rule would be considered to require this information.

NHTSA is also aware of the potentially sensitive nature of much of the information that will be provided by the manufacturers in these submissions. The agency specifically directs the manufacturers' attention to its regulation setting forth the procedures for claiming confidentiality for information (49 CFR Part 512), and assures the manufacturers that information which is confidential within the meaning of that regulation will not be disclosed in accordance with agency rules and regulations.

The agency will promptly review the manufacturer's selections and evaluations and notify the manufacturer of its agreement or disagreement with them. The agency does not anticipate that it would disagree with a manufacturer's position that a line should be selected as a high theft line. The agency's notification to the manufacturer of its preliminary determinations would, of course, include the facts and supporting rationales for the determinations. Those determinations which agree with the manufacturer's views would probably be comparatively less fully explained than those determinations which disagree with the manufacturer's initial positions. The latter determinations would set forth in detail the supporting reasons.

The manufacturer would then be allowed 30 days after receiving the agency's preliminary determinations to request agency reconsideration of any determination to which the manufacturer objects. The agency has tentatively concluded that a 30 day period would allow adequate time for a manfacturer to prepare and present an effective rebuttal argument, while also ensuring a relatively swift final decision. Any request for reconsideration must include all facts and arguments which underlie the manufacturer's objections. Further, during this 30 day period, the manufacturer could request a meeting with the agency to explain its objections in detail. NHTSA anticipates that a meeting at this point could aid both the agency and the manufacturer in fully understanding the reasons for the other's position, and allow the parties every opportunity to reach agreement on the appropriate determination for a particular line.

If a manufacturer requests reconsideration of an agency determination, NHTSA would inform the manufacturer of its final determination promptly after considering the manufacturer's objections and explain the basis for that final determination. This decision would be the agency's final determination. If no request for reconsideration is received within the 30 day period after the manufacturer receives the agency's preliminary determination, the preliminary determination would automatically become final. Should the manufacturer disagree with this final agency determination, it has the right to seek judicial review of the agency determination, as specified in section 610 of the Cost Savings Act (15 U.S.C. 2030).

NHTSA does not anticipate that much, if any, of the information and communications involved in the selection process will be made available to the public. Section 609 of the Cost Savings Act (15 U.S.C. 2029) states that trade secret information obtained by the agency under the Theft Act shall be treated as confidential, but that information "may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title (*other than a proceeding under section 603(a)(2) or (3) of this title*)." NHTSA construes this language to mean that it has no authority to make public trade secret information during the selection process. The agency anticipates that most, if not all, of the information provided to NHTSA by the maufacturers during the selection process will be trade secrets, and will be accorded confidential treatment.

NHTSA will keep records of the dates of meetings with the various manufacturers and any nonconfidential matters discussed at such meetings. These records will be made available to the public in response to requests filed under the Freedom of Information Act (5 U.S.C. 552(b)). Of course, the lines which are finally selected for coverage under the theft prevention standard will be made public. The agency believes that this approach to public disclosure is the only one consistent with the requirements of Title VI of the Cost Savings Act, and will encourage greater openness and cooperation by the manufacturers during the selection process.

NHTSA proposes that the selections of lines subject to Part 541 be added to Appendix A of Part 541 by October 24, 1985, for lines introduced before the effective date of the standard, and by annual amendments thereafter, as new lines are selected as high theft lines. These annual amendments will inform the public of those lines which have been finally determined to be "high theft lines", and will be subject to the marking requirements of Part 541. Comment is specifically requested on the appropriateness of publishing these annual updates to Appendix A of Part 541, together with any reasons why such amendments shoud be published more or less frequently.

Differentiation Between Vehicle Lines

NHTSA proposes to use the same definition of "lines" as it did for the notice publishing theft rates for the various existing lines; see 50 FR 18706, May 2, 1985. That is, all vehicles with the same nameplate would be treated as a single line, regardless of styling and performance differences. Comments are invited on this proposed definition.

Procedures for Selecting Lines Introduced After January 1, 1983, but Before the Effective Date of the Standard To Be Covered by the Theft Standard

Proposed § 542.1 sets forth the procedures for selecting the high theft lines for lines introduced after January 1, 1983, but before the effective date of the theft prevention standard. § 542.2 sets forth the procedures to be followed in

limiting to 14 the number of lines produced by a single manufacturer which will be designated as high theft lines because of their actual or likely high theft rate. § 542.3 sets forth the procedures to be followed in determining which lines with theft rates below the median should nevertheless be subject to the standard because a majority of their major component parts are interchangeable with those of high theft lines.

Each of these three sections propose short time schedules for both the manufacturer and the agency. For instance, manufacturers would have to submit their evaluations and supporting rationales to the agency not later than July 24, 1985. NHTSA would have to complete its initial determinations by August 24, 1985. These deadlines are necessary to achieve compliance within the time period set by Congress for the selection of lines. Under section 603(a)(3) of the Cost Savings Act, the agency must select, by October 24, 1985, the high theft lines among all existing lines and among all new lines introduced between January 1, 1983, and the effective date of the final standard. The agency invites comments on the ability of manufacturers to meet the proposed deadlines set forth for these sections.

Section 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

The manufacturer would apply the criteria outlined in Appendix C of proposed Part 541 to each line introduced between January 1, 1983, and the effective date. Briefly, the criteria of Appendix C are:

(a) Price;
(b) Vehicle image;
(c) Competitive lines;
(d) Line or lines that the new line replaces;
(e) Presence or absence of any new theft prevention devices;
(f) Any available theft date for lines already introduced.

After applying these criteria, each affected manufacturer would submit its view that a line is likely to be a high theft or low theft line and its supporting rationale to NHTSA by July 24, 1985. The agency would carefully consider the manufacturer's submission to decide whether it agrees or disagrees with the manufacturer's views.

Within 30 days, the agency would inform the manufacturer of its agreement or disagreement with the manufacturer's views as to whether its various lines should be included or excluded from the list of high theft lines. The agency would indicate its formal agreement or disagreement by making its own preliminary determinations selecting the high theft lines. If a manufacturer does not submit its views for each of its lines in a timely fashion, the agency will send the manufacturer NHTSA's unilateral initial determinations by August 24, 1985.

The manufacturer would have 30 days after receipt of the agency's preliminary determination to request reconsideration of any determination that a particular line is a high theft line within the meaning of the Theft Act. The manufacturer would have received the agency's reasoning underlying the preliminary determination that the line should be a high theft line. Any request for reconsideration would be expected to explain in detail why the manufacturer believed the agency had erred, and explain why the manufacturer believed the line should not be treated as a high theft line. If desired, the manufacturer could request a meeting with the agency during this 30 day period to amplify further its position. The agency would make its final selection of high theft lines by October 24, 1985.

Section 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

Section 603(a)(3) of the Cost Savings Act establishes a limit of 14 on the combined total of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that may be selected as high theft lines because of actual or likely high theft rates. This appendix provides procedures for implementing that limit.

These procedures apply only to manufacturers with more than 14 lines that have actual or predicted high theft rates and are introduced before the effective date of the standard. In the case of manufacturers with 14 or fewer of those lines, there would be no need to choose among those lines in order to meet the statutory maximum of 14 lines per manufacturer. The agency intends to automatically "select," up to the statutory maximum of 14, all of each manufacturer's lines that have actual or predicted high theft rates and are introduced before the effective date of the standard.

Each manufacturer producing a total of more than 14 lines that either exceed the median theft rate or are likely to have a high theft rate would evaluate and rank those lines in accordance with the extent to which they satisfy the criteria outlined in Appendix B of Part 541. These criteria are:

a. The closeness of the line's theft rate to the median theft rate;
b. The approximate production volume of vehicles in the line during the next model year;
c. The likelihood of significant design changes to the line;
d. The rate at which stolen vehicles in the lines are recovered with all parts intact;
e. The plans for installation of an original equipment anti-theft device in the line, which satisfies the requirements of section 605 of the Cost Savings Act; and
f. The number of other lines having parts interchangeable with those of that line and the production volume of those lines.

After ranking its lines, each manufacturer would submit the rankings and evaluations to the NHTSA by July 24, 1985. At the same time, the manufacturer would also submit the factual information it considered in making its rankings. Since the lines to which these procedures would apply have already been introduced or will be very near introduction, and since the data necessary to apply the criteria are readily available to the manufacturers, the agency believes that the proposed schedule provides manufacturers with sufficient time to develop rankings and the rationale for that ranking. The NHTSA solicits comments on the appropriateness of this schedule.

Section 542.3 Procedures for selection of pre-standard low theft lines with major parts that are interchangeable with those of a high theft line.

These procedures apply to manufacturers of low theft lines introduced before the effective date of the theft prevention standard that may have major component parts interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard. The agency contemplates that after the automatic "selection" of high theft lines that have theft rates above the median theft rate, the agency and manufacturers would apply these procedures to all lines falling below the median. These procedures would be used to determine which of those remaining lines should be considered high theft lines under the interchangeable parts provision of the Theft Act [section 603(a)(1)(C)]. Section 603(a)(1)(C)(i) and (ii) provides an exception for low theft lines with a majority of major component parts interchangeable with high theft lines if the high theft lines compose less than 10 percent of all of the vehicles possessing interchangeable parts. Those low theft

lines would not be treated as high theft lines. We emphasize that lines selected under proposed § 542.3 would not be included as part of a manufacturer's selected lines for determining whether the manufacturer has more than 14 lines subject to the standard as of the effective date of the standard. *See* section 603(a)(3).

Under the proposed procedures, the manufacturer would decide whether its lines with theft rates below the median rate had major parts interchangeable with a majority of the major parts of any of its lines with actual or likely high theft rates, together with the supporting rationale for that decision. For the purposes of these procedures, NHTSA proposes using the same definition of "interchangeable part" as contained in the proposed theft prevention standard: A passenger motor vehicle major part that is sufficiently similar in size and shape to a major component part of another car line so that it could be used to replace the major component part on a vehicle in that other car line, with no modification to the vehicle other than to the interior or exterior trim.

The agency anticipates that these decisions by the manufacturers and supporting rationales will take the following form. Manufacturers would submit a listing of the number and identity of major component parts that are incorporated in each line determined by the manufacturer not to have an actual or likely high theft rate, and that are interchangeable with the major component parts of those lines determined by the manufacturer to have actual or likely high theft rates. An example may help clarify the information being sought under this section. Suppose that ABC Motors decides that its "x" and "y" lines are high theft lines, but that its "a", "b", "c", and "d" lines are not high theft lines. ABC Motors might submit the following listing:

[Numbers represent interchangeable parts]

	Number of x line	Number of y line
a line	4	6
b line	9	8
c line	0	2
d line	0	0

From this listing, ABC Motors would decide that its "b" line has major parts interchangeable with a majority of the major parts of both of its high theft lines, but that its a, c, and d lines do not. For the purposes of this Appendix, 8 or more interchangeable parts for a line constitute a majority of major parts.

As a part of the supporting rationale for the manufacturer's decision that a low theft line does or does not have a majority of interchangeable major parts, the agency has tentatively determined that manufacturers should submit a listing of both the number of interchangeable parts each low theft line has and a listing of the specific major parts the manufacturer believes to be interchangeable with the high theft line in question.

Perhaps the most difficult parts for purposes of the manufacturers' interchangeability decisions are the engine and transmission. Both these parts are specifically designated as major parts by section 601(7) of the Cost Savings Act (15 U.S.C. 2021 (7)), which means that both the manufacturers and the agency must decide whether they are interchangeable between lines. Several different engines and transmissions are available for most lines. NHTSA has tentatively concluded that if an engine or transmission is offered, either as standard or optional equipment, on any vehicles in two or more different lines, the engine and transmission should be considered interchangeable between lines. This tentative conclusion is based on the fact any necessary modifications could be made to enable a stolen engine or transmission to fit in a vehicle of either line. NHTSA is interested in comments on whether this detailed listing by the manufacturers of interchangeable parts for all of their lines would be too unwieldy or burdensome, and, if so, what other means are available to arrive at proper determinations of interchangeability.

If a manufacturer were to decide that a low theft line has major parts that are interchangeable with a majority of the major parts of high theft line, the manufacturer would then decide whether the total annual production of low theft lines accounts for more than 90 percent of the total annual production of all lines containing those interchangeable parts. This merely requires the manufacturer to apply the statutory language and formula found at section 603(a)(1)(C). In the example given above for ABC Motors, the company would decide whether the b line production accounts for more than 90 percent of the total production of the b, x, and y lines combined. After making this decision, ABC Motors would submit its views that its b line either should or should not be selected for coverage under the theft prevention standard.

The manufacturer would again submit its views and supporting rationales by July 24, 1985. Unlike the procedures for selection of lines under the two previous sections, § 542.3 does not propose any criteria to be used by the manufacturers when determining whether major parts are interchangeable. However, NHTSA anticipates that it will consult current auto parts data publications to see how closely the manufacturers' decisions regarding interchangeability correspond to those publications statements regarding the interchangeability of parts. Two of these publications are "The Hollander", Auto-Truck Interchange Edition, Hollander Publishing Co., Inc., Minnetonka, Minnesota, and "Mitchell's Manual", Cordura Publications, San Diego, California. Although this proposal does not incorporate any set of criteria to be followed by manufacturers when determining interchangeability, the ageny welcomes comments and suggestions on possible criteria.

If a manufacturer submits views that a line should be subject to the requirements of the theft prevention standard under the interchangeability provision, the agency anticipates that it would accept those views. If a manufacturer submits views that a line is not high theft, the agency would have 30 days to inform the manufacturer that it either agrees with the manufacturer or disagrees and preliminarily selects the line. If the agency selects a line despite a manufacturer's contrary views, NHTSA would explain its rationale in detail. The manufacturer would have 30 days to request reconsideration of the agency's determination. The agency must make its final decision by October 24, 1985.

Procedures for Selecting Lines Introduced After the Effective Date of the Theft Prevention Standard

These procedures would apply to all new lines introduced on or after the effective date of the theft prevention standard. § 542.4 sets forth the procedures which will be followed in selecting new lines which will be likely to have high theft rates. § 542.5 sets forth the procedures for selecting those lines which, while themselves likely to have a theft rate below the median, will have major parts interchangeable with a majority of the major parts of a line selected as likely to have a high theft rate.

The reader will notice that § 542.4 is very similar to § 542.1, which also specifies how the agency will select particular lines as high theft lines, and that § 542.5 is very similar to § 542.3, which also specifies how the agency will select certain low theft lines for parts marking because of interchangeable parts. The similarity, of course, results

from the similar functions. However, there are ways in which these latter sections differ from the earlier ones applicable to vehicles introduced before the effective date of the theft prevention standard.

The first and most obvious difference is that these procedures are not subject to the October 24, 1985 statutory deadline, and therefore allow the manufacturers and the agency more time to complete the selection process. For 1988 and subsequent model years, the manufacturers would submit to the agency their views, together with the supporting rationales, as to whether the theft prevention standard's requirements would apply to a new line not more than 24 months or less than 18 months before that new line was introduced. The agency would have 90 days to consider these submissions and make its initial determinations. These initial determinations would be sent to the manufacturer, together with the supporting rationales. The manufacturers would have 30 days after receiving the agency's initial determination to request reconsideration of such determination. The request would be made by submitting a letter detailing its objections to the agency's initial determination, and all facts and reasoning underlying those objections. The manufacturer may also request a meeting with the agency during this 30 day period to further explain its objections. The agency would have 60 days from the date it received the manufacturer's request for reconsideration to make its final determination. If the manufacturer does not object to the agency's initial determination, that determination would automatically become final 45 days after the agency informs the manufacturer of the initial determination.

For new lines to be introduced in the 1987 model year, the manufacturers will not be able to provide their views and supporting analyses to NHTSA 18 months before the start of the model year. Accordingly, this notice proposes a separate schedule for new lines to be introduced in the 1987 model year.

Section 603(a)(5) of the Cost Savings Act specifies that manufacturers must be informed of the selection of covered lines at least 6 months before the start of the model year in which those lines are introduced. To assure that there is adequate leadtime, NHTSA has tentatively decided to make its final determinations of covered lines by March 1, 1986. Hence, this notice proposes the following schedule for the selection of new lines to be introduced in the 1987 model year:

October 1, 1985—Manufacturers submit their views and supporting analyses for 1987 new lines to NHTSA.

December 31, 1985—NHTSA notifies manufacturers of its preliminary determinations.

January 31, 1986—Manufacturers file any requests for reconsideration of preliminary determinations.

March 1, 1986—NHTSA makes all final determinations.

Those manufacturers which would like earlier notice or the selections for their new 1987 lines may submit their views and supporting analyses to NHTSA sooner than October 1, 1985. The agency will make its preliminary determinations not later than 90 days after it receives those views and supporting analyses. This proposed schedule incorporates all of the other time intervals and opportunities for meetings proposed for the 1988 and subsequent model years.

A second difference between the pre and post effective date procedures is the greater flexibility incorporated in the later procedures. Because there is no definitive measurement of theft rates for lines before they are introduced, the selection of those lines likely to have theft rates above the median is partially a subjective judgment. Thus, NHTSA has designed these latter procedures to permit more meetings between the agency and the manufacturers. In the case of the procedures applicable to lines introduced before the affective date, the manufacturer may request a meeting with the agency only after receiving the agency's initial determination for its lines. This is because the statutory deadline limits the opportunity for holding meetings and more objective data is available to both parties for use in making the selections. These latter procedures allow the manufacturers to request a meeting with the agency after the manufacturer has submitted its views and before the agency has made its initial determination. The manufacturer may wish to use these meetings to amplify the reasoning behind its submission. The agency anticipates that it would request meetings, as appropriate, with the manufacturers before making its preliminary determinations, to ensure that the agency has the best possible basis for its initial determination. Note that these procedures do not require meetings, if neither party believes a meeting would be productive.

A final noteworthy difference between the procedures is not really reflected in differing procedures, but certainly bears mention. Even more so that with pre-standard lines, the agency needs adequate and detailed information to ensure accurate and effective selection of lines likely to have high theft rates. When the agency is required to make final selections of high theft lines at least six months before the lines are actually introduced, NHTSA will not have available to it any existing theft data, access to the vehicles to make its own observations, or as much information from third party and industry sources. Thus, it is necessary that manufacturers thoroughly address the selection criteria in the supporting rationale provide with their views, and provide whatever objective data is available. NHTSA specifically requests comments suggesting, for possible inclusion in the final rule on this subject, certain objective date which would be readily available to the manufacturer before introducing a line and which would be effective in predicting likely high theft lines.

As an adjunct to this area, NHTSA recognizes that information provided by the manufacturers under §§ 542.4 and 542.5 could be extremely sensitive, even more so than information provided for pre-standard lines under the earlier appendices. NHTSA wishes to emphasize that it has already made a class determination under 49 CFR 512.9 granting confidential treatment to all future model specific product plans, projected not more than three years into the future. Hence, any information provided to the agency under these sections will be accorded confidential treatment based on this class determinaton NHTSA will treat the information accordingly, However, recognizing the sensitivity of the information which would be provided, NHTSA seeks comment from the manufacturers as to whether the current procedures under Part 512 are sufficient, or whether some additional procedures would be appropriate.

Section 542.4 Procedures for the selection of new lines introduced on or after the effective date of the standard that are likely to have high theft rates.

These procedures apply to all lines introduced at any time on or after the effective date of the standard. The agency believes that this proposed section will result in an effective, efficient selection process. This proposed section tentatively sets the dates for submission, review, and decision making to provide for six months of negotiation between the agency and the manufacturer. The dates allow at least the minimum lead time of

six months before the model year in which the line is introduced, as mandated by section 603(a)(5), and allow a manufacturer to submit data earlier to increase lead time to as long as 18 months. This is proposed in response to comments received during the public meeting that lead time of a year or more would be beneficial in some instances. The proposed dates do not allow submission of data earlier than two years in advance of introduction of the line as the agency feels that such data are likely to be out of date by the time the line is actually introduced. The agency requests comment on the appropriateness of the time schedule generally as well as on the deadlines at each particular step in the selection process.

Each manufacturer would apply the criteria listed in Appendix C of Part 541 to each new line to determine whether the line's theft rate is likely to exceed the median. After applying these criteria, each affected manufacturer would submit its views that a new line is likely to be a high theft or low theft line and its supporting rationale to the NHTSA. From this point, the process would closely resemble the process described above for § 542.1, except that the manufacturer may request a meeting with the agency to explain its submission in this case.

Section 542.5 Procedures for selecting post-standard low theft new lines with major parts interchangeable with those of a high theft line.

These procedures would be used to select those lines introduced after the effective date of the theft prevention standard which, while themselves likely to be low theft lines, will be required to have parts marked because a majority of their major component parts will be interchangeable with a majority of the major component parts of a line selected as a high theft line because of its actual or likely high theft rate. The manufacturer would submit a listing as described above for § 542.3 for each new line to be introduced which has not been selected as a high theft line, showing the number and the description of the major component parts for that line which will be interchangeable with the major component parts of each of the manufacturer's high theft lines. The explanation given in the discussion of § 542.3 above is also applicable to this appendix and is therefore not repeated here.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

Because this rulemaking is procedural, merely implementing the substantive provisions of Part 541, the agency has determined that this rulemaking is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule only specifies how the agency would select the lines which will be subject to the requirements of the theft prevention standard. NHTSA does not believe that this proposed rulemaking would affect the impacts described in the regulatory evaluation prepared for the proposal setting forth the substantive requirements of Part 541. Accordingly, a separate regulatory evaluation has not been prepared for this proposed rule. As noted above, a full regulatory evaluation was prepared for the proposed rule setting forth the substantive requirements of Part 541. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T84-01, Notice 4, and may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590.

B. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Since the rule is merely procedural and imposes no substantive requirements, I hereby certify that the proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. Accordingly, no preliminary regulatory flexibility analysis has been prepared. Those persons interested in learning the effects of Theft Act rulemaking on small businesses are advised to read the preliminary regulatory flexibility analysis incorporated in the preliminary regulatory evaluation prepared for the proposed rule setting forth the substantive requirements of Part 541.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and determined that this proposal would not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The procedures in this proposed rule for manufacturers to submit preliminary decisions to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements have been submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

The Department of Transportation regulatory policies and procedures specify that the public will generally be given 45 days to comment on nonsignificant rulemaking actions. However, that time period is not available for this proposal, because of the statutory deadline under the Theft Act and because manufacturers who choose to provide information to the agency must do so by July 24, 1985. The agency believes that the 15-day comment period provided for this notice will be sufficient to allow the public to comment on these appendices, especially given the similarities between the procedures to be followed under all of them, while allowing the agency to establish a final rule in time to meet the statutory deadline.

All comments must not exceed 15 pages in length. 49 CFR 553.21. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting

forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the agency intends to proceed as rapidly as possible with this rulemaking once the comment closing date has passed. Comments received after the closing date will very be too late for consideration in regard to this action, but will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, reporting requirements.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations would be amended by adding a new Part 542 to read as follows:

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

§ 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any pre-standard new lines are lines likely to have high theft rates.

(b) *Application.* These procedures apply to each manufacturer that has introduced or will introduce a new line commerce in the United States after January 1, 1983, and before [the effective date of the standard], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to identify those lines the manufacturer believes are likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and identifications made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA by July 24, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter, and, on a preliminary basis, determines whether those new lines should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section become final on October 15, 1985, unless a request for reconsideration of its has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in implementing the 14 line limit applicable to certain groups of high theft lines in the initial year of the theft prevention standard.

(b) *Application.* These procedures apply to each manufacturer that produces more than 14 lines that have been or will be introduced into commerce in the United States before [the effective date of standard] and that have been listed in Appendix A of Part 541 of this chapter or have been identified by the manufacturer or preliminarily determined by the agency to be high theft lines under § 542.1, and to each of those lines.

(c) *Procedures.* (1) Each manufacturer evaluates each of its lines in accordance with the criteria in Appendix B of Part 541 of this chapter and ranks the lines based on the extent to which they satisfy those criteria.

(2) Each manufacturer submits its evaluations and rankings made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and rankings, to NHTSA by July 24, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each of the manufacturer's lines using the criteria in Appendix B of Part 541 and, on a preliminary basis, determines which 14 lines should be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and rankings, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider its preliminary ranking under paragraph (c)(3) of this section of any of the highest 14 ranked lines. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary rankings. The request must include the facts and arguments underlying the

manufacturer's objections to the agency's preliminary rankings. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary rankings of the 14 highest ranked lines under paragraph (c)(3) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final rankings by October 24, 1985, and informs the manufacturer by letter of those rankings and its response to the request for reconsideration.

§ 542.3 Procedures for selecting pre-standard low theft lines with major parts that are interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determination of whether any pre-standard lines with low theft rates have major parts interchangeable with a majority of the major parts of a line with an actual or likely high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States before [the effective date of the standard] and that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1, and

(ii) At least one line that has been or will be introduced into commerce in the United States before that date and that is below the median theft rate; and

(2) Each of those sub-median rate lines.

(c) *Procedures.* (1) For each of its lines with a theft rate below the median rate, each manufacturer identifies how many and which of the major component parts of that line are interchangeable with the major component parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1.

(2) If the manufacturer concludes that one or more lines with a sub-median theft rate has major component parts that are interchangeable with a majority of the major component parts of a high theft line, the manufacturer decides whether all the vehicles of those lines with sub-median theft rates and interchangeable parts account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its identifications and conclusions made under paragraphs (c)(1) and (2) of this section, together with the facts and data underlying those identifications and conclusions, to NHTSA by July 24, 1985.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of those determinations, together with the bases for the determinations, including the factual information considered by the agency.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations under paragraph (c)(4) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any post-standard line is likely to have a theft rate above the median rate.

(b) *Application.* These procedures apply to each manufacturer which plans to introduce a new line into commerce in the United States on or after [the effective date of the standard], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each line and to conclude whether the manufacturer believes that new line is likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and conclusions made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and conclusions, to the NHTSA not more than 24 months before the introduction of each new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than December 31, 1985, for new lines introduced in the 1987 model year, or not later than 15 months before the introduction of each new line for the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) becomes final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been

received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.5 Procedures for selecting post-standard, low theft, new lines with major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determinations of whether any post-standard lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in Appendix A of Part 541 of this chapter or has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high theft line under §§ 542.1 or 542.4, and

(ii) At least one line that will be introduced into commerce in the United States on or after the [effective date of the standard] and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median rate lines.

(c) *Procedures.* (1) For each new line that a manufacturer identifies under Appendix G as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major component parts of that line will be interchangeable with the major component parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1 or § 542.4.

(2) If the manufacturer concludes that a new line with a likely sub-median theft rate will have major component parts that are interchangeable with a majority of the major component parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely sub-median theft rates and interchangeable parts will account for more than 90% of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and identifications made under paragraphs (c) (1) and (2) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or not later than December 31, 1985, for new lines introduced in the 1987 model year, or not later than 15 months before the introduction of each new line for the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on June 17, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-14840 Filed 6-17-85; 3:47 pm]

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49 CFR Part 571

[Docket No. 85-06, Notice 2]

Hydraulic Brake Systems; Passenger Car Brake Systems; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This notice corrects certain technical and typographical errors in the notice of proposed rulemaking published on May 10, 1985 (50 FR 19744). These errors appear in the language of the proposed new Standard No. 135, *Passenger Car Brake Systems.* Correction of these errors is necessary to avoid misunderstanding of the proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2800).

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.135 Federal Motor Vehicle Safety Standard No. 135; Passenger Car Brake Systems

1. On page 19753, in paragraph S4. *Definition*, the definition of "maximum speed" should read "surface," not "surfaces."

2. On page 19753, in paragraph S4. *Definition*, the definition of "skid number" should read "resistance," not "resistence."

3. On page 19753, in paragraph S5. *Requirements*, the second sentence should read "km/h," not "Km/h."

4. On page 19753, in paragraphs S5.1.1.1. *Preburnished effectiveness*, S5.1.1.3. *High speed effectiveness*, and S5.1.1.4. *Final effectiveness*, the last term of the equation should read "$0.0067V^2$," not "$0.006V^2$."

5. On page 19753, in paragraph S5.1.2. *Adhesion Utilization*, the second sentence should read "system," not "systems."

6. On page 19754, in paragraph S5.2.2.2. *Unit failure (system depleted)*, the last term of the equation in the second sentence should read "0.015V^2," not "0.0015V^2."

7. On page 19754, in paragraph S5.2.3. *Failed anti-lock or variable proportioning system*, the first term of the equation in the second sentence should read "0.05V," not "0.005V."

8. On page 19756, in paragraph S6.1.1. *Ambient temperature*, the high temperature of the ambient temperature range should read "40°C(104°F)," not "(40°F)."

9. On page 19756, in paragraph S6.2.1. *Skid number*, "surfact" should read "surface."

10. On page 19756, in paragraph S6.4. *Instrumentation—Brake temperature*, in the first sentence, insert "of" between "width" and "the."

11. On page 19758, in paragraph S7.4.3.1.*Burnish*, the third sentence should read "interval," not "internal."

12. On page 19758, in paragraph S7.4.1.1. *Coast downs in neutral and in gear*, in the third sentence, insert "the" between "in" and "gear".

13. On page 19758, in paragraph S7.4.2.5, the last word should read "pressure," not "prsessure."

14. On page 19759, in paragraph S7.11.1. *Heating snubs*, the third sentence should read "an," not "and."

Issued on June 14, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-14839 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

[Ex Parte No. 445 (Sub-No. 1)]

Intramodal Rail Competition

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file replies to notice of proposed rules.

SUMMARY: In this proceeding, the Commission announced its intention to adopt rules to govern its handling of various competitive access issues.

By a notice served March 28, 1985, and published in the **Federal Register** April 2, 1985 (50 FR 13051), the Commission required comments to be filed by May 17, 1985, and replies by June 3, 1985. By notice served May 16, 1985, and published in the **Federal Register** May 23, 1985 (50 FR 21319) the time for filing comments was extended to May 31, 1985, and replies were permitted to be filed by June 17, 1985. The Association of American Railroads and Consolidated Rail Corporation request a 3-week extension of time to file replies because of the volume of comments, complexity of issues, and unavailability of their expert witnesses at this time. In light of these reasons, a 3-week extension of time will be granted and the time for filing replies is extended accordingly.

DATES: Reply comments are due by July 8, 1985.

ADDRESSES: Send an original and 15 copies of all documents referring to Ex Parte No. 445 (Sub-No. 1) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and serve on all parties to this proceeding.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Decided: June 13, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-14838 Filed 6-19-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 119
Thursday, June 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 AGRICULTURE

Forest Service

Western Spruce Budworm Management Program Santa Fe National Forest; Environmental Impact Statement Cancellation Notice

A draft environmental impact statement (EIS) for the Western Spruce Budworm Management Program Santa Fe National Forest was distributed to the public and filed with the Environmental Protection Agency on April 29, 1983.

I am terminating the EIS process for this program due to:

(1) A re-appraisal of western spruce budworm management policy in the Southwestern Region, Forest Service which will be initiated soon,

(2) changing public issues relating to budworm management which may not have been properly considered in the EIS, and (3) new strategies of integrated pest management which have been developed since the analysis for this EIS was completed.

Dated: June 11, 1985.

Maynard T. Rost,

Forest Supervisor.

[FR Doc. 85-14880 Filed 6-19-85; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Central Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electricification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by the South Carolina Public Service Authority (Santee Cooper) for the purpose of providing a source of electric power to the Central Electric Power Cooperative, Inc. (Central). The project consist of approximately 15 miles of 230 kV transmission line, one 230 kV switching station and one 230/115 kV substation.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment and the Borrower's Environmental Report (BER) submitted by Central may be reviewed in the office of the Director, Southeast Area-Electric, REA, Room 0256, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-8434, or at the office of Central (Mr. Patrick T. Allen, Manager), 121 Greystone Boulevard, Columbia, South Carolina 29202, telephone (803) 779-4975.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Central and has determined that it represents an accurate evaluation of the environmental impact of the proposed project. The project consists of the construction of a 15 mile, 230 kV transmission line using two and three-pole H-frame structures on an additional 85-foot of new right-of-way along existing tramsmission line right-of-way and 125-foot right-of-way where no existing transmission line presently exists. The line will begin at a proposed switching station to be located in Dorchester County, South Carolina and traverse in a southerly direction to a proposed 230/115 kV substation to be located in Charleston County, South Carolina. The switching station will require a 3.3 acre site and the substation will require a 5.5 acre site.

REA has prepared an Environmental Assessment concerning the proposed project REA concluded that its approval of Central's selection of Santee Cooper as a source of power would not be a major Federal action significantly affecting the quality of the human environment. This conclusion was reached after considering the project's potential impacts on resources including federally listed threatened and endangered species, cultural resources, wetlands, floodplains, prime farmlands, coastal barrier resources areas, coastal zone management areas and wild and scenic rivers. The proposed project will have no impact to federally listed threatening and endangered species, sites listed or eligible for listing on the National Register of Historic Places, coastal barrier resource areas, or rivers listed on the National Wild and Scenic River System. The 100-year floodplain, wetlands, coastal zone management areas, and prime farmlands will be crossed by the proposed transmission line; however, the proposed switching station and substation will not be located in these areas. REA has determined that there are not practicable alternatives for locating transmission line support structures in the 100-year floodplain or in wetlands and that all practicible measures to minimize harm to these areas will be implemented. There is a demonstrated significant need for locating these structures in prime farmlands and there is no practicable alternative to such sitings.

Alternatives to the proposed project were considered which included no action, three alternative transmission line routes, alternative switching station and substation sites, alternative construction methods and materials, and the alternative of a lower power supply voltage. REA has determined that the project is an environmentally acceptable alternative because it best meets the needs of Central with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of Central's selection of Santee Cooper as a source of power would not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not necessary. This program is listed in the catalog of Federal Domestic Assistance as 10.850, Rural Electricification Loans and Loan Guarantees.

Dated: June 14, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-14899 Filed 6-19-85; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Fish Bayou Watershed, AR; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Fish Bayou Watershed project, Crittenden and St. Francis Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 700 West Capitol Avenue, Room 2405 Federal Office Building, Little Rock Arkansas 72201, telephone 501-378-5445.

SUPPLEMENTARY INFORMATION: A determination has been made by Jack C. Davis that the proposed works of improvement for the Fish Bayou Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should deauthorized for the project. Information regarding this determination may be obtained from Jack C. Davis, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. The State of Arkansas' procedure for State and local clearinghouse review of Federal and federally assisted programs and projects is applicable).

Dated June 12, 1985.

Jack C. Davis,

State Conservationist.

[FR Doc. 85-14828 Filed 6-19-85; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Meetings

Notice is hereby given that the Arctic Research Commission will hold public meetings in Alaska on June 25, 26, and 28, 1985.

Public meetings are scheduled on June 25, from 9 a.m. to 12 p.m., in the Assembly Room of the North Star Borough, 809 Pioneer Road, Fairbanks, Alaska. On June 26, from 9 a.m. to 1 p.m., in the Assembly Room, North Slope Borough, Barrow, Alaska. On June 28, from 9 a.m. to 12 p.m. in the Auditorium of the Anchorage Historical and Fine Arts Museum, 121 W. 7th Avenue, Anchorage, Alaska.

Matters to be considered at these public meetings include 1. Introduction, 2. Review and Status of Implementation of the Arctic Research and Policy Act, 3. Arctic Research in the National Interest, 4. Suggestions for Arctic Research Policy and, 5. General Discussion.

The Commission will meet in Executive Session on June 26, 1985, from 3 to 5 p.m. at the Arctic Slope Regional Corporation, Barrow, Alaska. Matters to be discussed in the Executive Session include nominations for a Scientific Committee and future activities of the Commission. On June 27, the Commission will conduct a site visit to the Prudhoe Bay Oil Field.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 85-14886 Filed 6-19-85; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Carbon Steel Wire Rod From South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on carbon steel wire rod from South Africa. The review covers the period from October 1, 1984. The petitioners in this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. In accordance with the petitioners' notification, the revocation will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip Otterness or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 42396) a countervailing duty order on carbon steel wire rod from South Africa.

In a letter dated May 9, 1985 (*see* Appendix A), Georgetown Steel Corporation, North Star Steel Texas, Inc., Continental Steel Corporation, Raritan River Steel Company, and Atlantic Steel Company, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of South African wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on wire rod from South Africa provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984,

without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of wire rod from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision of revocation, including it analysis of issues raised in any such written comments or at a hearing.

This intention to review, adminstrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 14, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

Appendix A

[C–751–004]

May 9, 1985.

Mr. Alan F. Holmer,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 3850, Washington, DC 20230

Re: Outstanding Countervailing Duty and Antidumping Orders Concerning Wire Rod from South Africa

Dear Mr. Holmer: Paragraph 2(a)(2) of the Arrangement Concerning Trade in Certain Steel Products Between South Africa and the United States (the "Arrangement"), requires the United States to initiate the legal process to terminate those antidumping and countervailing duty orders described in Appendix A to the Arrangement. The Appendix A orders include, but are not limited to, the order issued September 27, 1982, as a result of a countervailing duty petition filed by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

On behalf of the companies that filed the petition (hereinafter the "Petitioners"), you are hereby notified that, based on the undertaking of South Africa to limit its annual exports of wire rod to the United States to 0.990 percent of U.S. apparent domestic consumption for the duration of the Arrangement, and in reliance on the other understandings expressed herein, the Petitioners will not object to the intiation of legal process to terminate the South Africa wire rod countervailing duty order of September 27, 1982. Nor will they object during such process to the Department's proceedings provided they have assurance that the South Africa Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning wire rod. Petitioners also understand that the United States does not plan to agree to any modifications of the Arrangement that would affect the South African obligations concerning wire rod during the Arrangement term.

Petitioners do not intend to file petitions [as specified in paragraph 2(a)(3) of the Arrangement] seeking import relief with respect to wire rod from South Africa during the period of the South African Arranagement provided that Arrangement proves to be an effective alternative to the results of unfair trade cases as defined by the remedial provisions (offsetting unfair trade practices) of the order that will be terminated. To that end, Petitioners expressly do not waive any statutory rights to file such petitions as they may determine nor do they waive their right to take such other steps as may be provided by law.

It is Petitioners' understanding that the Arrangement with South Africa is a "bilateral arrangement" within the meaning of section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. Pursuant to those provisions and the requirements and terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of wire rod from South Africa that (i) is not accompanied by an export certificate and (ii) is not issued consistent with the quantitative limitations specifically applicable to South Africa as defined by the Arrangement.

We request that this letter be published together with the **Federal Register** notice of the initiation of the process required by Paragraph 2(a)(2) of the Arrangement. Petitioners will assume that the understandings contained herein are valid and, unless informed otherwise, will undertake to furnish the Department with such documentation as necessary to implement their expression of no objection to the initiation of the referenced legal process and its conclusion.

Respectfully submitted,

Charles Owen Verrill, Jr., Esq., Robert E. Nielsen, Esq., Wiley & Rein, 1776 K Street, NW., Washington, D.C 20006, (202) 429–7000

Counsel for Petitions: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc. Raritan River Steel Co.

David E. Birenbaum, Esq., Alan G. Kashdan, Esq., Fried, Frank, Harris, Shriver & Jacobson (A Partnership Including Professional Corporations), 600 New Hampshire Ave., NW., Washington, D.C. 20037, (202) 342–3500

Counsel for Petitioner: Atlantic Steel Co.

[FR Doc. 85–14851 Filed 6–19–85; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcement; Connecticut

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first eight months is estimated at $105,967 for the project performance of October 1, 1985 to May 31, 1986. The MBDC will operate in the Connecitcut Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and a minimum of $18,700 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is July 10, 1985. Applications must be postmarked on or before July 10, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264–3262.

Pre-Application Conference: A pre-application conference to assist all interested applicants will be held on June 25, 1985 at 10:00 AM in the Penthouse Suite, Robert N. Giaimo Federal Building, 150 Court Street, New Haven, Connecticut.

FOR FURTHER INFORMATION CONTACT: Rochelle K. Schwartz, Business Development Specialist, Boston District Office, (617) 223–3726.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of applications kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development Catalog of Federal Domestic Assistance

Dated: June 12, 1985.

Gina Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 85–14883 Filed 6–19–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; New Jersey

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve months is estimated at $158,950 for the project performance of October 1, 1985 to September 30, 1986. The MBDC will operate in the New Brunswick-Perth Amboy-Sayreville, New Jersey Metropolitan Statistical Area (MSA) and the adjoining counties of Mercer and Monmouth. The first year cost for the MBDC will consist of $158,950 in Federal funds and a minimum of $28,050 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services.)

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA support MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is July 10, 1985. Applications must be postmarked on or before July 10, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: June 12, 1985.

Gina Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 85–14884 Filed 6–19–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve months is estimated at $158,950 for the project performance of October 1, 1985 to September 30, 1986. The MBDC will operate in the Buffalo, NY Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $158,950 in Federal funds and a minimum of $28,050 in non-federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full

range of management and technical assistance; and service as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities

CLOSING DATE: The closing date for applications is July 10, 1985. Applications must be postmarked on or before July 10, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code-Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal-Domestic Assistance)

Dated: June 12, 1985.

Gina Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 85–14882 Filed 6–19–85; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A subgroup of the Plan Team for the North Pacific Fishery Management Council's Gulf of Alaska Groundfish Fishery Management Plan (FMP) proposes to meet in Seattle, WA, July 29–31, 1985, to prepare an outline and revision schedule for the Gulf of Alaska Groundfish FMP. The public meeting will convene at 9 a.m., July 29, in Room 2079 of the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle. On July 31, the full Plan team will meet at 2 p.m., PDT, via teleconference to review the subgroup's outline and make changes if necessary.

On September 9–13, the Gulf of Alaska Plan Team again will convene in Seattle to review 1985 survey results, prepare a status of stocks document and work on the FMP revision. The public meeting will convene at 9 a.m., on September 9, in Room 2079 of the Northwest and Alaska Fisheries Center. For further information contact Gary Stauffer, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Building 4, BIN C15700, Seattle, WA 98115; telephone: (206) 526–4247.

Dated: June 14, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–24812 Filed 6–19–85; 8:45 am]

BILLING CODE 3910–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will meet in Portland, OR, July 1–3, 1985, to review current groundfish landing statistics and project catches through the end of the year; review criteria for specifying the acceptable biological catch; review a request to move the southern boundary line for managing the Coumbia area to the north jetty at Coos Bay, OR; and consider the implications of removing widow rockfish, Pacific ocean perch, and sablefish from the optimum yield category and manage as harvest guideline species. Other matters to be considered include reviewing the Council's By-catch Committee recommendations and proposals for amending the fishery management plan.

For futher information contact Joseph C. Greenly, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: June 14, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–14813 Filed 6–19–85; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Sweden

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10–14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On April 25, 1985, the Federation of Swedish Industries submitted to the Secretary of Commerce a petition for the issuance of an interim order. Comments on the petition were requested on or before May 22, 1985, and a hearing was set for May 29, 1985. Requests to testify were received from the Semiconductor Industry Association (SIA) and the Federation of Swedish Industries.

At the May 25, 1985, hearing SIA testified in support of the issuance of an interim order. SIA urged that, in view of their areas of concern, any order issued should be limited to one year. The Federation of Swedish Industries urged that the order should issue for the full term of the Commissioner's authority. The Commissioner has determined that Sweden has demonstrated good faith efforts and reasonable progress toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue for one year from the date of signature of the order.

EFFECTIVE DATE: The effective date of this order shall be April 25, 1985, the date of receipt of the petition.

Termination Date: This order shall terminate on June 13, 1986, one year from its date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

a series of related images, however, fixed or encoded

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semi-conductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A); or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On April 25, 1985, the Federation of Swedish Industries submitted a petition for the issuance of an interim order. This petition included materials provided under the seal of the Swedish Ministry of Justice reporting on the work of a committee exploring the subject of chip protection in the context of the revision of the Swedish copyright law.

At the May 29, 1985, hearing, Mr. Hakan Sjostrom of the Federation of Swedish Industries explained the strong support of Swedish industry for legislation to protect semiconductor ships and mask works.

At the hearing, SIA presented its testimony and clearly stated that they "believe that the Swedish Government is making a good-faith effort to enact legislation that would provide protection on substantially the same basis as is provided under U.S. law." However, SIA urged that because "this proceeding is taking place at a fairly early state in the Swedish consideration of their law" that an interim order designating Sweden should be granted for a period not to exceed one year. They argued that this would permit a review of the progress toward developing legislation that provides protection equivalent to that under U.S. law. SIA also stated that they were unaware "of any cases in which Swedish nationals are engaged in the misappropriation or unauthorized copying of mask works."

Appearing in his capacity as chairman of the working group that is drafting the law in Sweden, and as an official of the Swedish Ministry of Justice, Mr. A. Henry Olsson explained in detail the work and progress underway in Sweden. He also explained that this activity is taking place in the context of the revision of the Swedish copyright law, and emphasized that the intention of his working group was to develop a law that would "basically correspond to the protection under the Semiconductor Chip Protection Act.

The record supports the conclusion that Sweden is engaged in good faith efforts to develop effective legislation to protect semiconductor chip products. However, we recognize that the report of the activities of the Swedish working group is not as specific as is the U.S. legislation. We have determined that, as urged by SIA, a review of progress would be appropriate, but the order should be long enough to permit Sweden to make significant progress toward developing its own legislative proposals. Accordingly, this order will endure one year from its date of signature. This will permit a review of progress on a timely basis without unduly burdening either the parties to this proceeding or the Government.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Sweden

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on May 2, 1985, I find that: Sweden is and has, since April 25, 1984, been making good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); Swedish nationals, domiciliaries and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Sweden are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be April 25, 1985 and this order shall terminate on June 13, 1986, one year from its date of signature.

Dated: June 13, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85–14863 Filed 6–19–85; 8:45 am]

BILLING CODE 3510-16-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84-1 83CD]

Clarification of Order Directing Partial Distribution of 1983 Cable Royalty Fees; Correction

In FR Doc. 85-14377 appearing on page 24929 in the issue of Friday, June 14, 1985, make the following correction:

Program Suppliers		69.2982
(MPAA & SIN	68.0508)	
(Multimedia	6930)	
(NAB	5544)	
Joint Sports Claimants		14.8496
Public Television		5.1974
National Association of Broadcasters		4.4549
Music Claimants		4.2074
Devotional Claimants		1.0000
Canadian Claimants		0.7425
National Public Radio		0.2500
		100.0000

Dated: June 14, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85-14794 Filed 6-19-85; 8:45 am]

BILLING CODE 1410-15-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday and Wednesday, July 16-17, 1985.

Times and places: 0800-1600 hours (Closed at Depot Systems Command, Chambersburg, Pennsylvania on July 16; 0800-1600 hours (Closed) at Pentagon, Washington, DC on July 17.

Agenda: The Mobilization Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet on July 16 to receive briefings and conduct a fact-finding session at DESCOM and on July 17 for report preparation at the Pentagon. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-14833 Filed 6-19-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Monday thru Wednesday, July 22-24, 1985.

Times of meeting: 0800-1700 hours (Closed) both days.

Places: Pentagon, Washington, D.C. 20310-0103.

Agenda: The Army National Guard Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet to study the documentation, assembled to date; to discuss findings; to identify the critical issues; to develop a plan to obtain additional documentation and to develop a draft of the subpanel's findings and recommendations. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereuf, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-14832 Filed 6-19-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Erie County, NY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS); for a proposed flood control study on Cazenovia Creek, in the town of West Seneca, Erie County, New York, which is being done under Section 205 of the 1948 Flood Control Act. The DEIS will accompany the Draft Detailed Project Report.

Proposed Action

The proposed action would provide for construction of an ice retention structure in the Cazenovia Creek floodplain in the town of West Seneca, NY. The purpose of the ice retention structure would be to retain ice formed in the headwaters of Cazenovia Creek. The primary effect of retaining ice formed in the headwaters would be to reduce ice jamming and attendant flooding downstream from the ice retention structure. The structure would include a low reinforced concrete dam, a stilling pool, and an overflow area. The dam, comprised of a two-stage weir, would extend across Cazenovia Creek at a site approximately 2,300 feet upstream of Mill Road. It would be about 900 feet long and its low stage weir would extend 250 feet from the high south bank of the creek, across the creek and into the present floodplain. The dam would include a 4-foot high, 6-foot wide gated opening to permit drainage of the stilling pool during the period of the year that the ice retention function is not needed. In normal wintertime operation, the stilling pool would have a depth of about 6 feet and a surface area of about 10 acres. The high stage weir would extend from the low-stage weir the remaining distance across the floodplain to the north side of the valley. This part of the dam would stand approximately 4 feet about the surface of the floodplain near the creek.

Alternatives Considered

The No Action alternative, as well as a number of nonstructural and structural flood damage reduction alternatives were initially investigated in developing solutions to flood-related problems. Each alternative was examined as to engineering, environmental, and economic characteristics. The No Action alternative implies that the Federal Government acting through the Corps of Engineers, would make no structural or nonstructural modifications to reduce flood damages. This alternative was rejected because a feasible alternative (the proposed plan) with a benefit/cost ratio greater than one was identified. Other alternatives considered, but rejected on the basis of having a benefit/cost ratio of less than one were as follows: Local Protection (levee-floodwall measure) in Reach 3 and Floodplain Management; Floodproofing in Reach 3 and Floodplain Management; Diversion of Floodwaters from Tannery Brook to a tributary of Buffalo Creek; Flood Retention Reservoir Site 1 on Cazenovia Creek (approximately 2 miles upstream of Springbrook, NY); Levee and Floodwall construction in Reach 1; Levee and Floodwall construction in Reach 2; Levee and Floodwall construction in Reach 3 and Channel Alignment—this alternative involves constructing two levees, a 3-foot high sheet pile floodwall, riprap bank protection and relocation of a portion of the creek channel (along West Willowdale Drive near Parkside Drive); Levee and Floodwall Construction in Reach 3 and Channel Alignment—this alternative involves levee construction as well as relocation of the creek

channel upstream from Parkside Drive and enlargement of the channel between Ridge Road and the Union Road Bridges; Floodproofing in Reach 1, Floodproofing in Reach 2, and Floodproofing along Tannery Brook—each of these floodproofing alternatives provides for modification of buildings in the floodplain to reduce potential for flood damages.

Public Involvement

A number of meetings were held relative to the Cazenovia Creek Flood Control Study, in order to obtain public views on problems and needs, as well as on various alternatives for water resource development. Public meetings were held on 11 January 1959; 29 June 1971 (by NYS Department of Environmental Conservation—NYSDEC); 28 August 1973 (by the Southgate Homeowner's Association of West Seneca); in addition, several informal meetings and one formal public meeting (11 December 1973) were held; a meeting was held on 26 November 1974 at the Allendale Junior High School to discuss feasibility of an ice retention structure; on 18 May 1977, the Corps District Engineer met with representatives of the Erie and Niagara Counties Regional Planning Board and their Utilities Committee, whereby the Board reiterated that they were in favor of the ice retention project. Recently, a meeting was held by the Corps on 30 May 1985 at the West Seneca Town Hall where the ice retention structure plan as developed by the Corps Cold Regions Research and Engineering Laboratory (CRREL) was presented to the public.

Federal agencies providing advice and input through the course of the flood control study include the U.S. Soil Conservation Service, Forest Service, U.S. Fish and Wildlife Service, Bureau of Outdoor Recreation, and the Environmental Protection Agency. State agencies that the Corps maintained a close liaison with were the NYSDEC, Erie and Niagara Counties Regional Planning Board, and the Erie and Niagara Basin Regional Water Resources Planning Board. Contact was also maintained with the following county and town interests: Erie County, City of Buffalo, Town of West Seneca, Village of East Aurora, Town of Elma, and Town of Aurora.

Issues

Significant issues to be addressed in the DEIS include a determination of the extent to which the selected plan and any feasible alternatives might positively or negatively impact upon the natural and human environment—to include air quality, water quality, fish and wildlife, noise, aesthetics, community, and regional growth and development, health and safety, and cultural resources.

Review and Compliance

The study shall be conducted so as to comply with the various Federal and State environmental statutes and Executive Orders and associated review procedures. When the Detailed Project Report and accompanying DEIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be reviewed under the National Environmental Policy Act procedures.

Scoping Meetings: Since Federal, State, and local interests have been involved during formulation of the proposed project and because a recent public meeting was held outlining the ice retention structure proposal, adequate coordination has already been conducted; therefore, no further scoping meetings are anticipated.

Availability

The combined document consisting of the Draft Detailed Project Report and Draft Environmental Impact Statement will be made available to the public on or about 15 November 1985.

ADDRESS: Questions concerning preparation of the Draft Environmental Impact Statement can be answered by Mr. Tod Smith, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, (716) 876-5454 or FTS 473-2173.

Dated: June 6, 1985.

Robert R. Hardiman,

Colonel, Corps of Engineers District Commander.

[FR Doc. 85-14878 Filed 6-19-85; 8:45 am]

BILLING CODE 3710-GP-M

Defense Intelligence Agency

Membership of the Defense Intelligence Agency (DIA) Performance Review Committee

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice of Membership of the Defense Intelligence Agency Performance Review Committee.

SUMMARY: This notice announces the appointment of members of the Performance Review Committee (PRC) of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service. The Publication of PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive Service Performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Alice F. Titus, Chief, Employee Services Division, Directorate for Human Resources, Defense Intelligence Agency, Washington, D.C. 20301-6111, (202) 373-2669.

SUPPLEMENTARY INFORMATION: In accordance with 10 U.S.C. 1601(a)(4), the following are names and titles of those who have been appointed to serve as members of the Performance Review Committee. They will serve a one-year renewable term, effective July 31, 1985.

Mr. Paul LaBar, Executive Director (Chairman)
RADM Robert W. Schmitt, USN, Deputy Director for JCS Support
COMO Thomas A. Brooks, USN, Assistant Deputy Director for Collection Management
Mr. Robert K. Little, Deputy Director for Resources and Systems
Mr. John T. Berbrich, Vice Assistant Deputy Director for Estimates

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1985.

[FR Doc. 85-14834 Filed 6-19-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Membership of the Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA), DOD.

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance awards to the Director, DMA.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: James W. Willis, Defense Mapping Agency, Civilian Personnel Division, Bldg. 56, U.S. Naval Observatory,

Washington, D.C. 20305, telephone (202) 653–1670.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DMA PRB. They will serve a 1-year renewable term effective July 1, 1985.

Brig. Gen. David M. Goodrich, USAF, Deputy Director, Headquarters, DMA
BG Robert H. Ryan, USA, Director for Plans and Requirements, Headquarters, DMA
Mr. Lawrence F. Ayers, Deputy Director, Management and Technology, Headquarters, DMA
Mr. Robert J. Beaton, Associate Deputy Director for Hydrography, Headquarters, DMA
Dr. Mark M. Macomber, Deputy Director for Systems and Techniques, Headquarters, DMA
Mr. Allen E. Anderson, Deputy Director for Programs, Production and Operations, Headquarters, DMA
Mrs. Eloise W. Manifold, Director of Personnel, Headquarters, DMA
Mr. John R. Vaughn, Comptroller, Headquarters, DMA
Dr. Charles F. Martin, Chief, Advanced Technology Division, Directorate for Systems and Techniques, Headquarters, DMA
Mr. William P. Durbin, Assistant Deputy Director for Plans and Requirements, Headquarters, DMA
Mr. Thomas O. Seppelin, Assistant Deputy Director for Production and Distribution, Headquarters, DMA
Mr. Charles D. Hall, Assistant Deputy Director for Programs, Headquarters, DMA
Mr. Charles W. Leslie, Deputy Comptroller/Chief, Program, Budget Division, Headquarters, DMA
Dr. Kenneth L. Daugherty, Technical Director, DMA Hydrographic/Topographic Center
Mr. Edward F. Finnegan, Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Mr. Paul Peeler, Technical Director, DMA Aerospace Center
Mr. James R. Skidmore, Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Mr. Penman R. Gilliam, Director, DMA Special Program Office for Exploitation Modernization
Mr. Lon M. Smith, Deputy Director, DMA Special Program, Office for Exploitation Modernization
Mr. William M. Cassell, Comptroller, Headquarters, Defense Logistics Agency

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 17, 1985.

[FR Doc. 85–14831 Filed 6–19–85; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Open 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 Panel on Navy Artificial Intelligence R&D will meet on 8 July 1985 and 9 July 1985 at Woods Hole Oceanographic Institution, Woods Hole, Massachusetts. The first session of the meeting will commence at 10:00 A.M. and terminate at 4:30 P.M. on July 8. The second and final session will commence at 8:00 A.M. and terminate at 4:30 P.M. on July 9. All sessions of the meeting will be open to the public.

The purpose of the meeting is to receive technical briefings from industry and university representatives in order to develop a working definition of artificial intelligence suited to Navy needs; determine the current state of R&D and evaluate its' relevance to Navy needs; establish criteria for evaluating potential applications of artificial intelligence in the Navy and identify the most beneficial applications for the Navy in combat and non-combat roles; identify commercial applications that may be readily adapted to Navy needs; and propose mechanisms for bringing existing artificial intelligence technology to the Navy. The agenda will include presentations and discussions by industry and university representatives on expert systems, natural language, robotics, training, and basic research in artificial intelligence.

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 June 17, 1985.

William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–14937 Filed 6–19–85 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 will meet July 8–12, 1985 and July 15–19, 1985, at Woods Hole Oceanographic Institution, Woods Hole, Massachusetts. Sessions of the meeting will commence at 8:00 A.M. and terminate at 5:00 P.M. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research. The agenda will include briefings and presentations pertaining to Aircraft Modernization Requirements; Naval Special Warfare; Artificial Intelligence; Mid-Depth Sea Floor Technology; Joint C^3 Interoperability; and other research currently being conducted by the Navy. 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: June 17,1985.

William F. Ross, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–14936 Filed 6–19–85; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–161–000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1985.

Take notice that on June 12, 1985, Colorado Interstate Gas Company (CIG) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 36
Second Revised Sheet No. 42
First Revised Sheet No. 45A
Fourth Revised Sheet No. 56
Fourth Revised Sheet No. 61.

The proposed effective date for the sheets is July 15, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14842 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-498-002]

The Inland Gas Company, Inc.; Tariff Filing

June 14, 1985.

Take notice that on May 24, 1985, The Inland Gas Company, Inc. (Inland) tendered for filing the following tariff sheets with a proposed effective date of July 1, 1985:

First Revised Volume No. 1

Second Revised Sheet No. 1, Superseding First Revised Sheet No. 1

Original Sheet No. 10
Original Sheet Nos. 20 through 23, inclusive
Original Sheet Nos. 30 through 41, inclusive

This filing adds Rate Schedule ITS and General Terms and Conditions to Inland's First Revised Volume No. 1 Tariff and revises the Index to that Tariff. It also corrects an inadvertent error in Inland's May 16, 1985 filing of Original Sheet No. 10. The ITS Rate Schedule sets forth the terms pursuant to which Inland will perform interruptible transportation for interstate pipelines, local distribution companies and certain end-users. Inland has requested that the ITS Rate Schedule and related tariff sheets be accepted for filing and become effective on July 1, 1985.

A copy of Inland's tariff filing was served upon each of its affected customers. Also, a copy of Inland's tariff filing is available for public inspection during regular business hours in its offices at 340 Seventeenth Street, Ashland, Kentucky 41101.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14843 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-498-001]

The Inland Gas Company, Inc.; Filing

June 14, 1985.

Take notice that on May 16, 1985, The Inland Gas Company, Inc. (Inland) tendered for filing Original Tariff Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheet bears an issue date of May 16, 1985 and an effective date of July 1, 1985.

Inland states that the foregoing tariff sheet is being filed pursuant to the Commission's Order issued August 21, 1984 approving a Stipulation and Agreement in the above-captioned dockets. Inland further states that the subject tariff sets forth a proposed transportation rate, plus retainage, to be effective July 1, 1985.

A copy of Inland's tariff filing was served upon each of its affected customers. Also, a copy of Inland's tariff filing is available for public inspection during regular business hours in its offices at 340 Seventeenth Street, Ashland, Kentucky 41101.

Any person desiring to be heard or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 21, 1985. 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 Inland's tariff and the proposed revision are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14844 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8307-001]

Jack A. Shaffer; Surrender of Preliminary Permit

June 17, 1985.

Take notice that Jack A. Shaffer, Permittee for the Cedar-Willow Creek Power Project, FERC No. 8307, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8307 was issued on September 28, 1984, and would have expired on February 28, 1986. The project would have been located on Cedar and Willow Creeks, in Humboldt County, California.

The Permittee filed the request on May 15, 1985, and the preliminary permit for Project No. 8307 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14845 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8353-001]

Jack A. Shaffer; Surrender of Preliminary Permit

June 17, 1985.

Take notice that Jack A. Shaffer, Permittee for the Madden Creek Power Project, FERC No. 8353, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8353 was issued on October 25, 1984, and would have expired on March 31, 1986. The project would have been located on Madden Creek, in Humboldt County, California.

The Permittee filed the request on May 15, 1985, and the preliminary permit for Project No. 8353 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following

that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14846 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-162-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1985.

Take notice that Southern Natural Gas Company (Southern) on June 12, 1985, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

First Revised Sheet No. 40
Fourth Revised Sheet No. 41
Original Sheet No. 41A

The proposed effective date of the sheets is July 15, 1985.

Southern's present Section 13 of the General Terms and Conditions provides that a purchaser may, within any 12 month period, decrease its contract demand at any delivery point if that purchaser or another purchaser or other purchasers increase their contract demands at other delivery points in total amount equal to the decrease, provided that the increased contract demand can be delivered without investment in new facilities (except minor measurement or delivery facilities) by Southern. As proposed, revised Section 13 of the General Terms and Conditions would allow each of Southern's resale customers, subject to Southern's ability to deliver the gas, an opportunity to receive a pro rata share of the contract demand made available when one of Southern's resale customers requests a reduction in its total contract demand in an amount greater than 1,000 Mcf. In addition, all customers desiring to increase their total contract demands would be entitled, subject to the ability of Southern to deliver the gas, to receive 5 Mcf as a minimum share of the contract demand made available.

Copies of this filing have been served upon Southern's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14847 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-156-001]

Valero Interstate Transmission Co.; Corrected Filing

June 14, 1985.

Take notice that on June 12, 1985, Valero Interstate Transmission Company (Vitco) tendered for filing the following substitute tariff sheets correcting its previous filing of May 31, 1985 in Docket No. RP85-156-000:

FERC Gas Tariff, Original Volume No. 1

Substitute 8th Revised Sheet No. 14 superseding 7th Revised Sheet No. 14

FERC Gas Tariff, Original Volume No. 2

Substitute 2nd Revised Sheet No. 6 superseding 1st Revised Sheet No. 6

Vitco's filing of May 31, 1985 for the purpose of reinstating its base tariff rates did not correctly reflect gas costs consistent with Vitco's PGA effective June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14848 Filed 6-19-85; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. ID-2181-000]

Virgil C. Summer; Application

June 13, 1985.

Take notice that on May 17, 1985, Virgil C. Summer (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, South Carolina Electric & Gas Company
Chief Executive Officer, South Carolina Electric & Gas Company
Chairman of Board, South Carolina Electric & Gas Company
Director, South Carolina Generating Company, Inc.
Chairman, South Carolina Generating Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14849 Filed 6-19-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Policy on Distribution of Potassium Iodide Around Nuclear Power Sites for Use as a Thyroidal Blocking Agent

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Issuance of Federal Policy.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is publishing this notice to provide guidance to State and local agencies responsible for radiological emergency planning and preparedness regarding the distribution of potassium iodide for use as a thyroidal blocking agent by the general public in the vicinity of nuclear power plants. The

Federal Emergency Management Agency (FEMA) chairs the FRPCC, thereby assuming the responsibility for this publication.

FOR FURTHER INFORMATION CONTACT: Gerard W. Smith, Technological Hazards Division, Office of Natural and Technological Hazards Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, 202–646–2869.

SUPPLEMENTARY INFORMATION:

Background

This guidance on distribution of potassium iodide as a thyroidal blocking agent to the general public in the vicinity of nuclear power plants is part of a Federal interagency effort coordinated by the Federal Emergency Management Agency (FEMA) for the Federal Radiological Preparedness Coordinating Committee (FRPCC). FEMA issued a final regulation in the Federal Register of March 11, 1982, (47 FR 10758), which reflected governmental reorganizations and reassigned agency responsibilites for radiological incident emergency response planning. A responsibility assigned to the Department of Health and Human Services (HHS) and in turn delegate to the Food and Drug Administration (FDA) is the responsibility to provide guidance to State and local governments on the use of radioprotective substances and prohylactic use of drugs (e.g. potassium iodide) to reduce radiation dose to specific organs including dosage and projected radiation exposures at which such drugs should be used.

In the **Federal Register** of June 29, 1982 (47 FR 28158), FDA published recommendations for State and local agencies regarding the projected radiation dose to the thyroid gland at which State and local health officials should consider the use of potassium iodide. The recommendations stated that: (1) Potassium iodide be used during radiation emergencies by people who are likely to receive more than 10 to 20 rads to the thyroid. (2) The drug at the recommended doses could block at least 90 percent of radioiodine absorption if the first dose is given shortly before or immediately after exposure to radioiodine. The drug could still block 50 percent of radioiodine uptake if the first dose is administered within 4 hours after exposure. (3) State and local officials should establish a system for informing the public how to use potassium iodide, how to report side effects of the drug, and how to get treatment for any adverse reactions.

The guidance published here contains the rationale on the use of potassium iodide for emergency workers and institutionalized individuals. It also incorporates the considerations that should be made in deciding to implement the distribution and use of potassium iodide for the general population. The decisions on distribution and use of potassium iodide for thyroidal blocking to protect the public health and safety resides with the State and, in some cases, local health authorities. It suggests that any decision by State and local authorities to use potassium iodide should be based on the site environment and conditions at the time of an emergency for the specific operating commercial nuclear power plant and should include detailed plans for distribution, administration, and medical assistance.

The Federal position with regard to the predistribution or stockpiling of potassium iodide for use by the general public is that it should not be required.

Richard W. Krimm,

Chairman, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 85–14810 Filed 6–19–85; 8:45 am]

BILLING CODE 6718-01-M

[Docket No. FEMA–REP–5–WI–2 and FEMA–REP–5–WI–3]

The Wisconsin Radiological Emergency Response Plans Site-Specific for the Kewaunee and Point Beach Nuclear Power Plants

ACTION: Certification of FEMA Findings and Determinations.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Wisconsin submitted its plans relating to the Kewaunee and Point Beach Nuclear Power Plants to the Director of FEMA Region V on April 6, 1981, for FEMA review and approval. On August 30, 1984, the Regional Director forwarded his evaluations to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in the evaluations are reviews of the State and local plans around the Kewaunee and Point Beach facilities, and evaluations of the joint exercises conducted on January 21, 1981, March 9, 1982, November 1, 1983, and June 19, 1984, in accordance with § 350.9 of the FEMA rule. A report of the public meeting held on January 22, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule was also included.

Based on the evaluations by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Kewaunee and Point Beach Nuclear Power Plants are adequate to protect the health and safety of the public living in the vicinity of the plants. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approvals is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG–0654/FEMA–REP–1, Revision 1 and FEMA–43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants."

FEMA will continue to review the status of offsite plans and preparedness associated with the Kewaunee and Point Beach Nuclear Power Plants in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket Files FEMA–REP–WI–2 and FEMA–REP–5–WI–3 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: June 14, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–14809 Filed 6–19–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

First Railroad & Banking Company of Georgia and First Financial Management Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y [12 CFR 225.23 (a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Georgia*, Augusta, Georgia through *First Financial Management Corporation*, Atlanta, Georgia; to acquire Decimus Data Services Corporation, located in the following cities: Chicago, Illinois; Piscataway, New Jersey; Nashville, Tennessee; Knoxville, Tennessee; Pittsburgh, Pennsylvania; Boston, Massachusetts; and Columbia, South Carolina.

Board of Governors of the Federal Reserve System, June 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14814 Filed 6-19-85; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan & Co. Inc.; Proposal To Engage in Commercial Paper Advisory and Placement Activities

J.P. Morgan & Co. Incorporated, 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 in the activities of acting as agent for issuers of short-term notes exempt from registration under the Securities Act of 1933 ("commercial paper"). In addition to acting as agent for issuers of commercial paper, Company may provide advisory services to the issuer consisting of information concerning market conditions, Company's views on the preferred maturities and yields in the market, and assistance in preparing brochures to be sent to prospective investors summarizing the issuer's business and generally providing summary financial data.

Applicant would engaged in the activities indirectly through J.P. Morgan Securities Inc., New York, New York ("Company"), which is a wholly-owned subsidiary of Applicant's direct subsidiary, J.P. Morgan Securities Holdings Inc., New York, New York. Company is currently engaged in underwriting and dealing in securities that a state member bank may underwrite and deal in under the Glass-Steagall Act, including U.S. government securities, money market instruments and, through a wholly-owned subsidiary, J.P. Morgan Municipal Finance Inc., certain municipal securities. Applicant proposes to expand Company's activities by transferring to it the commercial paper placement activities currently being performed by Applicant's banking subsidiary, Morgan Guaranty Trust Company of New York. The activities would be performed through Company's offices in New York, serving customers in the United States and abroad.

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." The Board has not previously approved the proposed activities for bank holding companies.

Applicant states that the activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis that banks engage in the activities, and because the activities are the functional equivalent of extending a short-term commercial bank loan to customers.

Commercial paper constitutes a security for purposes of the Glass-Steagall Act, which restricts the third party securities activities of banks and affiliates of banks. Section 20 of that Act (12 U.S.C. 377) prohibits affiliates of banks from being "engaged principally in the issue, flotation, underwriting, public sale, or distribution" of securities. In Applicant's opinion, it would not be engaged in such activities on the basis that the activities are limited to acting solely as agent for the customer and would not involve a public distribution of securities. The Board recently ruled that such activities conducted by Bankers Trust Company, a state member bank, would not violate the Glass-Steagall Act provisions applicable to banks on that basis. *Statement Concerning Applicability of the Glass-Steagall Act to the Commercial Paper Placement Activities of Bankers Trust Company*, (Press Release dated June 4, 1985).

Applicant also states that it would not be "engaged principally" in such activities on the basis of a test that would limit the amount of commercial paper placement activity relative to the total activity conducted by Company. Under the test stated by Applicant, the gross income to be derived from Company's commercial paper activities would not, during any rolling two year period, exceed 5 percent of the gross income of Company, measured on a consolidated basis that would include the income derived from Company's U.S. government securities and money market instruments business as well as the income derived from the municipal securities business of Company's subsidiary, J.P. Morgan Municipal Finance Corp.

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 test proposed by the Applicant, which is based on a percentage of the affiliate's total business activities, measured in terms of gross income. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate. While the Board has decided to publish J.P. Morgan's proposal for comment, the Board does not thereby take any position on the "engaged principally" issue under the Glass-Steagall Act or other issues raised by the proposal.

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to

produce benefits to the public, such as greater convenience increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why 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 hearings, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the officers of the Board of Governors or the Federal Reserve Bank of New York.

Any views or 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.

Board of Governors of the Federal Reserve System, June 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-14815 Filed 6-19-85; 8:45 am]

BILLING CODE 6210-01-M

Peconic 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 July 12, 1985.

A. Federal Reserve Bank of New York (A. Mashall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Peconic Bancshares, Inc.*, Riverhead, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Peconic Bank, Riverhead, New York.

2. *Grand Bancorp*, Grand Bay, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Mobile County Bank, Grand Bay, Alabama.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hastings Bancorp, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring 96.7 percent of the voting shares of Hastings State Bank, Hastings, Nebraska.

2. *York State Company*, York Nebraska; to acquire 100 percent of the voting shares of The Gresham Company, Gresham, Nebraska, thereby indirectly acquiring Gresham State Bank, Gresham, Nebraska.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Laredo Bankcorp, Inc.*, Zapata, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Falcon National Bank, Laredo, Texas, a *de novo* bank.

2. *Zapata Bancshares, Inc.*, Zapata, Texas; to acquire 51 percent of the voting shares of The First National Bank of Mercedes, Mercedes, Texas.

3. *Zapata Bancshares, Inc.*, Zapata, Texas; to acquire 80 percent of the voting shares of Laredo Bankcorp, Inc., Zapata (a *de novo* bank), thereby indirectly acquiring Falcon National Bank, Laredo, Texas (a *de novo* bank).

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Salt Lake Holding Corp.*, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Sand State Bank, Sandy, Utah.

Board of Governors of the Federal Reserve System, June 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14816 Filed 6-19-85; 8:45 am]

BILLING CODE 6210-01-M

Valley Utah Bancorporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writtten 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 application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1985.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. *Valley Utah Bancorporation*, Salt Lake City, Utah; to engage *de novo* through its subsidiary, Valley Utah Insurance Company, Salt Lake City, Utah, in acting as principal, agent or broker for insurance directly related to an extension of credit by any of the subsidiaries of Valley Utah Bancorporation and for which the insurance is limited to assuring the repayment of the outstanding balance

due on a specific extension of credit by a subsidiary of the bank holding company in the event of the death or disability of the debtor, pursuant to § 225.25(b)(8) of Regulation Y. Applicant will also act as a reinsurer or credit-related insurance that is directly related to an extension of credit by the bank holding company system, pursuant to § 225.25(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, June 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14817 Filed 6-19-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 84V-0074 et al.]

Availability of Approved Variances for Sunlamp Products

Correction

In FR Doc. 85-13713 beginning on page 24048 in the issue of Friday, June 7, 1985, make the following corrections:

On page 24049, in the table, under the heading for "Sunlamp product", in the third, fifth, ninth and eleventh lines, remove the words "or imported".

BILLING CODE 1505-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. July 23 and 24, 9 a.m., Director's Conference Room, Building 13, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open committee discussion, July 23, 9 a.m. to 5 p.m.; open public hearing, July 24, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12:30 p.m.; Ronald F. Coene, National Center for Toxicological Research (NCTR) (HFA-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the board. The board advises the Director, NCTR, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The board provides the extra-agency review in ensuring that research programs and methodology development at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open board discussion. The board will continue discussions on research initiatives for the NCTR in the following areas: the evaluation of the assumptions underlying risk assessment and modulating factors in toxicology. Additional items are being considered for review by the board, and a final agenda will be available on request on July 15, 1985, by communicating with the contact person.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. July 25 and 26, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 25, 9 a.m. to 10 a.m.; open committee discussion, July 25, 10 a.m. to 5 p.m.; July 26, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss NDA 18-981, Encainide (Enkaid) for use as an anti-arrhythmic agent, Bristol-Myers Co.; NDA 19-151, Propafenone (Rhythmonorm), for use as an anti-arrhythmic agent, Knoll Pharmaceutical Co.; Guidelines for Study of Anti-Anginal Agents.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who

does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 13, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–14796 Filed 6–19–85; 8:45 am]

BILLING CODE 4160–01–M

Dermatologic Drugs Advisory Committee; Meeting Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice to reflect the deletion of one agenda item. The announcement of the Dermatologic Drugs Advisory Committee meeting, which was published in the **Federal Register** of June 4, 1985 (50 FR 23520), is revised to read as follows:

Dermatologic Drugs Advisory Committee

Date, time, and place. June 24, 9 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Etretinate (Hoffmann-La Roche, Inc.); (2) prescription topical antibiotics for the treatment of skin infections, pseudomonic acid (Beecham Labs); and (3) Lindance (Reed & Carnrick).

Dated June 13, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–14797 Filed 6–19–85; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Cancer Therapeutics Program Project Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, August 29, 1985, Building 31C, Conference Room 7, Bethesda, Maryland 20205. This meeting will be open to the public on August 29, from 8:00 a.m. to 8:30 a.m., to review administrative details. 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. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 29, from approximately 8:30 a.m. until adjournment for the review, discussion and evaluation of 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.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Eric Jurrus, Executive Secretary, Cancer Therapeutics Program Project Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20205 (301/496–2330) will furnish substantive program information.

Dated: June 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–14807 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, July 26, Building 31, Conference Room 7, Bethesda, Maryland 20205. This meeting will be open to the public on July 26, from 8:30 A.M. to 9:00 A.M. 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. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 26 from 9:00 A.M to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575) will provide program information.

Dated: June 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–14806 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Frederick Cancer Research Facility Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Frederick Cancer Research Facility Advisory Committee, National Cancer

Institute, 8:30 a.m.–5:00 p.m., July 1–2, 1985. The meeting will be held in Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland, 20205.

This meeting will be open to the public on July 1 from 8:30 a.m. to recess for the regular status report, presentations on AIDS vaccine and intervention, and future planning needs for the committee. 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 from 9:30 a.m. to adjournment on July 2, for review, discussion, and evaluation of individual projects and programs conducted by the contractor for the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Berge Hampar, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701 (301–695–1108) will furnish substantive program information.

Dated: June 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–14803 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 25–26, 1985, at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 8:30 a.m. to approximately 1:30 p.m. on July 25, and from 8:30 a.m. to approximately 9:30 a.m. on July 26 to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). 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. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 25 from approximately 1:30 p.m. to 5:00 p.m. and on July 26 from approximately 9:30 a.m. to adjournment for the review, discussion and evaluation of the individual grant applications submitted to the Minority Biomedical Research Support Program (MBRSP). These applications and discussions could revel 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, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20205, telephone (301) 496–5545, will provide a summary of meeting and a roster of panel members. Dr. Ethel B. Jackson, Executive Secretary of the General Research Support Review Committee (GRSRC), Building 31 Room 5B11, Bethesda, Maryland 20205, telephone (301) 496–4390, will furnish substantive program information upon your request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: June 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–14802 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 12–13, 1985, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on September 12 for the discussion of program policies and issues. Attendance by the public is 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 Council meeting will be closed to the public from approximately 8:30 a.m. on September 13 until adjournment 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. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institute of Health, Bethesda, Maryland 20205, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Samuel H. Joseloff, Executive Secretary of the Council, Westwood Building, Room 7A–15, (301) 496–7548, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institute of Health)

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–14808 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 29–30, 1985, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public from 9:00 a.m. to approximately 10:30 on July 29, for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m., on July 29, to adjournment on July 30, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Carol Shreffler, Executive Secretary, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–14805 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

NIDR Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, July 17–18, 1985, Forest Hills Conference Room, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 9:30 a.m. July 17 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. July 17 to adjournment July 18 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.

Dr. H. George Hausch, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 507, Bethesda, MD 20205, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health)

Dated: June 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–14804 Filed 6–19–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

California Condor; Emergency Exemption; Issuance

By letter of June 7, 1985, the Director of the Patuxent Wildlife Research Center applied for an amendment to permit number PRT–682928 to authorize the taking from the wild of two additional California condors (*Gymnogyps californianus*) for enhancement of propagation and survival. The letter also asked for an emergency waiver of the 30-day public comment period required by section 10(c) of the Endanger Species Act. Permit PRT–682928 already authorized the take of one unpaired female condor to mate with a captive adult male.

It was determined by the U.S. Fish and Wildlife Service that an emergency does in fact exist, and that no reasonable alternative is available to the applicant, for the following reasons:

a. As far as can be determined, the wild population has declined from 18 birds to nine since 1983 for unknown reasons;

b. There appears to be only one nesting pair in the wild this year, down from five pairs last year;

c. The captive population (with one exception) will not reach breeding age for several years, and this may be the last chance to enlarge the gene pool in captivity on a potentially immediate breeding basis; and

d. Because the hot season is advancing rapidly, temperatures within the next week or so will preclude capture because of the potential for mortality through heat prostration.

Therefore, on June 12, 1985, PRT–682928 was amended to authorize take of two additional adult birds (one of each sex), with an emergency waiver of the 30-day public comment period.

Dated: June 17, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–14862 Filed 6–19–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Plan for the Use and Distribution of the Pala Band of Mission Indians Judgment Funds in Docket 80–A Before the United States Claims Court

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 10, 1984, in satisfaction of the award granted to the Pala Band of Mission Indians before the United States Claims Court in Docket 80–A. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated December 31, 1984, and was received (as recorded in the Congressional Record) by the Senate on January 29, 1985, and by the House of Representatives on January 21, 1985. The plan became effective on May 1, 1985 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

To Provide for the Use of the Pala Band's Judgment Funds in Docket 80–A before the United States Claims Court

The funds of the Pala Band appropriated January 10, 1984, in Docket 80–A before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be invested by the Secretary of the Interior and utilized by the tribal governing body on a budgetary basis, subject to the approval of the Secretary, for tribal

social and economic development programs which may include the expansion of the domestic water system, home improvement projects and a land acquisition program.

None of the funds made available under this plan are for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for benefits in excess of $2,000, any Federal or federally assisted programs.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-14876 Filed 6-19-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM 46277]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisions of Pub. L. 97-451, Read & Stevens, Inc., petitioned for reinstatement of oil and gas lease NM 46277 covering the following described lands located in Lea County, New Mexico:

T. 22 S., R. 32 E., NMPM, New Mexico
Sec. 23, E½SE¼.
Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, October 1, 1984.

Dated: June 13, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85-14871 Filed 6-19-85; 8:45 am]

BILLING CODE 4310-FB-M

Colorado; Filing of Plats of Survey

June 12, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., June 12, 1985.

The plat, representing the dependent resurveys of a portion of the north boundary and subdivisional lines, a portion of the Maysville Townsite, Homestead Entry Survey No. 98, and Mineral Survey No. 1165, Copper King lode, and the survey of the subdivision of sections 2 and 3, T. 49 N., R. 7 E., New Mexico Principal Meridian, Colorado, Group No. 732, was accepted May 24, 1985.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the survey of the subdivision of sections 7 and 18, T. 49 N., R. 8 E., New Mexico Principal Meridian, Colorado, Group No. 732, was accepted May 24, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

The supplemental plat prepared to create lots in section 33, T. 41 N., R. 4 W., New Mexico Principal Meridian, Colorado, was accepted May 30, 1985.

This plat was prepared to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-14877 Filed 6-19-85; 8:45 am]

BILLING CODE 4310-84-M

[NM-52389]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 725.72-acre withdrawal for the Bureau of Reclamation continue for an additional 75 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of February 13, 1919, be continued for a period of 75 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 30 N., R. 7 W.,
Sec. 20, Lots 1, 2, E½NW¼, NW¼SW¼.
T. 31 N., R. 7 W.,
Sec. 30, Lots 5, 7, 8, 11, 12, S½NE¼, NW¼NE¼, NE¼NW¼;
Sec. 31, Lots 5, 6, 9, 10, 13, 14.
T. 30 N., R. 8 W.,
Sec. 24, N½NE¼, SE¼NE¼.

The area described contains 725.72 acres in Rio Arriba and San Juan Counties.

The purpose of the withdrawal is for use in connection with the Navajo Dam and Reservoir of the Colorado River Storage Project.

The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons whom wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 7, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-14885 Filed 6-19-85; 8:45 am]

BILLIND CODE 4310-FB-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3980, Block 104, Vermillion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on June 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 12, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–14891 Filed 6–19–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Saturn Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Saturn Energy Company has submitted DOCD describing the activities it proposes to conduct on Lease OCS–G 3939, Block 79, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 13, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Mineral Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Mineral Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 14, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–14886 Filed 6–19–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Union Oil Co. of California

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0549, Block 35, Vermilion Area, Offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana..

DATE: The subject DOCD was deemed submitted on June 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals

Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 12, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-14890 Filed 6-19-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, D.C. 20503, telephone 202-395-7340.

Title: Procedures for State and Local Government Historical Preservation Programs

Abstract: The information collection requirements in this rule are established in order to implement the requirements for State and local historic preservation programs as specified in the National Historic Preservation Act. The information will be used for approval of State and local programs.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: State or local Governments

Annual Responses: 214

Annual Burden Hours: 8,158

Bureau Clearance Officer: Russell K. Olsen, 202-523-5133

Russell K. Olsen,

Information Collection Clearance Officer.

June 13, 1985.

[FR Doc. 85-14872 Filed 6-19-85; 8:45am]

BILLING CODE 4310-70-M

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, D.C. 20503, telephone 205-395-7340.

Title: Special Use Permit

Abstract: The National Park Service uses the Special Use Permit to document and authorize special uses of public land that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources.

Bureau Form Number: 10-114

Frequency: On occasion

Description of Respondents: Individuals or households, businesses, small businesses or organizations

Annual Responses: 496,975

Annual Burden Hours: 138,933

Bureau Clearance Officer: Russell K. Olsen, 202-523-5133

Russell K. Olsen,

Information Collection Clearance Officer.

June 5, 1985.

[FR Doc. 85-14879 Filed 6-19-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30654]

Plymouth Short Line, Ltd.; Operation Exemption in Plymouth, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C 10901 the operation by Plymouth Short Line, Ltd., of about 1.8 miles of rail line extending from approximately milepost 159.1 to approximately milepost 160.9 in Plymouth, Marshall County, IN.

DATES: This exemption will be effective on June 19, 1985. Petitions to reopen must be filed by July 9, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30654 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Bruce A. Hugon, 3665 North Washington Blvd., P.O. Box 55526, Indianapolis, IN 46205.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

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

Decided: May 28, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley concurred in the result with a commenting expression.

James H. Bayne,

Secretary.

[FR Doc. 85-14835 Filed 6-19-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30649]

Jim Walter Corp.; Exemption Continuance in Control

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts, under 49 U.S.C. 10505, the countinuance of Jim Walter Corporation's control of Jefferson Warrior Railroad Company, Inc., and The Celotex Corporation, which recently obtained motor contract carrier authority, from the requirements of 49 U.S.C. 11343, subject to protective conditions for rail employees. Celotex received its authority in docket No. MC-180458, *Jim Walter Transp., a Div. of the Celotex Corp.* (not printed), served March 6, 1985.

DATES: This exemption is effective on July 20, 1985. Petitions to stay must be filed by July 1, 1985, and petitions to reopen must be filed by July 10, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30649 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative; H.E. Miller, Jr., P.O. Box 1832, Brentwood, TN 37027.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

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

Decided: May 30, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 85–14836 Filed 6–19–85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 320 (Sub-3)]

Product and Geographic Competition

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file replies to notice of proposed change in guidelines.

SUMMARY: In this proceeding the Commission is seeking comments on a request that we supplement the evidentiary guidelines in *Market Dominance Determinations*, 365 I.C.C. 118 (1981).

By a notice served April 1, 1985, and published in the **Federal Register** April 2, 1985 (50 FR 13090), the Commission required that comments be filed by May 17, 1985, and replies by June 1, 1985. By notice served May 16, 1985, and published in the **Federal Register** May 23, 1985 (50 FR 21371) the time for filing comments and replies was extended to May 31, 1985, and June 17, 1985, respectively. The Association of American Railroads requests a 3-week extension of time to file replies because of the volume of comments, complexity of issues, and unavailability of its expert witnesses at this time. In light of these reasons, a 3-week extension of time will be granted and the time for filing replies will be extended accordingly.

DATES: Reply comments are due by July 8, 1985.

ADDRESSES: Send an original and 15 copies of all documents referring to Ex Parte No. 320 (Sub-No. 3) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and serve on all parties to this proceeding.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

Decided: June 12, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–14836 Filed 6–19–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. John Barth, Inc., et al.; Comment on Proposed Consent Decree

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received from private class action plaintiffs in *Dixie Brewing Co., Inc.* v. *John Barth, et al.*, Civil Action No. 984–4112 (E.D. Pa.) on a proposed consent decree judgment in *United States* v. *John Barth, Inc., et al.*, Civil Action No. C–84–505–JLQ, United States District Court for the Eastern District of Washington, together with the response of the United States to that comment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

June 5, 1985.

Barry F. Schwartz, Esq., Debra Klebanoff, Esq., Wolf, Block, Schorr and Solis-Cohen,

Twelfth Floor Packard Building, Philadelphia, PA

Re: United States of America v. John Barth, *Inc., et al., Civil Action, No. C–84–505–JLQ*

Dear Mr. Schwartz and Ms. Klebanoff: We have received a copy of the pleading entitled "Public Comments of Private Class Action Plaintiffs in Opposition to Entry of the Proposed Final Order in its Present Form."

As you know, there was no criminal case filed in this matter and thus pleas of *nolo contendere* are not at issue here as they were in many of the cases you cite. With respect to the provisions of the proposed Final Judgment, the Supreme Court has recognized that there is a "sound policy . . . [not] to assess the wisdom of the Government's judgment in negotiating and accepting . . . [a] consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting." *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683, 689 (1961).

As we understand Part I of your comments, you do not object to the substantive provisions of the proposed Final Judgment, nor do you claim any bad faith or malfeasance on the part of the Government. Rather you object to the entry of any Final Judgment that does not recognize the legal culpability of the defendants, claiming that such a Judgment violates the "clear import" of 15 U.S.C. § 16(a) because it cannot be introduced as *prima facie* evidence in your private suit against the defendants. You fail to recognize that U.S.C. § 16(a) expressly provides for such a judgment. If, as you suggest, the Government was required as a matter of course to establish a *prima facie* case or the culpability of defendants before a Final Judgment could be entered, then, as a practical matter, there would rarely ever be a negotiated Final Judgment and 15 U.S.C.16(a) would become a nullity.

Moreover, as explained in the Competitive Impact Statement filed with the proposed Final Judgment, there are sound reasons for entering into a negotiated Judgment instead of taking the case to trial where the culpability of the defendants might be established. The proposed Final Judgment provides the Government with all of the relief it sought in its Complaint and avoids the burden of a long and costly trial.

In Part II of your comments, you object to the proposed Final Judgment because it does not contain any provisions impounding or otherwise preserving grand jury materials. We do not believe these collateral questions are appropriate subject matter for the Final Judgment, but we are separately responding to the motion you have filed with the Court for an order impounding or preserving various grand jury materials.

Pursuant to the provisions of 15 U.S.C. 16(d), a copy of your comments and this letter will be filed in the **Federal Register** and with the Court. Thank you for your comments.

Sincerely,

Gary R. Spratling,

Chief, San Francisco Office.

Wolf, Block, Schorr and Solis-Cohen, By: Barry F. Schwartz, Debra Klebanoff,

Twelfth Floor Packard Building, Philadelphia, PA 19102, (215) 977–2240

In the United States District Court for the Eastern District of Washington

United States of America v. John Barth, Inc., John I. Haas, Inc., Lupofresh, Inc., S.S. Steiner, Inc., and Von Horst Co.—Yakima.

[Civil Action No. 6–84–505–JLQ]

Public Comments of Private Class Action Plaintiffs in Opposition to Entry of the Proposed Final Order in Its Present Form

Introduction

Several purchasers of hops from throughout the United States, who were injured by the price fixing practices of defendants as alleged in the Complaint herein, brought four separate private treble damage actions against defendants under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. These actions, filed in the Eastern District of Pennsylvania, were thereafter consolidated and plaintiffs filed a Joint Motion for Determination of Suit as Class Action, which is pending before the Honorable John B. Hannum in *Dixie Brewing Co., Inc.*, v. *John Barth, et al.*,

Civil Action No. 84-4112 (E.D. Pa.). Plaintiffs in that related civil treble damage class action respectfully urge this Court to reject the proposed final judgment submitted by the parties in the case before this Court. Entry of the proposed judgment in its current form would not be in the public interest as required under the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(e), in that the proposed judgment may offer no genuine relief and would impact adversely upon the purchasers alleging specific injury from the violations while allowing the facts of defendants' illegal activities to remain concealed and unacknowledged.

The Antitrust Procedures and Penalties Act specifically authorizes both intervention and appearance as *amicus curiae* in government civil proceedings of interested persons to assist the Court in its determination of whether a proposed final order is in the public interest, 15 U.S.C. §16(f). Section 16(e)(2) states that the impact upon individuals alleging specific injury is one of the two criteria under which the public interest in entering the Order is to be determined.[1] The private civil action plaintiffs representing those individuals alleging specific injury are thus in a particular position to comment upon the public interest, or lack thereof, of a proposed decree. *See, e.g., United States* v. *R & G Sloane Manufacturing, Inc.*, 1973 Trade Cases ¶74,289 Z(C.D. Cal. 1972). ("The real issue, however, is pointed up by the *amicus curiae* briefs filed by certain treble damage claimants.")

I. Entry of the Proposed Consent Decree at This Juncture Would Violate the Import of Section 5(a) of the Clayton Act Which Provides That a Judgment Obtained in Civil Proceedings Brought by the Government May Be Introduced in a Private Civil Case as at Least Prima Facie Proof of a Defendants' Violation of the Antitrust Laws.

Entry of the proposed final judgment at this juncture "without trial or adjudication of any issue of fact or law and without [the] Final Judgment constituting evidence against or admission by any party with respect to any such issue." (50 Fed. Reg. 11258 (1985)) would impact adversely upon the individuals alleging specific injury from violations charged in the action and thereby directly contravene 15 U.S.C. 16(e)(2). Moreover, entry of such an order would substantially vitiate the clear import of the Clayton Act, 15 U.S.C. 16(a), which provides that a decree obtained after the taking of evidence in a government antitrust action establishes at least *prima facie* prooof of a violation in a subsequent private civil action.

The important purpose served by government proceedings in assisting civil plaintiffs to establish an antitrust defendant's liability was recently reaffirmed by Congress' enactment of the Antitrust Procedural Improvements Act of 1980 which amended Section 5(a) of the Clayton Act, 15 U.S.C. 15(a), to provide that a judgment obtained by the government may be invoked as collateral estoppel against the defendants in subsequent private civil actions.[2] The proposed final judgment could not be introduced by civil plaintiffs under §5 either to establish *prima facie* prooof of their case or to collaterally estop defendants from contesting their violation. *See*, 15 U.S.C. 16(h); *Lindy Bros. Builders, Inc.* v. *American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, n.12 (3d Cir. 1973).

Even prior to the recent amendments to the Clayton Act, courts held in the analogous context of acceptance of *nolo contendere* pleas in criminal antitrust proceedings, that the public interest represented by private civil litigants precluded entry of pleas of *nolo contendere* in pending government proceedings. "To routinely accept *nolo contendere* pleas where there is a high potential of treble damage action would make a mockery of Section 5—any guilty defendant might avoid serious private actions by pleading the magic words." *United States* v. *American Bakeries Co.*, 284 F. Supp. 864, 869 (E.D. Mich. 1968). Thus, the fact that private civil actions are pending highlights the necessity to reject the proposed final order in its present form. *See also, United States* v. *David E. Thompson, Inc.*, 621 F.2d 1147 (1st Cir. 1980); *United States* v. *Brighton Building and Maintenance*, 431 F. Supp. 1118 (N.D. Ill. 1977), *aff'd*, 598 F.2d 1101 (7th Cir. 1979); *United States* v. *Rockwell International Corp.*, 1978-2 Trade Cases ¶ 62,402 (E.D. Pa. 1978); *United States* v. *Westinghouse Electric Corp.*, 1960 Trade Cases ¶ 69,699 (E.D. Pa. 1960); *United States* v. *Ultramarine and Color Co.*, 137 F. Supp. 167 (S.D.N.Y. 1955).

The application of this reasoning to government civil actions was underscored by Judge Curtis in *United States* v. *R & C Sloane Manufacturing Company*, 1973 Trade Cases ¶ 74,289 (C.D. Cal. 1972) in which the court accepted pleas of *nolo contendere* in a criminal action precisely because a government civil action was to proceed, which would protect the interest of the private civil plaintiffs under section 5 of the Clayton Act in using in their private action any judgment obtained after the government civil trial. Id. at p. 93,322. *Accord, United States* v. *Standard Ultramarine & Color Co.*, 137 F. Supp. 167, 174 (S.D.N.Y. 1955).

In his seminal decision rejecting proferred *nolo contendere* please in *United States* v. *Standard Ultramarine and Color Co., supra*, 137 F. Supp. at 172, Judge Weinfeld explained that the very purpose of section 5 of the Clayton Act was to assure that the government enforcement action would assist and encourage private litigants:

> It was fashioned as a powerful weapon to aid private litigants in their suits against antitrust violators by reducing the almost prohibitive costs and staggering burdens of such litigation in making available to him the results of the *Government's successful action, whether an equity suit* or a criminal prosecution. And the hoped for by-product of the benefit to a plaintiff was increased law enforcement.[3] (emphasis added)

In *United States* David E. Thompson, Inc., 621 F.2d 1147, 1150-51 (1st Cir. 1980), Judge Coffin writing for the First Circuit noted that in light of pending

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[1] That provision reads:

Public interest determination

(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

[2] Section 5(a) of the Clayton Act, 15 U.S.C. 16, as amended by the Antitrust Procedural Improvements Act of 1980 (Pub. L. 96-349) reads:

Sec. 5(a) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceedings brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel. . .

[3] Judge Weinfeld set out the legislative history of Section 5 of the Clayton Act:

> A reading of the interesting debates which followed shows that the unmistakable purpose of the Congress in enacting §5 in response to the Presidential message was "to minimize the burdens of litigation for injured private suitors by making available to them all matters previously established by the Government in antitrust actions." *The defendants urge that there is no obligation upon the Government to assist or encourage litigants. But a fair reading of the debates and the Committee Reports indicates that such was the very purpose of the clause.*
>
> 137 F. Supp. at 171 (footnote omitted; emphasis added)

private civil cases, it was "almost inconceivable" for a district court to find that a plea of *nolo contendere* was in the public interest.

At a minimum, prior to the entry of final judgment in this case, this Court should require that defendants acknowledge their liability for the acts complained of herein.

II. The Proposed Final Judgment Fails to Provide for Impoundment of Grand Jury Transcripts, Subpoenae and Documents Obtained by the Government Despite the Risk That the Information Relating to the Conspiracy May be Otherwise Inaccessible to Subsequent Private Civil Litigants

Entry of the proposed final judgment is particularly inappropriate in the instant action because of the lack of any provision impounding or otherwise preserving grand jury documents, subpoenae and transcripts for use of subsequent private civil litigants or any provision making available to subsequent private civil litigants materials in the government's possession that were obtained outside of or after the grand jury investigation.

The availability of materials generated in a government investigation for use in related private treble damage litigation is settled. *See, e.g., Olympic Ref. Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964). Consistent with the public policy of aiding private antitrust plaintiffs, the Supreme Court has reasoned that:

> The Government's initial action may aid the private litigant in a number of other ways [than by establishing a *prima facie* case on liability]. The pleadings, transcripts of testimony, exhibits and documents are available to him in most instances. * * * The greater resources and expertise of the [government's attorneys] render the private suitor a tremendous benefit aside from any value he may derive from a judgment or decree. Indeed, so useful is this service that government proceedings are recognized as major source of evidence for private parties."

Minnesota Mining & Mfg. Co. v. *New Jersey Wood Finishing Co.*, 381 U.S. 311, 319 (1965). *See also, Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 336 (1971).

Since the parties have consented to the entry of a proposed final judgment in the case before this Court, a danger exists that the material obtained or generated by the Government in connection with its investigation of defendants will be destroyed, suppressed or lost prior to an adjudication of its availability to private litigants. To avoid this loss of essential evidentiary material, the class representatives in the pending private suit have filed with this Court a motion to impound or otherwise preserve grand jury documents, subpoenae and transcripts. However, in order to effectuate the public policy of aiding private antitrust plaintiffs, it is of particular importance that any decree entered in this action contain a provision impounding or otherwise preserving the grand jury transcripts and subpoenae and all documents obtained by the government in connection with the grand jury investigation, and providing means for access to such documents by the private civil plaintiffs. *See e.g., United States* v. *Automobile Manufacturers Association, Inc.*, 307, F. Supp. 617, 620 (C.D. Cal. 1969) (order entered prior to entry of final judgment "requiring that all evidence obtained by the grand jury, as well as its own transcript, be impounded in the hands of the Justice Department, where it may be obtained by treble damage claimants. . . where good cause therefore can be shown.") Furthermore, any decree entered in this action-should provide for access by the private civil plaintiffs to all materials obtained by the government outside of or after the grand jury investigation.

III. Conclusion

For the reasons set forth above, plaintiffs in the related private civil class action respectfully urge that the proposed final judgment be rejected in its present form at this juncture as against the public interest.

Respectfully submitted,

Barry F. Schwartz, Debra Klebanoff, Wolf, Block, Schorr and Solis-Cohen, Twelfth Floor Packard Building, Philadelphia, Pennsylvania 19102, (215) 977-2000

On Behalf of Plaintiffs: Jerry S. Cohen, Esquire, Kohn, Milstein, Cohen & Hausfeld, Suite 600, 1401 New York Avenue NW., Washington, D.C. 20005

and

Warren Rubin, Esquire, Gross & Sklar, P.C., 1500 Walnut Street, Suite 600, Philadelphia, PA 19102

Co-Lead Counsel: Milbers Weiss Bershgd Specthrie & Lerach, 1111 Third Avenue Building, Suite 1880, Seattle Washington 98101, (206) 382-1000.

Dated: May 6, 1985.

[FR Doc. 85-14825 Filed 6-19-85; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility, Municipal Airport, Marianna, Jackson County, FL

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

Summary

1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new medium security prison with an adjacent satellite camp is needed in its system. A 300-acre tract of land at the Municipal Airport near Marianna, Florida is being evaluated for the site of the facility. The proposal calls for the construction of a 550-bed facility to house medium security inmates and a 150-bed satellite camp housing minimum security inmates. Approximately 60-70 acres would be required for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, the following aspects will receive a detailed examination: Wetlands, threatened and endangered species, cultural resources, unique and prime farmlands, and socioeconomic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: A number of public meetings have already been held in the Jackson County area in an effort to determine the issues to be examined. This scoping process has involved approximately 400 people. The meetings were well publicized and were held on a number of days at different times of day or evening in an effort to make it possible for the public and all interested agencies or organizations to attend.

5. DEIS Preparation: The DEIS should be available for public review and comment in July or August 1985.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Kay E. King, Executive Assistant, Administration Division, U.S. Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534, Telephone: (202) 724-3230.

Dated: June 17, 1985.

Scott Higgins,

Acting Chief, Office of Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 85-14873 Filed 6-19-84; 8:45 am]

BILLING CODE 4410-05-M

POSTAL RATE COMMISSION

[Order No. 612, Docket No. A85-19]

East Nicolaus, CA 95622 (Doris Quinn, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: June 13, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85-19
Name of affected Post Office: East Nicolaus, California 95622
Name(s) of Petitioner(s): Doris Quinn
Type of Determination: Closing
Date of filing of appeal papers: June 10, 1985

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before June 25, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

June 10, 1985—Filing of Petition
June 13, 1985—Notice and Order of Filing of Appeal
July 5, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
July 15, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
August 5, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
August 20, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
August 27, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
October 8, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-14889 Filed 6-19-85; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14576; 812-6115]

Thrift Mortgage Acceptance Corp.; Application for an Order

June 13, 1985.

Notice is hereby given that Thrift Mortgage Acceptance Corp. ("Applicant"), Suite 700, 550 Kearny Street, San Francisco, California 94108, a corporation recently organized under Delaware law as a wholly-owned subsidiary of Thrift Investors Services ("TIS"), a California limited partnership, filed an application on May 13, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that it is a "limited purpose" entity, set up to facilitate the financing of long-term residential mortgages on one- to four-family residences by providing a source of funds to entities engaged in mortgage finance ("Participants") through issuance of bonds collateralized by mortgages and/or mortgage-backed securities ("Bonds"), and commitment to "funding agreements" with respect to such mortgages and mortgage-backed securities.

Applicant contemplates that it will issue Bonds in series, each series to be separately secured primarily by mortgage collateral, which may include conventional mortgage loans, mortgage loans insured by the Federal Housing Administration ("FHA Loans"), and mortgage loans guaranteed by the Veterans' Administration ("VA Loans"); "fully-modified pass-through" mortgage-backed certificates, fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), Guaranteed Mortgage Pass-Through Certificates issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage pass-through certificates, or mortgage collateralized obligations issued by any person or entity or other interests in mortgages ("Other Mortgage Certifications"). Bonds also may be colleralized by certain proceeds accounts, debt service funds, reserve funds and insurance policies ("Secondary Collateral") (thus, the term "Pledged Loans" includes conventional mortgage loans, FHA Loans and VA Loans; "Mortgage Certificates" includes GNMA Certificates, FHLMC Certificates, FNMA Certificates and Other Mortgage Certificates; and the term "Mortgage Collateral" includes Mortgage Certificates and Pledged Loans). It is further stated that each Pledged Loan will be a loan secured by a mortgage or deed of trust on a one- to four-family residence, and that each Mortgage Certificate will evidence an undivided interest in a pool of such mortgage loans.

The Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"), as supplemented by one or more supplemental indentures, and will be sold to institutional or retail investors through one or more investment banking firms. Certain series of the Bonds will be registered under the Securities Act of 1933 ("1933 Act") and others will be sold in transactions exempt from such registration; Indentures for public offerings will be subject to the provisions of the Trust Indenture Act of 1939. The Bonds are to be structured so that they will receive one of the two highest ratings from one or more nationally-recognized rating agencies.

Participants and their limited purpose finance subsidiaries ("Finance Subsidiaries") may sell Mortgage Collateral to Applicant, or Applicant's affiliate ("Affiliate"), in exchange for a portion of the net proceeds of the sale of the related series of Bonds. Where the sale is to Affiliate, Applicant will enter into a funding agreement ("Funding Agreement") with Affiliate, each Funding Agreement to be secured by a pledge of the Mortgage Collateral to Applicant by Affiliate. On the other hand, Participants and Finance subsidiaries may pledge, rather than sell, Mortgage Collateral to Applicant, or

Affiliate. In that case, or where Mortgage Collateral is pledged by Affiliate, the Participant, Finance Subsidiary, or Affiliate, as the case may be, will enter into a Funding Agreement, pursuant to which it will sell one or more promissory notes ("Notes") to Applicant in consideration of allocation of a portion of the net proceeds of the sale of the related series of Bonds. Each Finance Subsidiary is to distribute the net proceeds from the sale of Notes to its affiliated Participant, which in turn is to use the proceeds to repay indebtedness to lenders or others incurred in connection with the funding, or acquisition of, mortgage loans on one- to four-family residences financed by it or in its general business, primarily in the origination of other real estate-related loans.

Affiliate, on the other hand, will use such proceeds to purchase related Mortgage Collateral. Notes will be secured primarily by a security interest given to Applicant in certain Mortgage Collateral, and certain other assets, which may include debt service funds, reserve funds, proceeds accounts and insurance policies (Applicant, or Affiliate, may also acquire all or a portion of Mortgage Collateral securing a series of Bonds through open-market purchases, or privately-negotiated transactions with entities other than Participants or Finance Subsidiaries. These transactions would be financed by the proceeds of sale of Bonds collateralized by such Mortgage Collateral). Notes will be amortized through payments to the Trustee on behalf of Applicant in such amounts as are necessary to pay the principal of and interest on the related series of Bonds. Mortgage Collateral securing each series of bonds will remain fixed for the life of the Bonds of such series, except for a limited right of substitution. Applicant will provide security for Bonds by pledging to the Trustee Mortgage Collateral in amounts which will produce a cash flow sufficient to support the obligations of Participants, Finance Subsidiaries, or Affiliate to Applicant, and Applicant's correlative obligation to Bondholders. When Applicant purchases Mortgage Collateral, it will pledge its entire right, title and interest in such Mortgage Collateral to the Trustee, and such Mortgage Collateral, together with the other security provided for Bonds, will be expected to produce a cash flow sufficient to support Applicant's obligations to Bondholders. Bonds secured by Pledged Loans will either be "overcollateralized," to the extent required by the rating services rating Bonds, or Pledge Loans securing such Bonds will be covered by insurance policies to the extent required by the rating services.

Each Pledged Loan will be serviced by a servicer acceptable to Applicant, and a servicer engaged by Applicant, and acceptable to the rating services for the Bonds, will be the master servicer of each Pledged Loan. Each such servicer and/or master servicer will have the power and obligation to foreclose against the property securing any delinquent Pledged Loan, Liquidate that property, pursue any mortgage insurance or guarantee claims, collect payments of principal and interest, as well as any insurance proceeds. Amounts so collected will be paid over to the Trustee as the holder of each Pledged Loan to the extent and as provided in the applicable servicing and master servicing agreements.

Certain series of Bonds may provide may provide for optional and special redemptions on the terms specified for each such series of Bonds. A series may provide for mandatory special redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate which will provide sufficient income to pay interest on the Bonds. All or a portion of the Bonds of a series may be subject to redemption at the option of Applicant at any time on or after a date certain recited in the Indenture and disclosed in the prospectus or private placement memorandum relating to such series of Bonds. The terms of each offering may also provide for redemptions at the option of Bondholders to the extent that payments received on Mortgage Collateral are available for such redemptions. Except in the event of a default on the Bonds, and then only under limited circumstances, Bondholders will not be entitled to compel the liquidation of Mortgage Collateral in order to redeem Bonds prior to their maturity.

Applicant submits that each of the activities it proposes to engage in could otherwise be conducted directly by each Participant, Finance Subsidiary, or Affiliate without the requirement of registration under the Act, or exemption therefrom. Applicant states that a number of large thrift institutions and home builders have issued mortgage-backed bonds through subsidiary finance companies without having to register these entities under the Act. Applicant submits that there is no public policy basis upon which to require it to register under the Act merely because it would be facilitating the financing efforts of smaller thrift institutions, home builders and similar entities so as to achieve the same economies of scale as the larger builders and thrift institutions, or because Applicant would be providing medium-sized and larger builders and thrift institutions an opportunity to reduce their reinvestment risk and their interest-rate exposure by participating in a regular financing program with smaller amounts of collateral.

Applicant states that its primary activity will be the facilitation of the sale of one- to four-family residential property through the financing of residential mortgages rather than investing in securities. Applicant asserts, therefore, that it should be exempt from the Act by virtue of section 3(c)(5)(C) of the Act, which excepts from the definition of an investment company, companies which do not issue redeemable securites, face-amount certificates of the installment type, or periodic payment plan certificates, and which are primarily engaged in the business of "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate." Applicant will not issue any redeemable securities (as that term is defined in the Act), face-amount certificates of the installment type or periodic payment plan certificates, but will be engaged in the business of facilitating the financing of mortgage loans. Although Applicant concedes that it will not acquire legal title to Mortgage Collateral that is pledged (rather than sold) to it, it will acquire a security interest in such Mortgage Collateral, and will, assertedly, have direct or indirect liens on, and other interests, in real estate. Such security interests will be evidenced by assignments of such Mortgage Collateral by Participants, Finance Subsidiaries, or Affiliate to Applicant, and by Applicant to the Trustee.

In conclusion, Applicant states that it has been formed for the primary purpose of facilitating the funding of mortgage loans to expand the availability of residential mortgage, a critical national need. Applicant submits that the transactions in which it proposes to engage will contribute to the satisfaction of the continuing need for mortgage funds in the economy by facilitating access to the private capital markets by thrift institutions which are directly providing mortgage financing to home buyers throughout the country.

Notice is further given that any interested person wishing to request a

hearing on the application may, not later than July 8, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14829 Filed 6-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22139; File No. 4-208]

Joint Industry Plan; Summary Effectiveness of Amendment to the Intermarket Trading System Plan Relating to Complaint Procedures for Locked Markets in ITS

The Securities and Exchange Commission has issued an order, pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa-3-2 thereunder, approving an amendment ("Amendment") to the "Plan for the Purpose of Creating and Operating an Intermarket Communication Linkage ("Intermarket Trading System ("ITS") Plan").[1]

I. Description of Amendment

The purpose of the Amendment is to clarify the complaint procedures for responding through ITS to "locked markets",[2] and to otherwise refine the ITS locked market rule. The present rule does not specify when a complaint must be filed, and recognizes a locked market complaint that is filed regardless of whether or not the locking bid or offer still exists.

The Amendment would release the market that locked the quotation from liability if the locking bid or offer is removed prior to the time that a complaint is received. The Amendment also would give the market whose quote was locked the option of requesting satisfaction by either the issuance of a commitment or the removal of the locking bid or offer. A final refinement to the Amendment states that in error situations, a locking market must respond within two minutes of the receipt of a complaint in order to avoid liability for a locked market.

The Commission believes that the Amendment represents a positive enchancement to ITS that creates opportunities for more "efficient and effective market operations." [3] In light of this conclusion, and because the Commission has been informed that all ITS Participants have agreed to the terms of the Amendment, the Commission, pursuant to paragraph (c)(4) of the Rule 11Aa33-2, has determined to grant the Amendment summary effectiveness. The Commission finds that granting the Amendment summary effectiveness is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to and perfect the mechanisms of, a national market system.

II. Request for Comment

Interested persons are invited to submit written comments on the Amendments. Persons submitting comments should file six copies with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. All communications should refer to File No. 4-208 and should be submitted by July 10, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 12, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14893 Filed 6-19-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] The ITS Plan and subsequent amendments are contained in File No. 4-208. The Commission initially approved the ITS Plan on an interim basis on April 14, 1978. Subsequently, the Commission authorized the ITS participants to act jointly in operating the ITS for a further period of indefinite duration. *See* Securities Exchange Act Release No. 19456 (January 23, 1983), 48 FR 4938.

[2] A "locked market" occurs when the published bid quotation of one market is at the same price as the published ask quotation of another market.

[3] *See* Section 11A(a)(1)(B) of the Act.

[Release No. 34-22143; File No. SR-CBOE-85-24]

Self-Regulatory Organizations, Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Converting the S&P 500 Index to a European Style Option

Pursuant section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 10, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Definitions

Rule 24.1.

European Option

(j) The term "European option" means an option contract that can be exercised only on the last trading day prior to the day it expires.

Terms of Option Contracts

Rule 24.9. *(a) Exercise Prices.* The Exchange shall determine fixed-point intervals of excerise prices for call and put options.

(b) Expiration Months. Index option contracts may expire at three-month intervals or in consecutive months. When option contracts on a particular index expire in consecutive months, series expiring in no more than four months may be listed.

(c) European Exercise. Options on the Standard & Poor's 500 Stock Index can be exercised only on the last trading day prior to the option's expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Procedures of the Self-Regulatory Organization

The purpose of the proposed rule change is to convert the Standard & Poor's 500 Stock Index option contract (SPX) from an American to a European-style option contract. The Exchange wishes to list such contracts beginning August 1, 1985. This proposed alteration may offer some significant advantages in certain strategies for some index option market participants, even though American-style options have proven very successful. Therefore, CBOE believes that it is in the public interest to offer this alternative investment vehicle.

The ability to hedge portfolios of stocks should be facilitated by the European-style exercise feature. This can result from several interrelated features associated with the fact that the seller of a European option does not have to worry about the option being assigned.

Since the SPX option is an index option and is cash settled, the early exercise feature of an American option can result in unbalanced postions for the seller. The assignment may have been unanticipated by the seller. If his option has been assigned, his portfolio will temporarily be partially or wholly in an unhedged position, thereby increasing his exposure to risk, that is, to price movements that may work against the portfolio manager.

The portfolio manager who wishes to hedge his portfolio against a market decline may benefit from a European SPX option. This arises because the European put can sell for lower premiums than the American put. Therefore, if the portfolio manager purchases SPX puts to protect against an anticipated downside move, then the European no-exercise feature may reduce the cost of hedging the portfolio.

The possibility of early exercise can also complicate the timing decisions faced by portfolio managers. The timing of when to hedge a portfolio and the extent to which portfolio should be hedged, both to reduce risk and to increase investment income, are affected when American options are exercised against the portfolio manager.

Investors who hold spread positions in SPX will benefit from a European type of exercise. The investor would never have to face the situation in which one leg of his position is exercised away from him, thus leaving him with an out-of-position investment that may involve significantly greater exposure to risk. Spreading enhances depth and liquidity in trading markets, so European-style exercise provisions should lead to greater depth and liquidity in the SPX market.

The statutory basis for the proposed rule changes in section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), is that the proposed rule changes are designed to facilitate transactions in SPX.

(B) Self-Regultory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule-change creates any burden on competition not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Formal comments on the rule-change filing were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14892 Filed 6-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22144; File No. SR-CBOE-85-11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE") submitted on April 4, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to standardize the opening rotation procedure for government securities options.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21999, April 30, 1985) and by publication in the **Federal Register** (50 FR 19509, May 8, 1985). No comments were received with respect to the proposed rule filing.

CBOE indicates that the Exchange's Floor Procedure Committee, pursuant to its delegated authority under CBOE Rule 21.11(a),[1] recently voted to standardize and abbreviate the procedures to be followed by the Post Coordinator in opening government securities options. Pursuant to the proposed rule change, an exchange employee designated as the Post Coordinator for government securities options will open those series with the nearest expiration that are at-the-money, first in-the-money, and first out-of-the-money. The Post Coordinator will then open any other near term options within the class for which a broker requests a market; the Post Coordinator will also open any longer-term series within the class for which a broker requests a market. The Post Coordinator may then proceed to open the next options class, notwithstanding

[1] CBOE Rules 21.11(a) governs trading rotations in government securities options. The rule provides, in part, that procedures for opening government securities options may be "altered or supplemented" by the Board of Directors or a committee designated by the Board.

that all series within the previously-opened class may not have been opened. Series for which there was no buying or selling interest during opening rotation will be opened during the trading day in response to buying or selling interest, or forty minutes prior to the close, whichever is sooner. No quotations will be posted for series of bond options until they are opened for trading.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and the rules and regulations thereunder. The exchange states that this procedure will alleviate burdens relating to the opening of inactive series of government securities options and will promote the dissemination of accurate quotation information.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14894 Filed 6-19-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2191; Amdt. No. 1]

Disaster Loan Area; Puerto Rico

The above numbered declaration (50 FR 24339) is amended to correct the interest rate for other (non-profit organizations including charitable and religious organizations) from 11.000% to 11.125%. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on August 2, 1985, and for economic injury until the close of business on February 28, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 13, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-14823 Filed 6-19-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of the Lower Rio Grande Valley of Texas, will hold a public meeting at 1:00 p.m. on Tuesday, July 9, 1985, at the U.S. Small Business Administration's Conference Room, 222 E. Van Buren, Suite 500, Harlingen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas, (512) 423-8933.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 10, 1985.

[FR Doc. 85-14821 Filed 6-19-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, California, will hold a public meeting at 10:00 a.m. on July 9, 1985, 211 Main Street, 4th Floor, District Director's Conference Room, San Francisco, California, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Lawrence J. Wodarski, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 10, 1985.

[FR Doc. 85-14822 Filed 6-19-85; 8:45 am]

BILLING CODE 8025-01-M

Size Policy Board; Composition

AGENCY: Small Business Administration.

ACTION: Notice of change of composition of Size Policy Board.

SUMMARY: This notice indicates a change in the composition of SBA's Size Policy Board. The Administrator of SBA has expanded the Board to include one Regional Administrator to be designated by the Administrator and the Chief Counsel for Advocacy to be voting members, and the General Counsel and Assistant Administrator for Hearings and Appeals to be advisory members.

DATE: This notice is effective immediately.

ADDRESS: Address all comments to Martin D. Teckler, Deputy General Counsel, 1441 L Street NW., Washington, D.C. 20416, Room 700. (202) 653-6642.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel.

SUPPLEMENTARY INFORMATION: On November 14, 1983, at 48 FR 51882, the Administrator of the Small Business Administration announced the establishment of a Size Policy Board, its composition, and its functions. Since that time, it has been determined to expand the composition of the Board. Accordingly, the composition will be as follows:

The Board members are the Associate Administrator for Procurement and Technical Assistance (Chairman), the Associate Administrator for Finance and Investment, the Associate Administrator for Minority Small Business/Capital Ownership Development, the Assistant Administrator for Innovation, Research and Technology, one Regional Administrator appointed by the Administrator, the Chief Counsel for Advocacy, and the Director, Size Standards Staff.

Dated: June 12, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-14824 Filed 6-19-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 939]

United States-Spain Joint Committee for Science and Technology; Announcement of Cooperative Research Awards in Applied Science and Technology

Introduction

The United States-Spain Joint Committee for Scientific and Technological Cooperation announces the opening of the application period for cooperative research awards in applied science and technology in accordance with the provisions of Complementary Agreement Seven of the Agreement on Friendship, Defense and Cooperation between the United States of America and Spain. For the field of health and medical sciences, this program includes both basic and applied science.

Scope and Characteristics of the Program

These awards support cooperative research in applied science and technology which is relevant to the economic modernization and social well-being of the United States and Spain. Approximately 20 to 30 project awards will be made under this announcement.

Eligibility

U.S. and Spanish scientists should be affiliated with government agencies, departments, associations and foundations, or non-profit academic institutions, scientific associations and foundations. Scientists from the two countries must apply jointly. The proposal should identify the Principal Investigator in each country.

How To Apply for Cooperative Research Awards

U.S. scientists may obtain application forms from the Office of Cooperative Science and Technology Programs, Department of State, Washington, D.C. 20520; telephone (202) 632–0638. U.S. Government employees should obtain application forms from the international affairs office of their agency or the office listed in Appendix A. Spanish applicants should contact the Executive Secretariat of the United States-Spain Joint Committee for Scientific and Technological Cooperation, Paseo del Prado 28, 5a. Planta, Madrid Spain 28014; telephone (34–1) 467–59–18.

U.S. and Spanish applicants must submit a joint proposal. Joint proposals may be submitted by either the U.S. or Spanish scientist (not both) to the Executive Secretariat in Madrid. Proposals must be typed. An original and eight copies must be mailed directly to the Secretariat. Proposals must be received or postmarked (for airmail or equivalent delivery) by October 31, 1985, and must be complete (including all signatures) when submitted. Proposals generally should not exceed 25 pages in each language. Incomplete proposals will not be accepted. Please read all instructions carefully, and contact the Secretariat if you have questions.

The evaluation process will last approximately three months, and results will be announced in March 1986. The Secretariat will notify applicants of results by mail.

Selection Criteria

Projects in those areas of applied research and technology that are most relevant to the economic modernization and social will being of the peoples of the United States and Spain will receive priority consideration. These projects wil be judged according to the following criteria:

(a) Scientific merit.

(b) Clearly stated objectives and plan of work.

(c) Adequate distribution and joint nature of research activities.

(d) Appropriateness of budget to proposed research.

(e) Interest and benefit for both countries.

The Joint Committee may also consider other criteria such as the need for a representative cross-section of scientific disciplines and geographic distribution.

Proposals may be submitted in the following areas:

Agriculture and Forestry
Natural Resources
Oceanography and Marine Science
Environment
Industrial Technology and Industrialization
Energy
Health and Medical Sciences
Space
Transportation and Communications

With special justification, proposals in other areas of applied science may be submitted.

Budget Limitations and Project Length

Project budgets may not exceed a combined total of $80,000 per year for one and two-year projects, or a maximum of $200,000 for three-year projects.

Reporting Requirements

Annual and final technical and financial reports, plus semi-annual statements of expenditures are required. Continued funding of multi-year projects in contingent on a timely submission of satisfactory reports.

Publications of Research Results

U.S. and Spanish awardees are expected to publish research results jointly in appropriate scientific literature.

Related Programs

Limited funding is available for two additional award programs in the applied sciences: A Visiting Scientist Program and a Program of Joint Seminars. Selection criteria are essentially the same as those listed above for coopertive research projects.

Visiting Scientists: These awards will provide long-term research visits (6–15 months) to Spain for U.S. scientists. A letter of acceptance from a Spanish institution and a research plan must be submitted with the proposal. Awards will include round-trip airfare, a $1,300 monthly stipen/living allowance, dependent airfare and limited dependent support, and may include a small budget for supplies. Awardees may wish to supplement awards with home-institution funds such as sabbatical payments. It is anticipated that between 10 and 15 visiting scientists awards will be made under this announcement.

Joint Seminars: Consideration will be given to proposals for small bilateral seminars or workshops on timely research topics of mutual interest. Sufficient expertise and interest in the subject area must exist in both countries to make a bilateral seminar mutually beneficial. Awards are limited to $30,000.

How To Apply for Visiting Scientist and Joint Seminar Awards: U.S. scientists may obtain application forms from the Office of Cooperative Science and Technology Programs, Department of State, Washington, D.C. 20520; telephone (202) 632–0638. U.S. Government employees should obtain application forms from the international affairs (or equivalent) office of their agency (See Appendix A). Spanish applicants should contact the Executive Secretariat at Paseo del Prado 28, 5a. Planta, Madrid Spain 28014; telephone (34–1) 467–59–18.

An original and eight copies of the joint proposal must be mailed directly to the Executive Secretariat. Applications must be received or postmarked (for airmail or equivalent delivery) by October 31, 1985, and be complete (including all signatures) when submitted. Incomplete proposals will not be accepted. Please read all instructions carefully, and contact the Secretariat if you have questions.

Other Joint Committee Programs

There is a separate program in the "Basic Sciences" involving the collaboration of the National Science Foundation. For details, contact the Spain Program, Division of International Programs, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550, telephone (202) 357–7554.

Dated: June 11, 1985.

Charles Horner,

Deputy Assistant Secretary for Science and Technology, Bureau of Oceans and International Environmental and Scientific Affairs.

Appendix A—Cooperating Departments and Agencies in Applied Science Program

Agriculture and Forestry

Mr. James O. Butcher (Mr. Whetten Reed), International Research Division, Department of Agriculture, Room 4200—Auditors Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202) 475–4751

Energy

Dr. Moustafa Soliman, Office of International Energy Affairs, IE–121—Room 7A029, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6777

Environmental Affairs

Ms. Jane Lovelace, Office of International Activities, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20585 (202) 382–7394

Health and Medicine

Dr. Peter Henry, Director, Office for Europe and China, Office of International Health, Public Health Service, Department of Health and Human Services, Room 18–75 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4010

Industrialization and Industrial Technology

Dr. P. Goodman, Senior Technical Advisor, Office of the Assistant Secretary for Productivity, Department of Commerce, Room 4824, Washington, D.C. 20230 (202) 377–0825

Natural Resources—General

Mr. Robert Sturgill, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 (202) 343–3101

—Fish and Wildlife

Mr. Lawrence Mason, Office of International Affairs, Fish and Wildlife Service, U.S. Department of the Interior, Room 2441, Washington, D.C. 20240 (202) 343–5188

—Geology

Mr. Lee Benton, Office of International Geology, U.S. Geological Survey, U.S. Department of the Interior, 917 National Center, Reston, Virginia 22092 (703) 860–6410

—Mining

Mr. L. Nahai, Assistant to the Chief, Division of International Minerals, Bureau of Mines, U.S. Department of the Interior, 2401 E. Street, NW., Washington, D.C. 20241 (202)

—National Parks

Mr. Richard Cook, International Affairs, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343–7063

—Water Resources

Mr. Richard Ives, Bureau of Reclamation, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343–5236

Oceanography and Marine Science

Mr. William Erb, Director, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs—Room 5801, Department of State, Washington, D.C. 20520 (202) 632–0650

Space

Ms. Karen Kleinsorge, International Affairs Division, National Aeronautics and Space Administation, Washington, D.C. 20546 (202) 453–8452

Transportation

Mr. Bernard Ramundo & Mr. John Eymonerie, International Cooperation Division and Secretariat, Room 10302, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–4398

Other Areas of Mutual Interest

Archeology and Archeometry

Ms. Jacqueline Olin, Conservation and Analytical Laboratory, Smithsonian Institution, Washington, D.C. 20560, (202) 287–3717

Housing/Urban Planning

Mr. Leo Pozo-Ledezma, Office of International Affairs, Office of the Secretary, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755–5770

Metrology and Standards

Dr. Kurt F.J. Heinrich, Chief, Office of International Relations, Room A–511—Administration Building, National Bureau of Standards, Gaithersburg, Maryland 20899 (301) 921–2463

Military and Engineering

Dr. Francis Kapper, Assistant Deputy Under Secretary (Technology Transfer), Office of the Under Secretary of Defense for Research and Engineering, Department of Defense, Washington, D.C. 20301 (202) 697–2697

Nuclear Safety

Mr. Howard T. Faulkner, Chief, Technical Liaison Section, Office of International Programs, Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 492–7131

Questions Relating to Overall Program

Science and Technology Program Officer for Spain, OES/SCT—Room 4330, Department of State, Washington, D.C. 20520 (202) 632–0638

[FR Doc. 85–14898 Filed 6–19–85; 8:45 am]
BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85–048]

Consolidation of Merchant Marine Technical Branches of Third, Eighth, and Twelfth Coast Guard Districts; Establishment of Marine Safety Center in Washington, DC Metropolitan Area

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is consolidating the Merchant Marine Technical Branches of the Third Coast Guard District in New York, New York, the Eighth Coast Guard District in New Orleans, Louisiana, and the Twelfth Coast Guard District in Alameda, California and establishing a Marine Safety Center located in the Washington, DC metropolitan area. the plan review duties performed by the Merchant Marine Technical Branches of the Third, Eighth, and Twelfth Coast Guard Districts will be assumed by the Marine Safety Center.

EFFECTIVE DATE: This reorganization will be effective as of June 1, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Charles E. Bills, Marine Technical and Hazardous Materials Division, (G–MTH–2/12), Room 1216, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593; (202) 426–2160.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard has completed an evaluation of its Merchant Marine Technical Branch field organizations, taking into account many factors, including personnel considerations, system efficiency, and Fiscal Year 1986 staff reductions within the Commercial Vessel Safety Program. As a result, the Merchant Marine Technical Branches of

the Third, Eighth, and Twelfth Coast Guard Districts are being consolidated to improve overall plan review efficiency, quality, and consistency, and to provide a centralized site for performing oversight of Coast Guard plan review functions delegated to their parties. Consolidation will result in the establishment of a Marine Safety Center as a Headquarters unit located in the Washington, DC metropolitan area. The Washington, DC area was chosen based on many factors, including: locating the Marine Safety Center in a favorable technical labor market; recognition that the need for regionally based Marchant Marine Technical Branches has dramatically decreased since (1) overseas commercial vessel construction activity has increased and (2) their parties, having been delegated plan review functions by the Coast Guard, are themselves regionally based; recognition of the area as an expanding naval architect/marine engineer center; and the area's excellent access to international and domestic transportation.

The plan review previously conducted by the Third, Eighth, and Twelfth Coast Guard Districts' Merchant Marine Technical Branches will be performed by the Marine Safety Center. While the Marine Safety Center's exact location in the Washington, DC area has not as yet been determined, it is anticipated its location will be established by April 1, 1986. When its exact location is established, the Coast Guard will publish notification in the **Federal Register** and include the Marine Safety Center's mailing address.

B.G. Burns,

Captain U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

June 17, 1985.

[FR Doc. 85-14852 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-047]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the tenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, July 25, 1985 at the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at approximately 5:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee.
3. Reports of Subcommittees.
   A. Inshore Waterway Management.
   B. Offshore Waterway Management.
4. Discussion of Subcommittee Reports.
5. Presentation of any additional new items for consideration of the Committee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statement, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R.A. Brunell, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589-6901.

Dated: June 5, 1985.

T.T. Matteson,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 85-14854 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Circular on Initial Maintenance Inspection Test Run for Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This draft AC (33.90-1) is intended to provide guidance for meeting the test requirements of FAR Part 33 establishing when the initial maintenance inspection is required for an engine being type certificated.

DATE: Comments must be received on or before September 27, 1985.

ADDRESS: Send all comments on draft AC No. 33.90-1 to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: H. Alden Jackson, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7078.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Background

FAR 33.90, revised March 26, 1984, requires each new engine for which a type certificate is sought to undergo a test run that simulates the conditions under which the engine is expected to operate in service. The test run must include start-stop cycles which are typical of expected service to establish when the initial maintenance inspection is required. This AC, relating to engine certification substantiation procedures, is intended to provide guidance on the definition of the cycle to be tested and its relationship to initial service life limitations which have been established for the engine. The AC will replace FAA Order 8110.25, Guidance Information Concerning Overhaul Test, dated November 4, 1976.

Comments Invited

Interested parties are invited to submit comments on the draft AC. The draft AC and comments received may be inspected at the Aircraft Certification Division, Engine and Propeller Standards Staff, Room 408, 12 New England Executive Park, Burlington, Massachusetts, between the hours of 8:00 am and 4:30 pm on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on June 6, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-14790 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

Hartsfield Atlanta International Airport, Atlanta, GA; FAA Approval of Noise Compatibility Program Under 14 CFR Part 150

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it finds on the noise compatiblity program submitted by the City of Atlanta under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 16, 1984, the FAA determined that the noise exposure maps submitted by the City of Atlanta under Part 150 were in compliance with applicable requirements. On April 10, 1985, the Administrator approved the Hartsfield Atlanta International Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the Hartsfield Atlanta International Airport noise compatibility program is April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Prouty, Civil Engineer, Atlanta Airport District Office, Suite 310, 3420 Norman Berry Drive, Atlanta, Georgia 30354, telephone (404) 763–7631. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Hartsfield Atlanta International Airport, effective April 10, 1985.

Under section 104(a) the Aviation Safety and Noise Abatment Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additonal noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on intersate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control System, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the Airports district Office in Atlanta, Georgia.

The City of Atlanta submitted to the FAA on June 19, 1984, the noise exposure maps descriptions, and other documentation produced during the noise compatibility planning study conducted from 1982 through 1984. The Hartsfield Atlanta International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 16, 1984. Notice of this determination was published in the **Federal Register** on October 29, 1984 (49 FR 43523)

The Hartsfield Atlanta International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisidictions from the date of study completion to the year 1985 and beyond. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 29, 1984, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five proposed actions for noise mitigations. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective April 10, 1985.

Outright approval was granted for all of the specific program elements. All of the elements involved off-airport land use measures.

These determination are forth in detail in a Record of Approval endorsed by the Administrator on April 10, 1985. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Office of the Commissioner, Hartsfield Atlanta International Airport.

Issued in Atlanta, Georgia, May 31, 1985.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 85–14850 Filed 6–19–85; 4:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Anchorage, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project. The project would be located in Alaska within the boundaries of both the Municipality of Anchorage and the Matanuska-Susitna Borough.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99801, Telephone (907) 586–7248, or; Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, P.O. Box 6900, Anchorage, Alaska 99502, Telephone (907) 266–1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare an Environmental Impact Statement (EIS) on proposed improvements to the Glenn Highway. The Glenn Highway is the primary highway route between Anchorage and the rapidly growing Palmer/Wasilla area. Improvements to the Glenn Highway are considered necessary to provide for the existing and projected traffic demand.

The proposed project begins near the railroad overcrossing at Eklutna, where the existing "access control line" terminates. The proposed project ends with the Glenn Highway/Parks Highway interchange, for a total project length of approximately 9.8 miles. This portion of the Glenn Highway is a two-lane rural interstate highway. The proposed improvement would provide a six-lane divided highway with fully controlled access. Two interchanges would be constructed; one at the Old Glenn Highway, and one at the Parks Highway. Certain roads and driveways that currently intercept the Glenn Highway would be closed or rerouted to frontage roads or other access roads. A rest area, accessible only from the southbound lanes, would be provided near the boat launching area at the Knik River. Bridges for the new traffic lanes would be constructed adjacent to the existing Knik River and Matanuska River bridges.

Alternatives to the proposed action include: (1) Take no action; (2) upgrade the existing transportation system; and (3) utilize the Alaska Railroad for commuter service.

Federal, State, and local agencies, private organizations, and the public will be contacted for information relative to land use planning, wetland and floodplain impacts, social impacts, etc. An informal public information/discussion meeting will be held during the development of the Draft EIS. A formal Public Hearing will be held following distribution of the draft EIS. Public notice will be given as to the time and place of the meeting and hearing. No formal scoping meeting is planned for this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties and should be directed to FHWA or ADOT&PF at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction)

Issued on: June 14, 1985.

Barry F. Morehead,

Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 85–14887 Filed 6–19–85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 12, 1985.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0066
Form Number: IRS Form 2688
Type of Review: Extension
Title: Application for Extension of Time to File U.S. Individual Income Tax Return
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 202224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New
Form Number: ATF F 11
Type of Review: New
Title: Special Tax Return and Application for Registry
OMB Number: 1512–0092
Form Number: ATF F 5100.31 (1648/1649/1650)
Type of Review: Revision
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act
Clearance Officer: Howard Hood, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

James V. Nasche, Jr.,

Departmental Reports Management Office.

[FR Doc. 85–14798 Filed 6–19–85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

June 14, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 1275
Type of Review: New
Title: Taxpayer Education Program Interest Card
OMB Number: New
Form Number: IRS Form 8435
Type of Review: New
Title: Request to Participate as a Volunteer

OMB Number: 1545–0062
Form Number: IRS Forms 3903 and 3903F
Type of Review: Revision
Title: Moving Expense Adjustment and Foreign Moving Expenses Adjustment
OMB Number: 1545–0193
Form Number: IRS Form 4972
Type of Review: Extension
Title: Special 10-Year Coveraging Method
Clearance Officer: Garrick Shear (202) 566–6150 Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224
OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of Alcohol, Tobacco, and Firearms

OMB Number: 1512–0390
Form Number: ATF F 5020.29
Type of Review: Extension
Title: Request for Disposition of Offense
Clearance Officer: Howard Hood, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

James V. Nasche, Jr.,
Departmental Reports Management Office.
[FR Doc. 85–14799 Filed 6–19–85; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Comparative National and Community Approaches to Rural and Urban Drug Abuse
USIA is interested in supporting a six-day workshop presenting comparative approaches to urban and rural drug abuse. The workshop is tentatively scheduled to take place in late 1985 in Venezuela. The program will serve as a forum for the sharing of information and experience both at a national and community level regarding the control of illegal narcotics production, interdiction of supply, and prevention of domestic use and abuse. Emphasis will be on the shared internal problems encountered by Colombia, Peru, Bolivia, Ecuador, Venezuela, and Brazil, and potential solutions found in their experience and that of other countries in the region. This workshop's primary objective is the establishment of new links among South American and U.S. organizations which deal with public awareness, education and media programs and other preventative drug abuse measures within their countries. Parallel objectives include a clarification of U.S. policies and concerns about indigenous ethnic, attitudinal and cultural factors affecting national policies. This workshop program follows on the First Lady's International Conference on Drug Abuse in Washington, D.C. and Atlanta (April 1985).

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop, and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with with those of USIA. Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 working days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the limited financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (Attn: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547.

Dated: June 14, 1985.

Albert Ball,
Deputy Director, Office of Private Sector Programs.
[FR Doc. 85–14865 Filed 6–19–85; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 119
Thursday, June 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 DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, June 24, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal desposit insurance and for consent to purchase assets and assume liabilities and establish two branches:

First Bank of Baldwin County, Robertsdale, Alabama, a proposed new bank, for Federal deposit insurance, for consent to purchase the assets of and assume the liability to pay deposits made in the Robertsdale, Alabama, and Bay Minette, Alabama, offices of AmSouth Bank, National Association, Birmingham, Alabama, for consent to purchase certain assets of and to assume the liability to pay deposits made in the Daphne, Alabama, and Bay Minette, Alabama, offices of First National Bank of Mobile, Mobile, Alabama, and for consent to establish the Bay Minette, Alabama, office acquired from AmSouth Bank, National Association and the Daphne, Alabama, office acquired from First National Bank of Mobile as branches of First Bank of Baldwin County.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,254-L
The Shelby National Bank of Shelbyville, Shelbyville, Indiana

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors

Report of the Director, Division of Liquidation:

Memorandum re: Reports Under Delegated Authority Status of Approved Committee Cases

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Hereford State Bank, Hereford, Colorado, SR-505 (Memo dated June 6, 1985)
Summary Audit Report re: Century National Bank, Jacksonville, Florida, AP-417 (Memo dated May 23, 1985)
Summary Audit Report re: All American National Bank, Virginia Gardens (P.O. Miami), Florida, AP-377 (Memo dated June 4, 1985)
Summary Audit Report re: The First National Bank of Gaylord, Gaylord, Kansas, AP-428 (Memo dated May 24, 1985)
Summary Audit Report re: The Rexford State Bank, Rexford, Kansas, AP-421 (Memo dated May 24, 1985)
Summary Audit Report re: The First State Bank, Thayer, Kansas, AP-406 (Memo dated June 6, 1985)
Summary Audit Report re: Bank of the Northwest, Eugene, Oregon, AP-412 (Memo dated May 17, 1985)
Summary Audit Report re: Stewardship Bank of Oregon, Portland, Oregon, SR-488 (Memo dated May 17, 1985)
Summary Audit Report re: Girod Trust Company, San Juan, Puerto Rico, AP-407 (Memo dated June 4, 1985)
Summary Audit Report re: Coalmont Savings Bank, Coalmont, Tennessee, AP-401 (Memo dated May 17, 1985)
Summary Audit Report re: Oneida Bank & Trust Company, Oneida, Tennessee, AP-422 (Memo dated May 9, 1985)
Summary Audit Report re: Bledsoe County Bank, Pikesville, Tennessee, AP-387 (Memo dated May 16, 1985)
Summary Audit Report re: American Bank, St. Joseph, Tennessee, SR-494 (Memo dated May 17, 1985)
Summary Audit Report re: First National Bank, Snyder, Texas, NR-476 (Memo dated May 24, 1985)
Summary Audit Report re: New York Regional Office—Liquidation Cost Center 3500 (Memo dated May 9, 1985)
Summary Audit Report re: Follow-up on Recommendations Contained in the Audit Report of the Chicago Regional Office (Memo dated May 14, 1985)
Summary Audit Report re: Decimus Asset Management System—Western Regional Office Audit (Memo dated May 17, 1985)
Summary Audit Report re: Audit of Payroll Changes (Memo dated May 31, 1985)

Discussion Agenda:

Memorandum regarding solicitation of comment for an additional 30 days on two proposed alternatives for increasing market discipline for FDIC-insured banks and thereby increasing the safe and sound operation of banks and decreasing the risk to the deposit insurance fund: (1) Modification of the deposit payoff procedures and (2) increased capital requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: June 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-14953 Filed 6-18-85; 11:29 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 24, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a

member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Southern Pacific Thrift and Loan Association, an operating noninsured industrial bank located at 5150 East Pacific Coast Highway, Long Beach, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building loated at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–14953 Filed 6–18–85; 11:29 am]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:38 p.m. on Friday, June 14, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Swift County Bank, Benson, Minnesota, which was closed by the Deputy Commissioner of Commerce in Charge of Financial Institutions for the State of Minnesota on Friday, June 14, 1985; (2) accept the bid for the transaction submitted by First Security State Bank of Sleepy Eye, Sleepy Eye, Minnesota, an insured State nonmember bank; (3) approve the application of First Security State Bank of Sleepy Eye, Sleepy Eye, Minnesota, for consent to purchase certain assets of and assume the liability to pay deposits made in Swift County Bank, Benson, Minnesota, and for consent to establish the sole office of Swift County Bank as a branch of First Security State Bank of Sleepy Eye; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:39 p.m., and at 5:05 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution making funds available for the payment of insured deposits made in Strong's Bank, Dodgeville, Wisconsin, which was expected to be closed by the Commissioner of Banking for the State of Wisconsin on Friday, June 14, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–14955 Filed 6–18–85; 11:29 am]

BILLING CODE 6714–01–M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 25, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, June 27, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Sunshine regulations: Implementation and approval of final version
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–14973 Filed 6–18–85; 8:45 am]

BILLING CODE 6715–01–M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50, Page No. — None at this Time. Date Published—Tuesday, June 18, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The following item have been withdrawn from the open meeting, scheduled Friday, June 21, 1985, at 10:00 a.m.

Repurchase Agreement and Reverse Repurchase Agreement Transactions

John M. Buckley, Jr.,

Executive Secretary.

No. 13, June 18, 1985.

[FR Doc. 85–14945 Filed 6–18–85; 11:20 am]

BILLING CODE 6720–01–M

6

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:30 a.m., Tuesday, June 18, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and

Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Presentation by the American Association of Advertising Agencies entitled "Industry Self-Regulation."

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–14967 Filed 6–18–85; 1:50 pm]

BILLING CODE 6750-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 24085 June 7, 1985/To be published).

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW. Washington, DC.

DATES PREVIOUSLY ANNOUNCED: Monday, June 3, 1985/Thursday, June 13, 1985.

CHANGE IN THE MEETING: Additional items/deletion.

The following additional item was considered at a closed meeting scheduled on Friday, June 14, 1985, at 11:00 a.m.

Regulatory matter bearing enforcement implications.

The following item will not be considered at an open meeting scheduled for Tuesday, June 18, 1985, at 10:00 a.m.

Consideration of whether to issue a release adopting Securities Exchange Act Rule 3b–9 which excludes from the definition of "bank" as found in Section 3(a)(6) of the Securities Exchange Act of 1934, banks which engage in certain securities activities. For further information, please contact Amy Natterson Kroll at (202) 272–2848.

The following additional item will be considered at a closed meeting scheduled for Tuesday, June 18, 1985, at 2:30 p.m.

Chapter 11 proceeding.

Chairman Shad and Commissioners Cox, Marinaccio and Peter determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272–3085.

Shirley E. Hollis,

Assistant Secretary.

June 17, 1985.

[FR Doc. 85–14898 Filed 6–17–85; 4:36 pm]

BILLING CODE 8010-01-M

federal register

Thursday
June 20, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 108 and 129
Use of X-Ray Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket No. 24115; Amdt. Nos. 108-1 and 129-13]

Use of X-Ray Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the language of signs required to be posted in a conspicuous place that notify passengers that an X-ray system is being used to inspect carry-on baggage in accordance with required security programs. It also adopts a new standard for testing the effectiveness of these X-ray systems. A more realistic standard will result with the adoption of the revisions, one that will enhance overall security by requiring the X-ray systems to comply with a more realistic imaging standard and at the same time protect film and photographic materials.

DATES: Effective July 22, 1985.

The incorporation by reference of American Society of Testing and Materials Standard F792-82 listed in the regulations is approved by the Director of the Federal Register as of July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Theofolus P. Tsacoumis, Aviation Security Division (ACS-160), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-4817.

SUPPLMENTARY INFORMATION:

Background

On May 22, 1984, the Federal Aviation Administration (FAA) issued notice of proposed rulemaking (NPRM) No. 84-8 (49 FR 24974; June 18, 1984) pertaining to the use of X-ray systems by domestic, flag, and foreign air carriers and by commercial operators of large aircraft engaging in common carriage. This notice proposed the revision of the language of signs that notify passengers that an X-ray system is being used to inspect carry-on baggage in accordance with required security programs. The NPRM recommended that the signs be changed to read "Remove x-ray, scientific, and high-speed film." The notice also proposed the adoption of a new standard for testing the effectiveness of X-ray systems. The new standard uses a step wedge specified in American Society of Testing and Materials (ASTM) Standard F792-82. In addition, the notice proposed to extend the rule to cover X-ray systems that are used to process checked baggage. Also proposed was a correction to an editorial error in § 108.17(a)(4) in that the dosimeter provided to each operator is a "personnel" dosimeter, not a "personal" dosimeter. Noticed 84-8 solicited comments with respect to these proposals. Comments were also requested concerning any increase in the number of searches by hand that might occur and any other burden that might be caused by this proposal.

Discussion of Comments

In response to Notice 84-8, 12 written and one telephonic comment were received. One manufacturer comments that a sign should be posted advising passengers to remove all X-ray, scientific, and high-speed film from either their carry-on or checked baggage before inspection only if the X-ray system exposes any such item to more than .01 milliroentgen (mR) per inspection. Another manufacturer states that since a majority of X-ray systems used at domestic air terminals at present are scanning-type systems, the rule, as adopted, should state that any X-ray system that can demonstrate that a maximum of not more than 0.15 mR is required per inspection, while meeting all other requirements of the proposed rule, will be permitted to display signs suggesting the removal of X-ray and scientific film only, and that the high-speed film removal language will be deleted. This manufacturer also recommends that the proposed rule be modified so that any scanning-type X-ray system currently in use but unable to meet the imaging requirements of the step wedge specified in ASTM Standard F792-82 will be modified so as to meet the imaging requirements or be removed from service.

Another manufacturer expresses concern that requiring advice on signs to "remove X-ray, scientific, and high-speed film" would cause the certificate holders undue hardship. In addition, this maufacturer states that the FAA should distribute or sell the required step wedge to the certificate holders since they believed that a competitor would have an unfair advantage.

One film manufacturer, while expressing gratitude for the positive steps and concern demonstrated by the FAA relative to high-speed film, recommends development of a new sign that is larger and contains bigger and bolder lettering for prominent placement in the entranceways to airport X-ray screening checkpoints. The commenter also recommends development of a special warning decal which would be placed on all X-ray systems in bold, 2-inch-high lettering to state "Remove all X-ray, scientific, and high-speed film (ISO 1000 or higher) from baggage." In addition, the commenter requests that all airport X-ray inspectors verbally ask travelers to remove high-speed film from their baggage. A committee of photographers endorses the comments of this film manufacturer. In addition, the commenter submitted the following recommendations: (1) Checkpoint operator training: Have inspectors ask if travelers are carrying high-speed film and have them advise travelers that they should remove any film from hand luggage before passing through X-ray checkpoints if they are going through more than one airport; (2) Public education program: Inform travelers that X-ray screening can damage high-speed film and have airlines provide a ticket stuffer telling passengers about X-ray damage to film or disseminate information through travel agencies; and (3) FAA develop a better sign with large, bold lettering.

The FAA has determined that the proposed requirement to advise passengers to remove all X-ray, scientific, and high-speed film from carrying-on and checked articles prior to X-ray inspection (without regard to radiation levels) and to remove all film from carry-on and checked articles in the event radiation exposure exceeds 1 mR is adequate to protect photographic film from being adversely affected by radiation. No problems have been encountered with this requirement since the original X-ray rule became effective. Experience since "paste-on" stickers were put into use during May 1983, advising persons to remove "high-speed" film, has not revealed any substantiated incidents of damage to film as a result of its being exposed to an X-ray system utilized under §108.17 and 129.26 of the FAR. Experience has also shown that, since the "paste-on stickers" have been utilized, the additional number of hand searches caused by these signs has not created a significant burden.

In addition, signs advising passengers about X-ray inspections should be as uniform as possible. Under the current rules, all certificate holders may use an identical sign unless a carrier utilizes a system emitting more than 1 mR of radiation. In such case, passengers must be advised to remove *all* film prior to inspection rather than just X-ray, scientific, and high-speed film. Since to our knowledge all systems currently in use in the United States emit less than 1 mR and many are in the 0.15 to 0.30 mR range, virtually all certificate holders

use a standard sign supplied to them by the FAA. Even though, as indicated by one commenter, some machines may subject film to as little as .01 mR, industry concerns over damage to X-ray, scientific, and high-speed film warrant a uniform requirement for these signs.

With regard to signs, the FAA intends to study how the sign may be improved so as to properly highlight and prominently display the required information at screening stations that utilize X-ray baggage inspection systems. The FAA will consider the views of such organizations as the Air Transport Association, the American Association of Airport Executives, and the Airport Operators Council International. It is intended that a new sign will be developed that would enhance the notice now being given to the traveling public concerning their photographic equipment and film.

One individual is concerned that the requirement to inspect physically photographic equipment and film packages upon request be continued. Another individual suggests that the FAA be more specific with the term "high-speed film," while a third individual agreed with the proposal but suggested a change in language to read "Remove X-ray, scientific, and all camera film." A fourth individual commented telephonically that the FAA should not allow the use of any X-ray systems to screen baggage at airports. A municipality suggests that scientific and high-speed film with an ASA/ISO speed of more than 400 should be removed prior to X-ray inspection.

The FAA has determined that film speeds with an ASA/ISO reading of 400 or below are safe for X-ray inspection and need not be subjected to hand search or inspection. Therefore, it would not be appropriate to specify high-speed film as being ASA/ISO 400 and above. In addition, the FAA intends to retain the requirement that photographic equipment and film packages be physically inspected upon request. Thus, each person will determine the proper actions to be taken to safeguard his or her film.

X-ray baggage inspection systems to process carry-on baggage and items have been in use since 1973. The FAA is not aware of any specific instance of any damage to ordinary film caused by X-ray systems used in the United States that is substantiated by factual evidence. Therefore, it is not necessary to remove all camera film before X-ray examination. In addition, the FAA requires that these X-ray systems meet the Food and Drug Administration requirements specified in 21 CFR 1020.40. To our knowledge, there have been no instances where these systems had excessive leakage or the operators received an excessive dose as measured by the dosimeters each operator is required to wear. Therefore, there is no need to remove X-ray systems from all airports.

A trade association representing many of the major film manufacturers suggests that the sign posting requirements be modified so that the signs must be posted not only in a conspicuous place, but also at or near the X-ray systems and at the checked baggage stations as well. The commenter favors adoption of ASTM Standard F792–82. Another association recommends that the term "checked articles" be used in lieu of "checked baggage" and that the FAA should allow the use of X-ray systems at any location as long as they meet the current imaging requirements. An objection was raised concerning the FAA's intention of requiring a step wedge at each station utilizing X-ray baggage inspection systems. This association concurs with the language proposed, namely "Remove X-ray, scientific, and high-speed film," and indicates that the additional number of hand searches caused by this advice had not created a significant burden. A third association suggests removing ambiguous wording such as "ordinary undeveloped film" and "high-speed film" and substituting the phrase "inspection may affect film" to properly inform the traveling public.

The FAA believes the regulation should continue to require only that the sign be "posted in a conspicuous place." It will continue to consider what locations are appropriate and so advise the air carrier. The FAA is adopting the suggestion that "checked baggage" be changed to "checked articles."

One commenter expressed concern that a step wedge would be required at each screening station. However, this is not required by the regulation. Nevertheless, since X-ray systems must meet the specified imaging requirements, it is not unreasonable to expect that carriers will want to have a step wedge at each screening station, so that FAA inspectors and airline representatives can quickly determine if the X-ray system meets these imaging requirements. It is not necessary to substitute the phrase "inspection may affect film" since, as previously stated, the FAA is not aware of any substantiated damage caused by X-ray systems.

Discussion of the Amendments

As proposed in Notice 84–8, §§ 108.17 and 129.26 are being amended to extend their application to checked baggage as well as carry-on items since certificate holders from time to time utilize X-ray imaging systems to inspect checked baggage; to adopt the language of previously produced and distributed paste-on stickers stating "Remove X-ray, scientific, and high-speed film;" to adopt a new imaging standard; and to correct an editorial error in § 108.17(a)(4) involving the misuse of the term "personal" dosimeter. Another editorial change is being made by replacing the word "will" in § 108.17(a)(4) with "shall." This will clarify the mandatory nature of the provision and conform to language used throughout the Federal Aviation Regulations.

The FAA proposed in Notice 84–8 to establish a new imaging standard for inclusion in the airline standard security program and included such a standard as part of the proposed rule. Specificity regarding the imaging standard has been eliminated from the rule as adopted to prevent access by persons attempting to frustrate the system. The standard is being placed in the air carrier standard security program of domestic and flag air carriers. The same standard will be separately specified in a letter to foreign air carriers.

To reduce any possibility of confusion and to preclude a recurrence of past incidents, the FAA is adopting a suggestion from one of the commenters by inserting the word "individual" in front of "personnel dosimeter" in § 108.17(a)(4). This should make it clear to everyone concerned that the dosimeter must be assigned to one person and should not be given to others.

In response to several comments and to clarify the intent of the FAA, a certificate holder or a foreign air carrier will be permitted to relocate an X-ray system that does not meet the new standard, and has therefore been replaced, to a lower category airport (i.e., an airport with lower screening activity as defined in FAA Order 1650.14, Aviation Security Handbook) or as approved by the Director of Civil Aviation Security and still meet the requirements in effect prior to July 22, 1985.

Economic Impact

The amendment relating to the language content of signs at X-ray system locations has no cost impact and will save passengers the cost of damaged film; therefore, the benefits, although not easily quantifiable, exceed the costs.

The amendment relating to improved testing of X-ray systems will impose an additional cost of about $100 per new X-

ray system for the step wedge device. In addition, the amendment will effectively prohibit the sale of used equipment that does not meet the new performance standards. About 15 percent of the 830 installed X-ray systems might not meet the new test standards, and of those about 25 percent might have been made available for sale as used equipment for up to $10,000 per system. Therefore, the potential sales loss is estimated to be $300,000 over a period of 5 to 10 years.

The benefits in terms of improved detection of forbidden items and the resultant reductions in hijackings and attendant casualty loss are difficult to quantify because they require estimating the number of forbidden items that would be detected by the new, but not the old, X-ray machines and the probabilities of such items being used in successful hijackings. Clearly, only one hijacking resulting in an accident need be prevented or, for that matter, only one life saved for the benefits to exceed the costs; therefore, it is the FAA's judgment that, on balance, the rule is beneficial.

There were not comments relating to the costs and benefits of these amendments.

Trade Impact

Since these amendments are applicable only to U.S. airports and both foreign and domestic manufacturers of X-ray systems will have to meet the same requirement, there is no trade impact. There were not comments relating to trade impact.

Rceordkeeping/Reporting Requirements

The recordkeeping requirements contained in § 108.17 have previously been approved by the Office of Management and Budget under OMB Control Number 2120–0098.

Conclusion

This amendment does not impose requirements that would result in any significant burden on the aviation community. Airport signs already contain the proposed language. The improved X-ray systems would impose a small additional cost of about $100 per new X-ray system, and, in some cases, replaced equipment could not be resold for aircraft baggage inspection. The additional costs are far outweighed by saving passengers the cost of damaged film, improved detection of forbidden items, and the resultant reductions in hijackings and related costs. Further, the cost of an improved X-ray system would not be incurred until a new system is installed or the old system is replaced. For these reasons, and because there are no related cost savings to small entities, I certify that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities. In addition, for the same reasons, it has been determined that the amendment does not involve a major regulation under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 108

Ammunition, Guns, Baggage, Transportation, Security measures, Aviation safety, Air transportation, Air carriers, Airports, Airplanes, Airlines, Arms and munitions, Firearms, Weapons, Law enforcement officers, Incorporation by reference.

14 CFR Part 129

Aircraft, Air carriers, Airports, Weapons, Incorporation by reference.

The Amendments

In consideration of the foregoing, §§ 108.17 and 129.26 of the Federal Aviation Regulations (14 CFR 108.17 and 129.26) are amended as follows, effective July 22, 1985.

PART 108—AIRLINE OPERATOR SECURITY

1. The authority citation for Part 108 is revised to read as follows:

Authority: Secs. 313, 315, 316, 317, 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 108.17 by revising the introductory language of paragraph (a) and paragraphs (a)(4), (a)(5), and (e) and adding a new paragraph (g) to read as follows:

§ 108.17 Use of X-ray systems.

(a) No certificate holder may use an X-ray system within the United States to inspect carry-on or checked articles unless specifically authorized under a security program required by § 108.5 of this part or use such a system contrary to its approved security program. The Administrator authorizes certificate holders to use X-ray systems for inspecting carry-on or checked articles under an approved security program if the certificate holder shows that—

* * * * *

(4) Procedures are established to ensure that each operator of the system is provided with an individual personnel dosimeter (such as a film badge or thermoluminescent dosimeter). Each dosimeter used shall be evaluated at the end of each calendar month, and records of operator duty time and the results of dosimeter evaluations shall be maintained by the certificate holder; and

(5) The system has a capability of meeting the imaging requirements set forth in an approved Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792–82, except that a system in use prior to July 22, 1985 may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the system is replaced. A system may be relocated to a lower category airport or as approved by the Director of Civil Aviation Security. A relocated system may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the relocated system is replaced.

* * * * *

(e) No certificate holder may use an X-ray system to inspect carry-on or checked articles unless a sign is posted in a conspicuous place at the screening station and on the X-ray system which notifies passengers that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from carry-on and checked articles before inspection. This sign shall also advise passengers that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any carry-on or checked articles to more than 1 milliroentgen during the inspection, the certificate holder shall post a sign which advises passengers to remove film of all kinds from their articles before inspection. If requested by passengers, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

* * * * *

(g) The American Society for Testing and Materials Standard F792–82, "Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," described in this section is incorporated by reference herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by these amendments may obtain copies of the standard from the American Society for testing and Materials, 1916 Race Street.

Philadelphia, PA 19103. In addition, a copy of the standard may be examined at the FAA Rules Docket, Docket No. 24115, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

3. The authority citation for Part 129 is revised to read as follows:

Authority: Secs. 313(a) and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) and 1421); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

4. By amending § 129.26 by revising the introductory language of paragraph (a) and paragraphs (a)(4), (a)(5), and (b)(4) and adding a new paragraph (d) to read as follows:

§ 129.26 Use of X-ray systems.

(a) No foreign air carrier may use an X-ray system in the United States to inspect carry-on and checked articles unless:

* * * * *

(4) Procedures have been established to ensure that such operator of the system will be provided with an individual personnel dosimeter (such as a film badge or thermoluminescent dosimeter). Each dosimeter used will be evaluated at the end of each calendar month, and records of operator duty time and the results of dosimeter evaluations will be maintained by the foreign air carrier; and

(5) The system has a capability of meeting the imaging requirements specified by the Administrator using the step wedge specified in American Society for Testing and Materials Standard F792-82, except that a system in use prior to July 22, 1985, may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the system is replaced. A system may be relocated to a lower category airport or as approved by the Director of Civil Aviation Security. A relocated system may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the relocated system is replaced.

* * * * *

(b) * * *

(4) Unless a sign is posted in a conspicuous place at the screening station and on the X-ray system which notifies passengers that carry-on and checked articles are being inspected by an X-ray system and advises them to remove all X-ray, scientific, and high-speed film from their carry-on and checked articles before inspection. This sign shall also advise passengers that they may request an inspection to be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any carry-on or checked articles to more than 1 milliroentgen during the inspection, the foreign air carrier shall post a sign which advises passengers to remove film of all kinds from their articles before inspection. If requested by passengers, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

* * * * *

(d) The American Society for Testing and Materials Standard F792-82, "Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," described in this section is incorporated by reference herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by these amendments may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. In addition, a copy of the standard may be examined at the FAA Rules Docket, Docket No. 24115, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

Issued in Washington, D.C., on May 28, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-14785 Filed 6-19-85; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
June 20, 1985

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 541, 544, and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Control Unit Programs, and Adult Basic Education; Final Rules; Inmate Discipline and Special Housing Units; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Control Unit Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule with comments invited on interim § 541.48(b).

SUMMARY: This document finalizes and amends an interim rule relating to the Bureau of Prisons policy on Control Unit programs. The amendment allows an inmate who is being admitted to the Control Unit, or who is being returned to the Control Unit following contact with the public, to request an X-Ray be substituted for a digital search.

EFFECTIVE DATE: June 20, 1985. Public comment on the interim rule must be received on or before August 30, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, D.C. 20534. Comments received on the interim rule will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Control Unit Programs. A final rule on this subject was last published in the **Federal Register** August 17, 1984 (at 49 FR 32990 et seq.). At that time, the Bureau published interim § 541.48, Search of control unit inmates. That section authorized the Warden at an institution housing a control unit to order a digital or simple instrument search for new admissions to the control unit and for inmates returned to the control unit following contact with the public. The need for this procedure arose because some inmates were transporting serious contraband, such as hacksaw blades, in their rectal cavities. Undetected, such contraband poses a serious threat to institution security and good order, and to the protection of staff and others. This threat is heightened in a setting such as a control unit, for inmates who have been determined to be unable to function satisfactorily in a less restrictive environment.

The interim rule prohibited such a search if it was likely to result in physical injury to the inmate. In that situation, a non-repetitive X-Ray could be authorized by the Regional Director following a determination by the institution physician that such an examination is not likely to result in serious or lasting medical injury or harm to the inmate. While the inmate's consent would be solicited prior to conducting a digital or simple instrument search, or an X-Ray examination, the inmate's consent was not required.

Public comment on § 541.48 was invited and received, primarily from inmates housed at the United States Penitentiary, Marion, Illinois. Comments on § 541.48 expressed displeasure with the interim rule, primarily the digital search procedure. While the Bureau continues to believe a search procedure is necessary, the Bureau has decided to amend the final rule by inserting a new § 541.48(b), whereby an inmate in the Marion Control Unit may request, in writing, that an X-Ray be taken in lieu of the digital search. The request is to be approved by the Warden, provided the institution's Chief or Acting Chief of Health Programs determines and states in writing that the amount of X-Ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-Ray medically unwise.

The new language is considered less restrictive, and is intended to provide the affected inmate with an alternative to the digital search. For these reasons, the Bureau of Prisons has determined that the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public comment, and delay in effective date are inapplicable. While this option will be implemented immediately, the Bureau has decided to publish new § 541.48(b) as an interim rule, with public comment invited. Public comment received on or before August 30, 1985 will be considered, along with an assessment of the effectiveness of the X-ray procedure, prior to a decision on whether to finalize the interim rule.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments to Interim § 541.48

Several objections were offered to interim § 541.48(a). One commenter said that the rule as written provides the Warden with "unnecessarily and unreasonably broad authority". The commenter states a digital or simple instrument search should be prompted by "some kind of provocation or reason" rather than simply by admission to a control unit or return to a control unit following contact with the public. Another comment suggested that the standard for this search be the same (reasonable belief) as set forth in Part 552, Subpart B, searches of housing units, inmates, and inmate work areas.

We do not agree with these comments. Because a control unit is the most secure type housing unit in the Bureau of Prisons, it is necessary for the Warden to have the authority to order a digital or simple instrument search on inmates admitted to the control unit, or returned there after contact with the public. The Bureau's rule does not require every inmate be given a digital or simple instrument search, but provides the Warden, based on correctional experience and judgment, with the authority to authorize, in writing and within the constraints specified, that the search be conducted in order to ensure institution security and good order, and the protection of staff and others. A comment that the "mere fact of referral to a control unit" should not be sufficient grounds to believe the person may be hiding contraband in body cavities, fails to appreciate that the person given such a search has been placed in a control unit following a hearing in which it was determined that the inmate was unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution.

Comments also stated that the search provision was "completely unnecessary", that it was designed to humiliate, terrorize, degrade inmates, that it causes "hatred" on the part of the inmate being subjected to it, that it cause violence, and that digital searches are seen by inmates as a form of sexual assault. Suggested alternatives included the use of a "dry cell" (a cell without a sink or commode, and preferably void of furnishings), and/or the use of X-Rays. With a dry cell, the commenter suggested that the inmate can defecate in a bed pan, which may then be inspected for any contraband.

The Bureau considers § 541.48(a) necessary. Our previous experience with rectal searches has led to the discovery of various items, including hacksaw blades, lock picks, and handcuff keys. The procedure is not used to "humiliate and terrorize inmates", nor to degrade,

cause hatred or violence, or to perpetrate a sexual assualt. Rather, the search is intended to help insure institution security and good order, and the protection of staff and others, including inmates. While recognizing the concerns pertaining to digital searches, the Bureau believes this or a similar approach is necessary to help ensure weapons or similar items are not secreted by control unit inmates. In response to a comment asking how the Bureau planned to "assess the effectiveness" of the search procedure, the Bureau notes the recent testimony by an inmate at Marion reporting that the digital search was initially effective, apparently because people weren't prepared for them. While the inmate suggested this is no longer the case, the digital search, at a minimum, continues to serve a deterrent purpose. In a similar respect, we do not agree with the comment that the rule "encourages inmates to introduce drugs and small hacksaw blades into the unit, because they (inmates) know what the routine is going to be every time, which makes the system easy to beat." The search procedure described in § 541.48 is not expected, nor intended, to be the sole means to deter the introduction of contraband, or to ensure the safety of staff or others. Rather, it is one method used to help achieve these purposes.

With respect to the suggested alternatives, placement in a "dry cell" is not considered feasible on a regular basis, based on insufficient staff resources. A dry cell placement requires constant staff observation of the inmate to prevent the inmate's defecating, rewrapping the item, and then either reswallowing, or reinserting it in his rectum. This period of observation may extend over several days, depending on the inmate's rate of metabolism. In addition, staff resources would be further stretched in those situations where several inmates enter or return to the control unit at the same time, thereby creating a situation where each must be "dry-celled" and observed separately. To routinely require "dry-celling" in lieu of the digital search could seriously deplete staff resources, thereby endangering institution security and good order.

While the Bureau does not consider "dry-celling" to be feasible on a regular basis, the Bureau is willing to implement the suggestion that an inmate assigned to the Marion Control Unit may request an X-ray be substituted for the digital search. Accordingly, a new paragraph (b) is added. This paragraph allows an inmate in the Marion Control Unit to request in writing that an X-ray be taken in lieu of the digital search discussed in § 541.48(a). The rule requires the Warden (or Acting Warden) to approve this request, provided it is determined and stated in writing by the Chief (or Acting Chief) of Health Programs that the amount of X-ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-ray medically unwise. Documentation of the X-ray, and the inmate's signed request for it, are to be placed in the inmate's central and medical files.

This option is considered responsive to pubic comment, while recognizing the need to maintain health safeguards on the use of X-rays. The Bureau is implementing this procedure on an interim basis to assess its effectiveness and whether it is a feasible alternative. Public comment on the use of X-rays and/or other suggested alternatives will be considered prior to finalizing new interim § 541.48(b).

Other public comment stated that the phase "any inmate returning to the control unit following contract with the public" was vague. This language is intended to encompass an inmate's return to the control unit from outside the institution, and access to an area within the institution to which the public also has had opportunity for access. The possible digital search following the inmate's return to the control unit is not intended, as suggested in public comment, to discourage inmates from seeking redress in the courts, or to discourage inmate witnesses from testifying on behalf of other inmates, or to limit complaints being raised in courts against prison administration. The search requirement is necessary, however, to help ensure institution security and good order, and protection of staff and others. The need for the search is supported by factors which warrant a control unit referral, such as incidents during confinement in which the inmate caused injury to other persons, or involvement in a disruption of the orderly operation of a correctional institution. As stated previously, a control unit is the most secure type housing unit in the Bureau of Prisons, and is used to detain those inmates unable to function in a less restrictive environment. For these reasons, and because our experience has shown that inmates may hide weapons in their rectal cavities, the Bureau considers it appropriate to provide the Warden with the authority to order a digital search as specified in the rule. We would note, however, that new interim § 541.48(b) may help alleviate some of the expressed concerns, as an inmate will have the opportunity to request that an X-ray be substituted for the digital search.

In response to comment that staff abuse and "misuse" the policy, the Bureau notes that a digital search requires approval of the Warden and may be conducted only by designated qualified health personnel (e.g. physician, physician's assistant). Staff violation of the search procedure subjects that staff member to disciplinary action. An inmate who believes that an abuse or misuse of the procedure has occurred may use the Administrative Remedy Procedure (see Part 542, Subpart B) to file a complaint. The complaint will be investigated and, if an abuse or misuse is found, necessary action will be taken.

Based on new interim § 541.48(b), existing §541.48 (b) and (c) become final § 541.48 (c) and (d). Public comment on these sections objected to allowing the Warden to order an X-ray for an inmate without the inmate's expressed permission, referring to the possible dangers posed by X-rays. The Bureau is aware of this concern, and believes constraints within its rule are responsive to the concern. Specifically, the rule states that an X-ray for the purpose of determining if contraband is concealed in or on the person must be approved by the Regional Director (not the Warden), is to be non-repetitive, and that the X-ray may not be done if the institution physician determines the examination is likely to result in serious or lasting medical injury or harm to the inmate. Within this context, § 541.48(c) now states that where neither a digital or simple instrument search, nor an X-ray examination may be used, the inmate is to the placed in a dry cell until sufficient time has passed to allow excertion. Based on interim § 541.48(b), the phrase, "as specified in paragraph (c) of this section" is added to final § 541.48(d).

List of Subjects in 28 CFR Part 541

Prisoners.

Dated: June 14, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by revising § 541.48 of Part 541, Subpart D to read as set forth below.

In Subchapter C, Part 541, Subpart D is amended as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart D—Control Unit Programs

1. The authority citation for Part 541, Subpart D is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. By revising § 541.48 to read as follows:

§ 541.48 Search of control unit inmates.

(a) The Warden at an institution housing a control unit may order a digital or simple instrument search for all new admissions to the control unit. The Warden may also order a digital or simple instrument search for any inmate who is returned to the control unit following contact with the public. Authorization for a digital or simple instrument search must be in writing, signed by the Warden, with a copy placed in the inmate central file. The Warden's authority may not be delegated below the level of Acting Warden.

(b) An inmate in the Marion Control Unit may request in writing that an X-ray be taken in lieu of the digital search discussed in paragraph (a) of this section. The Warden shall approve this request, provided it is determined and stated in writing by the institution's Chief or Acting Chief of Health Programs (may not be further delegated) that the amount of X-ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-ray medically unwise. Staff are to place documentation of the X-ray, and the inmate's signed request for it, in the inmate's central and medical files. The Warden's authority may not be delegated below the level of Acting Warden.

(c) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate. In this situation, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive X-ray for the purpose of determining if contraband is concealed in or on the inmate. The X-ray examination may not be performed if it is determined by the institution physician that such an examination is likely to result in serious or lasting medical injury or harm to the inmate. Staff are to place documentation of the X-ray examination in the inmate's central file and medical file. The authority of the Warden and Regional Director may not be delegated below the level of Acting Warden and Acting Regional Director respectively. If neither a digital or simple instrument search, nor an X-ray examination may be used, the inmate is to be placed in a dry cell until sufficient time has passed to allow excretion.

(d) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search, or, as specified in paragraph (c) of this section, an X-ray examination. However, the inmate's consent is not required.

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BILLING CODE 4410-05-M

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28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates; Adult Basic Education

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on adult basic education (ABE). Although the proposed rule increased the minimum grade level from 6.0 to 8.0, the Bureau has decided to delay taking final action on this proposal. Instead, the Bureau will implement a pilot program to assess the impact of such an increase on institution resources and operations.

EFFECTIVE DATE: July 1, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on the Bureau's Adult Basic Education (ABE) Program. Proposed amendments to this rule were published in the **Federal Register** August 17, 1984 (at 49 FR 32999).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities. Because the revised rule generally continues current requirements, the Bureau finds good cause under 5 U.S.C. 553(d) to implement this rule without a delay in the effective date.

Summary of Changes/Comments

1. In the **Federal Register** publication of August 17, 1984, the Bureau of Prisons proposed raising the minimum academic grade level from 6.0 to 8.0. Because of concerns arising since publication of that proposal, the Bureau has decided to withhold final action on increasing the minimum grade level. Instead, a pilot program (effective July 1, 1985) is being established in several institutions to assess the merits of implementing an 8.0 minimum grade level. The pilot program is intended to help determine the number of inmates affected by the increase, the adequacy of educational resources, and the effect of the expanded program on other institution operations. At the conclusion of the pilot project, a decision will be made on whether to finalize the 8.0 minimum grade level. Public comment previously received on the proposed increase in grade level will be responded to at the time of such final action.

2. *Section 544.71* § 544.71(a)(4) inserts the date "June 21, 1982", as this is the date when the existing requirement of a 6.0 academic grade level first became effective. Section 544.71(c) is deleted, as its intent is encompassed within proposed, now final, § 544.72(c).

3. *Section 544.72* The Bureau is withdrawing its proposed change to § 544.72(b). That change would have required the ABE coordinator to formally interview each inmate involved in the ABE program at least once every 90 days. Instead, the Bureau has decided to retain the existing requirement of once every 30 days. This retention ensures that each inmate involved in the ABE Program is seen regularly during the 90 calendar day period. Reference to the Youth Corrections Act is deleted from § 544.72(c), although the intent of that section is unchanged.

4. *Section 544.73* The word "work" is added to the last sentence of this section. The intent of the sentence is unchanged.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Dated: May 23, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as follows: In Subchapter C, by revising Part 544, Subpart H.

In Subchapter C, revise Part 544, Subpart H to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

* * * * *

Subpart H—Adult Basic Education (ABE) Program

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level is required to attend an adult basic education (ABE) program for a minimum of 90 calendar days. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability.

(a) The provisions of this subpart on the adult basic education program apply to all inmates in federal institutions *except:*

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c);

(3) Sentenced aliens with a deportation detainer;

(4) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grades 1, 2, and 3 at the time of implementation of this rule (June 21, 1982) who do not presently function at the 6.0 academic grade level;

(5) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ABE program.

§ 544.72 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below a 6.0 academic grade level in reading, writing, and mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator shall formally interview each inmate involved in the ABE program at least once every 30 days to review and record the inmate's progress in this program. The ABE coordinator shall place documentation of this interview in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other authorized absences from scheduled classes, the inmate's unit team shall meet with the inmate in respect to the inmate's continued involvement in the ABE program towards attainment of the 6.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, and no disciplinary action will be taken. The inmate does not have this option to discontinue in programs where treatment is mandated by statute.

§ 544.73 Federal Prison Industries (UNICOR) and inmate performance pay (IPP) assignments.

Inmates who wish to secure a UNICOR or IPP work assignment above the fourth grade of compensation must be able to demonstrate achievement of at least a 6.0 academic grade level. An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be considered the basis for removal of the inmate from the UNICOR or IPP work assignment.

§ 544.74 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 6.0.

§ 544.75 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 6.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 541 and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Discipline and Special Housing Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau of Prisons is proposing amendments to its final rule on Inmate Discipline and Special Housing Units. These amendments are intended to clarify the existing Bureau policy and/or to address concerns that have arisen since the 1982 publication of the final rule. In addition, the Bureau of Prisons is publishing a new proposed rule on smoking/non-smoking areas. This rule provides guidelines for establishing smoking/non-smoking areas within Bureau institutions.

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its final rule on Inmate Discipline and Special Housing Units, and a new proposed rule on smoking/non-smoking areas within Bureau institutions.

The Bureau's proposed rule on smoking/non-smoking areas sets forth guidelines for the Warden to consider in establishing smoking/non-smoking areas within the institution. The rule prohibits smoking in those areas where to allow smoking would pose a hazard to health or safety. The rule authorizes the Warden to establish smoking/no smoking areas in other sections of the institution. The rule requires "no smoking" areas be clearly identified, and provides for disciplinary action to be taken for failure to observe posted smoking restrictions.

The Bureau published a final rule on Inmate Discipline and Special Housing Units in the **Federal Register** August 17, 1982 (at 47 FR 35920-35937). Because errors were made in the printing of this document, a correction document was published in the **Federal Register** September 9, 1982 (at 47 FR 39676-39678). The present amendments are intended to address issues that have arisen since the 1982 publication of the final rule on discipline. The proposed amendments are described below.

In § 541.11, Table 1, and throughout the rule, the term "Lieutenant" is substituted for "correctional supervisor", as this is now the proper designation for that individual. Table 1 is further revised by clarifying that the Warden, Regional Director, or General Counsel may not increase any "valid" disciplinary action taken. In Table 2, the phrase "of time staff became aware of the inmate's involvement in the incident" is added. This is consistent with the language of existing § 541.15(b).

Several revisions are made to the listing of prohibited acts contained in § 541.13, "Prohibited acts and disciplinary severity scale". A summary of these is given below.

Prohibited act	Change
101	Adds "or an armed assault on the institution's secure perimeter".
104	Adds "manufacture".
108	Moves "manufacture" into the title of the prohibited act (was within the explanatory language of the prohibited act).
198, 298, 398, 498	New acts for interfering with a staff member in the performance of duties. The conduct is to be categorized and charged in terms of its severity.
199, 299, 399, 499	Adds "or the Bureau of Prisons" after institution to clearly recognize that the rule applies to people in the care, custody, control of the Bureau of Prisons (e.g., to an inmate on writ, furlough).
206	Adds "or lock pick" after "locking device".
219	Adds "this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored".
221	New act for "Being in an unauthorized area (any area authorized only for the opposite sex) (This includes any inmate found in an otherwise authorized area with an inmate of the opposite sex without staff permission.)".
222	Moves the existing prohibited act of "making, possessing, or using intoxicants" from the moderate to high category.
331	Adds "manufacture" into the title of the prohibited act.
409	New act for "Unauthorized physical contact (e.g., kissing, embracing)".

Section 541.13(f), while new, is consistent with existing § 541.11(e). The existing Table 6, which is now referenced in § 541.13(f), is revised to propose a six months eligibility period for restoration of forfeited statutory good time. This revision is made because an inmate who receives two or more low moderate offenses within a six month period is subject to having statutory good time forfeited (as specified in existing Table 5, § 541.13).

Sections 541.15(f) and 541.17(f) are now revised to require that the discipline committee shall make its decision based on at least some facts, and if there is conflicting evidence, the decision must be based on the greater weight of the evidence. The phrase "some facts" refers to facts indicating the inmate committed the prohibited act, while the phase "greater weight of the evidence" refers to the merits of the evidence, not to its quantity nor to the number of witnesses testifying.

In § 541.17, paragraph (c) is revised to require the Institution Discipline Committee (IDC) chairman to document in a separate report, not available to the inmate, confidential reasons for declining to call requested witnesses. Paragraph (d) is revised to require that when an inmate who has had sanctions imposed by the IDC while absent from custody returns to custody, the rehearing is to ordinarily occur within 60 days of the inmate's arrival at the institution designated for service of sentence. Paragraph (g) now provides for the IDC to give the inmate a written copy of the decision and disposition, ordinarily within 10 days of the IDC's decision.

Section 541.19 now adds to the written policy the requirement that the discipline committee(s) give an inmate "written" notice of its decision, and advise the inmate that the inmate may appeal the decision within "15 days" under the Administrative Remedy Procedure (see Part 542 of this chapter). As in § 541.11, Table 1, the Bureau has now revised § 541.19 to state that the Warden, Regional Director, or General Counsel may not increase any "valid" sanction imposed. For consistency with the revised standard for determining whether an inmate committed a prohibited act, § 541.19(b) now inserts the phrase "some facts, and if there was conflicting evidence, whether it was based on the greater weight of the evidence", as the applicable standard when assessing an appeal.

For clarity, § 541.21(c)(9) now states that program staff are to arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request. In § 541.22, paragraph (a)(6)(i) is reworded to clearly indicate that the 90-day provision does not apply to pretrial inmates.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291

does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects

28 CFR Part 541

Prisoners.

28 CFR Part 551

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows:

I. In Subchapter C amend Part 541, Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart B—Inmate Discipline and Special Housing Units

A. The authority citation for Part 541, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0 0.99.

B. In § 541.11, Tables 1 and 2 are revised to read as follows:

§ 541.11 Notice to inmate of Bureau of Prisons rules.

* * * * *

BILLING CODE 4410-05-M

BILLING CODE 4410-05-C

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1

Procedures	Dispositions
1. Incident involving possible commission of prohibited act.	→ Observing staff may resolve informally or drop the charges.
2. Staff prepares Incident Report and forwards it to Lieutenant.	→ Lieutenant may resolve informally or may drop charges.
3. Appointment of investigator who conducts investigation and forwards material to Unit Discipline Committee.	
4. Initial hearing before Unit Discipline Committee.	→ Unit Discipline Committee may drop or resolve informally any High, Moderate, or Low Moderate charge, impose allowable sanctions or refer to Institution Discipline Committee.
5. Hearing before Institution Discipline Committee.	→ Institution Discipline Committee may impose allowable sanctions, or drop the charges.
6. Appeals through Administrative Remedy Procedure.	→ The Warden, Regional Director, or General Counsel may approve, modify, send back with directions, or reverse, but may not increase any valid disciplinary action taken.

TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

1. Staff becomes aware of inmate's involvement in incident.

maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

minimum of 24 hours (unless waived)

4. Institution Discipline Committee hearing.

maximum of 2 work days (excluding day of notice, weekends, and holidays) of time staff became aware of the innate's involvement in the incident.

3. Initial hearing.

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

* * * * *

§ 541.13 Prohibited acts and disciplinary severity scale.

C. In § 541.13 "Prohibited acts and disciplinary severity scale", Table 3, containing the code of prohibited acts, will be amended:

1. In the Greatest Category:

A. By revising prohibited act 101 to read, "Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter";

B. By revising prohibited act 104 to read, "Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition";

C. By revising prohibited act 108 to read, "Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade)";

D. By adding a new prohibited act 198 to read, "Interfering with a staff member in the performance of duties (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable."; and

E. By revising prohibited act 199 to read, "Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable."

2. In the High Category:

A. By revising prohibited act 208 to read, "Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys)";

B. By revising prohibited act 219 to read, "Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.)";

C. By adding a new prohibited act 221 to read, "Being in an unauthorized area (any area authorized only for the opposite sex) (This includes any inmate found in an otherwise authorized area with an inmate of the opposite sex without staff permission.)";

D. By moving existing prohibited act 322, "Making, possessing, or using intoxicants", from the moderate to high category (prohibited act 22).

E. By adding a new prohibited act 298, to read, "Interfering with a staff member in the performance of duties (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable."; and

F. By revising prohibited act 299 to read, "Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable."

3. In the Moderate Category:

A. By revising prohibited act 331 to read, "Possession, manufacture, or introduction of a non-hazardous tool (Tool not likely to be used in an escape or escape attempt, or to be manufactured or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety)";

B. By adding a new prohibited act 398 to read, "Interfering with a staff member in the performance of duties (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable."; and

C. By revising prohibited act 399 to read, "Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable."

4. In the Low Moderate Category:

A. By adding a new prohibited act 409 to read, "Unauthorized physical contact (e.g., kissing, embracing)";

B. By adding a new prohibited act 498 to read, "Interfering with a staff member in the performance of duties (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable."; and

C. By revising prohibited act 499 to read, "Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable."

D. In § 541.13, paragraph (f) is added, and Table 6, now referenced in this paragraph, is amended to read as follows:

* * * * *

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

* * * * *

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Maximum amount forfeited SGT	Maximum amount withheld SGT	Eligibility restoration forfeited SGT (months)	Eligibility restoration withheld SGT (months)	Maximum dis seg (days)
*	*	*	*	*	*	*
Low moderate	E-P	N/A		N/A (1st offense) 6 months (2nd or 3rd offense in same category within six months).	3	N/A
*	*	*	*	*	*	*

E. In § 541.15, paragraph (f) introductory text is revised to read as follows:

§ 541.15 Initial hearing.

* * * * *

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

* * * * *

F. In § 541.17, paragraphs (c), (d), (f), introductory text, and (g) are revised to read as follows:

§ 541.17 Procedures in Institution Discipline Committee hearings.

* * * * *

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the

disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The chairman shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of the outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The chairman need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the IDC. The chairman shall request submission of written statements from unavailable witnesses when necessary for an appreciation of the circumstances surrounding the charge(s). The chairman shall document reasons for declining to call requested witnesses in the IDC report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation members of the Committee, shall question witnesses requested by the inmate who are called before the IDC. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the Committee. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institutional security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate who has had any sanctions imposed by the IDC while absent from custody returns to custody, the Warden shall have the charges reheard before the Institution Discipline Committee ordinarily within 60 days of the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may dismiss the charge(s), or may modify but may not increase the sanctions previously imposed in the inmate's absence.

* * * * *

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The Committee shall find that the inmate either:

* * * * *

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decisions and disposition, ordinarily within 10 days of the IDC's decision.

* * * * *

G. In § 541.19, the introductory paragraph and paragraph (b) are revised to read as follows:

§ 541.19 Appeals from Unit Discipline Committee or Institutional Discipline Committee actions.

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate written notice of its decision, they shall also advise the inmate that the inmate may appeal the decision within 15 days under Administrative Remedy Procedures (see Part 542 of this chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, reverse, or send back with directions any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase any valid sanction imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

* * * * *

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based on its decision on some facts, and if there was conflicting evidence, whether it was based on the greater weight of the evidence; and

* * * * *

H. In § 541.21, paragraph (c)(9) is revised to read as follows:

§ 541.21 Conditions of disciplinary segregation.

* * * * *

(c) * * *

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

* * * * *

I. In § 541.22, paragraph (a)(6)(i) is revised to read as follows:

§ 541.22 Administrative detention.

* * * * *

(a) * * *

(6) * * *

(i) In Security Level 1 through 5 and in Administrative type institutions, staff within 90 days of an inmate's placement in post-disciplinary detention shall, except for pre-trial inmates, either return the inmate to the general inmate population or effect a transfer to a more suitable institution.

* * * * *

II. In Subchapter C, amend Part 551 by adding a new Subpart N to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

* * * * *

Subpart N—Smoking/Non-Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definition.
551.162 Notice of "no-smoking" areas.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart N—Smoking/Non-Smoking Areas

§ 551.160 Purpose and scope.

The Warden, as set forth in this rule, may establish smoking/no smoking areas within the institution.

(a) Smoking is prohibited in those areas where to allow smoking would pose a hazard to health or safety.

(b) Smoking/no smoking areas may be established in other areas of the institution, in the discretion of the Warden.

§ 551.161 Definition.

For purposes of this rule, smoking is defined as the use or carrying of any lit tobacco product.

§ 551.162 Notice of "no smoking" areas.

The Warden shall ensure that "no smoking" areas are clearly identified. Disciplinary action may be taken for failure to observe posted smoking restrictions.

Dated: June 17, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85–14948 Filed 6–19–85; 8:45 am]

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Thursday
June 20, 1985

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassification of the American Alligator in Florida to Threatened Due to Similarity of Appearance; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassification of the American Alligator in Florida to Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service reclassifies the American alligator (*Alligator mississippiensis*) in Florida, where the species is presently classified as threatened, to a classification of threatened due to similarity of appearance, under provisions of the Endangered Species Act of 1973, as amended. This change is based on evidence that the species is not biologically threatened, a legal status defined for species believed likely to become endangered within the foreseeable future. Productive alligator populations are well distributed throughout the State wherever suitable habitat occurs, with over 6,700,000 acres of wetland habitat currently occupied by the species. Reclassification of Florida alligators reduces restrictions on the State for future management and research. Any harvests in Florida must be within constraints established by the Service's special rule on American alligators 50 CFR 17.42(a) and existing State statutes and regulations.

EFFECTIVE DATE: The effective date of this rule is July 22, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell Neal (See **ADDRESSES** above) (601/960-4900 or FTS 490-4900), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The American alligator (*Alligator mississippiensis*) occurs in varying densities in wetland habitats throughout the Southeast including all or parts of the following States: Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, Oklahoma, North Carolina, South Carolina, and Texas. The alligator is a large wetland species of significant scientific and commercial value. Crocodilians such as the American alligator are the only extant representatives of the order Archosauria, and this species represents one of only two extant species of the genus *Alligator*. The crocodilians evolved as a group some 180–200 million years ago and show many advanced characteristics, such as a four-chambered heart, rudimentary diaphragm, and elaborate maternal care and behavior.

The alligator was first classified as endangered throughout its range in 1967 due to concern over poorly regulated or unregulated harvests. Subsequently, in response to Federal and State protection, the alligator recovered rapidly in many parts of its range, enabling the Service to undertake the following reclassification actions: (1) Reclassification to threatened due to similarity of appearance in three coastal parishes of Louisiana, reflecting complete recovery (September 26, 1975—40 FR 44412); (2) Reclassification to threatened, reflecting partial recovery, in all of Florida and certain coastal areas of South Carolina, Georgia, Louisiana, and Texas (January 10, 1977—42 FR 2071); (3) Reclassification to threatened by similarity of appearance, again reflecting complete recovery, in nine additional parishes of Louisiana (June 25, 1979—44 FR 37130); (4) Reclassification to threatened by similarity of appearance in 52 parishes in Louisiana, reflecting complete recovery (August 10, 1981—46 FR 40664); (5) Reclassification to threatened by similarity of appearance in Texas, reflecting complete recovery (October 12, 1983—48 FR 46332).

In June 1982, the Service began a status assessment of the alligator in the State of Florida by a review of data and materials held by the Gainesville Wildlife Research Laboratory of the Florida Game and Fresh Water Fish Commission. The data with the most significant bearing on status of Florida alligators are found in results of night count surveys that have been conducted since 1971 in all major habitat types. These data are stored on computer at the Wildlife Research Laboratory. Dr. C.L. Abercrombie, a biologist stationed at the laboratory, provided summaries and analyses of these unpublished data based on computer printouts of about 3,000 miles of survey lines. The Wildlife Research Laboratory also holds large quantities of data on population parameters for specific research areas, including Orange Lake, Lake Griffin, Newnans Lake, and Lochloosa Lake. In addition, in order to more fully understand Florida alligator data, a number of references were consulted, including Goodwin and Marion (1978, 1979), Hines (1979), Dietz and Hines (1980), and Wood and Humphrey (1983). The most important of these are listed in the "References" section of this proposed rule.

The evaluation of past, current, and likely future alligator habitat status is based primarily on data obtained from the Fish and Wildlife Service's National Wetlands Inventory Station, St. Petersburg, Florida. These data are the best available and provide estimates of past and present acreage in various wetland habitat types.

The Service believes these data indicate that the American alligator in Florida is not likely to become endangered within the foreseeable future, and thus its current designation as a threatened species should be changed. However, because of the alligator's similarity of appearance to other endangered crocodilians and the fact that hides or other parts may occur in the trade, it is necessary to maintain restrictions on commercial activities involving alligators taken in the State to insure the conservation of other alligator populations, as well as other crocodilians, that are threatened or endangered. This will be accomplished through restrictions in the Service's special rule on American alligators (50 CFR 17.42(a)). Section 4(e) of the Endangered Species Act authorizes the treatment of a species (or subspecies or distinct population) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened, if it is found: (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service already treats American alligators found in Louisiana and Texas as threatened because of their similarity of appearance to other American alligators, as well as other crocodilians, that are listed as threatened or endangered. Certain restrictions are

imposed on commercial activities involving specimens taken in Louisiana and Texas to insure the conservation of other endangered or threatened alligators and other crocodilians. The Service will now treat American alligators found in Florida as threatened due to similarity of appearance, and imposes similar restrictions on commercial activities involving specimens taken in Florida.

Summary of Comments and Recommendations

In the June 20, 1984, proposed rule (50 CFR 25342) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to 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 were published in the *Orlando Sentinel* on July 8, 1984; in the *Miami Herald* on July 16, 1984; and in the *Tallahassee Democrat* on July 7, 1984. The notices invited general public comment. A public hearing was neither requested nor held. Twenty-four comments were received and are discussed below.

The Service received comments from the following individuals and organizations: The New York Zoological Society; the Safari Club International; the Florida State Museum; the U.S. Department of the Interior, National Park Service (Washington office and Everglades National Park office); the Florida Audubon Society; the National Audubon Society; the Florida Game and Fresh Water Fish Commission; the Georgia Department of Natural Resources, Game and Fish Division; the Alabama Department of Conservation and Natural Resources, Division of Game and Fish; the Florida Department of Natural Resources; the Mississippi Department of Wildlife Conservation; the North Carolina Wildlife Resources Commission; the Louisiana Department of Wildlife and Fisheries; the County of Sarasota, Florida, Natural Resources Management Department; the St. Lucie County, Florida, Board of Commissioners; the U.S. Environmental Protection Agency, Region IV; the U.S. Department of Agriculture, Florida National Forests; the Florida Wildlife Society; Mr. James H. Powell, Jr.; and Mr. Manuel Lopez.

Twenty-two of the comments supported the proposal, voiced no objection to the proposal, or provided comments that were not substantive in nature. Two comments expressed concern regarding the proposal.

The Department of the Interior, National Park Service (Washington Office and Everglades National Park Office) requested that the proposal be ameliorated with a possible alternative of deleting Broward, Collier, Dade, and Monroe counties from the proposal. The basis for the request was possible illegal poaching resulting from reopening a legal market for alligator hides in Florida and the possible effects on the American crocodile both on and adjacent to the Everglades National Park. This concern presupposes that reclassification will result in a State-wide open season with an open commercial market for hides. In actuality, taking and commerce will continue to be tightly controlled through the Endangered Species Act by means of the special rule on threatened due to similarity of appearance alligators. Sustained yield harvesting will not be an open ended affair but a carefully controlled procedure on a limited area basis. The Service consulted with the Florida Game and Fresh Water Fish Commission during development of the proposed rule as it may relate to American crocodiles. It was determined that in areas where alligators and crocodiles occurred together, taking would be limited to removal of specific nuisance alligators on a carefully controlled and monitored basis.

Mr. James H. Powell, Jr. expressed a concern about the possible effect of increased alligator hides in international trade and the possible effect on other endangered or threatened crocodilians. The Service is aware of this possible impact and will continue to monitor the situation and take appropriate action if evidence indicates that restrictions are warranted.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the American alligator in Florida should be reclassified from threatened to threatened due to similarity of appearance. 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 (50 CFR Part 424), set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their application to the American alligator (*Alligator mississippiensis*) in Florida are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* American alligator populations, in terms of both density and total numbers, are limited by the productivity and amount of available habitat. Florida has more alligator habitat than any other State within the alligator's range. The best available data on wetland habitat in Florida comes from the National Wetlands Inventory group of the Service, which is located in St. Petersburg, Florida. Although there are many publications on Florida wetlands, they lack the specificity found in these draft data. Table 1, below, depicts these estimates by habitat type according to Circular 39 (Shaw and Fredine, 1956), a Service publication which classifies wetland types.

TABLE 1.—DRAFT DATA ON WETLAND INVENTORY IN FLORIDA—FROM NATIONAL WETLAND INVENTORY, U.S. FISH AND WILDLIFE SERVICE, ST. PETERSBURG, FLORIDA, EXCEPT AS OTHERWISE NOTED

Type	1950 inventory (acres)	Late 1970's inventory (acres)	Change (acres)	Estimated occupancy habitat by alligators (percent and acres)
Palustrine Forested				
Cir. 39 types 1, 7, 8; bottomland hardwood forests; seasonally flooded basins or flats; cypress-gum swamps, bay-heads, bogs, pocosins	4,820,198 ±367,306	4,743,409 ±357,608	−76,787 ±76,538	15% 712,000
Palustrine Scrub-Shrub				
Cir. 39 type 6; buttonbush type	1,093,603 ±196,261	889,699 ±144,546	−203,904 ±168,886	50% 445,000
Palustrine Emergent				
Cir. 39, types 2, 3, 4; inland fresh, shallow marshes	4,891,257 ±459,299	3,635,037 ±397,494	−1,256,220 ±253,794	100% 3,600,000
Estuarine Intertidal				
Cir. 39 type 20; mangrove swamps	442,689 ±68,072	427,149 ±69,921	−15,539 ±16,030	5% 21,000
Palustrine Open Water				
Cir. 39 type 5; water adjacent to marshes, cypress domes, small water bodies less than 20 acres	75,102 ±11,343	116,052 ±13,376	+40,950 ±9,662	100% 116,000
Lacustrine				
Lakes larger than 20 acres in size	1,785,027	1,835,780	+50,753	85%

TABLE 1.—DRAFT DATA ON WETLAND INVENTORY IN FLORIDA—FROM NATIONAL WETLAND INVENTORY, U.S. FISH AND WILDLIFE SERVICE, ST. PETERSBURG, FLORIDA, EXCEPT AS OTHERWISE NOTED—Continued

Type	1950 inventory (acres)	Late 1970's inventory (acres)	Change (acres)	Estimated occupancy habitat by alligators (percent and acres)
Estuarine Intertidal Emergent	±381,517	±383,605	±54,556	1,560,000
Cir. 39 types 16, 17, 18; coastal saltmeadows; saltmarsh—regularly and irregularly flooded	283,202 ±57,808	244,507 ±53,484	−38,695 ±17,300	10% 24,000
Palustrine (other)				
Cir. 39 type 5 and to some degree 4; all aquatic beds (lily pads, hydrilla)	8,026 ±2,438	34,983 ±25,056	+26,957 ±24,926	100% 35,000
Rivers and Streams				
Stream body only; taken from data provided by Division of Water Resources and Conservation; Florida Board of Conservation, Tallahassee, FL	200,000			100% 200,000
Totals	13,599,103 ±1,544,044	11,810,680 ±1,455,090		6,713,000

Trends are depicted as comparisons between the 1950 inventory and the late 1970's inventory. Because the data are derived through a sampling scheme, all figures are estimates with each carrying a confidence interval. The table also shows an estimated occupancy rate by alligators. These estimates were made by Tommy Hines and Allen Woodward, biologists employed by the Florida Game and Fresh Water Fish Commission. The estimates were based upon night count survey data (Abercrombie, 1982), nuisance complaint records, and personal observation and knowledge by these biologists of the distribution and abundance of alligators in Florida.

Table 1 indicates that more than 6,700,000 acres of Florida wetlands are occupied by alligators; this probably represents more than one-third of the total habitat occupied by the species throughout its range. A general summary of occupied habitats in Florida is as follows: Fresh marsh—approximately 3,600,000 acres; wooded permanent water areas—1,200,000 acres; lakes—estimated to number 30,000 and comprising 1,700,000 acres; and rivers and streams—200,000 acres.

One habitat type, the palustrine emergent, which includes the Everglades and other freshwater marshes, has undergone loss of approximately 25 percent in the last 30 years due to drainage and conversion to agricultural use. Also, this habitat type has been rendered less productive as alligator habitat due to the construction of levee systems for flood control. However, the total amount of fresh marsh habitat still substantially exceeds 3 million acres and is likely to remain an abundant habitat type for the foreseeable future. The data also show losses occurring in saltmarsh and brackish areas, but these have never been important components of alligator habitat.

Florida's lake habitats, although smaller in total size than the fresh marshes, are highly productive, often having alligator densities well in excess of the marsh areas. In terms of available habitat, lakes are not being lost to human activities, although residential buildup on some lakes causes an increase in potential human/alligator conflicts and some marshes associated with lakes are being drained. The streams of northern Florida contribute the least to the total Florida alligator population, due to the relative scarcity of suitable habitat.

Overall, Table 1 indicates that Florida currently has large amounts of alligator habitat, and this is likely to continue for the foreseeable future. Furthermore, State and Federal land holdings currently total 2,949,947 acres, much of which is occupied alligator habitat (Hines, 1979). Additional State acquisition of key wetland areas in south Florida has been authorized and new Federal acquisition is being considered. In summary, it is concluded that habitat loss does not pose a serious threat to the overall status of the American alligator in Florida within the foreseeable future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The commercial demand for alligator products was responsible for overharvests that caused population declines in accessible habitats during the 1950's and 1960's. This problem was reversed primarily through a more effective protective mechanism brought about by the Lacey Act Amendment of 1969, which prohibits interstate commerce in illegally taken reptiles and their parts and products. This law provides Federal authority for dealing effectively with illegal activities in the market system. The Endangered Species Act of 1973 added heavy penalties, which further enhances the control of illegal taking. Vigorous enforcement by State and Federal authorities has been effective in controlling illegal activity.

The State of Florida contemplates expansion of existing programs, which at this time are nuisance control and limited experimental harvests, to some form of sustained yield harvesting. Since uncontrolled harvesting was the reason for past over-exploitation in some areas, and sustainable yields from harvested populations are biologically limited, Florida is committed to harvests only to the extent permitted by available data. Such harvests will be strictly limited to insure against excessive harvests, as indicated by the State's approved Alligator Management Plan (Florida Game and Fresh Water Fish Commission, 1981). The only exception to this policy would be in extremely localized areas where potentially serious human/alligator conflicts exist; intentional overharvests might occasionally be authorized for such situations to remove the threat to human safety and promote overall public tolerance of the species.

In developing these policies, the Florida Game and Fresh Water Fish Commission has conducted population surveys and instituted population modeling research aimed at testing the sustained yield concept and the changes in population dynamics which may result from harvests. Data from this research are intended to fashion any future harvest to meet the Alligator Management Plan goal.

The results of the night counts conducted by the State in all major habitat types since the late 1960's illustrate the success in control of overharvest. These counts, along with personal observations by many biologists and State nuisance complaints records, confirm that alligator populations are abundant and productive on a State-wide basis. For example, Orange Lake near Gainesville is considered by Florida alligator biologists to contain a healthy population of alligators. The lake serves as an alligator research area for the State. Alligators on this lake have been monitored for several years through repeated night counts and nest counts. Using the size-class frequency model developed by Taylor and Neal (1984), the average 90–100 nest count on Orange

Lake can be shown to be associated with an after-hatching alligator density of approximately one alligator per acre, or 8,000–10,000 total animals. Similar densities in many of Florida's lakes are not uncommon, according to State alligator biologists.

Table 2 depicts amounts of effort expended (miles/year) on night count surveys in seven Florida habitat types for the period 1974–81. The data base that contains the results of these surveys is on computer at the State Wildlife Research Laboratory in Gainesville. These survey routes are widely distributed throughout the State and represent the major habitat types occupied by alligators.

TABLE 2.—NUMBER OF MILES RUN PER YEAR FOR SEVEN HABITAT TYPES

Habitat type	1974	1975	1976	1977	1978	1979	1980	1981
1. Open Lake	46.5	55.2	89.3	190.8	79.4	111.3	144.8	97.0
2. Riverine	27.4	59.8	106.0	128.2	129.7	134.9	134.5	58.6
3. Marsh	0	36.5	11.0	37.2	11.0	39.0	40.0	6.0
4. Canal, rural	15.8	42.9	62.2	77.7	107.0	121.0	121.0	48.3
5. Canal, urban	30.0	20.0	20.0	40.0	20.0	0	20.0	10.0
6. Phosphate pit	0	14.5	14.5	0	6.5	14.5	13.5	0
7. River marsh	0	0	10.5	0	60.3	50.3	60.3	70.4

Based on these counts, Abercrombie (1982) compared selected past and present densities (alligators/mile) of three size groups—small, medium, and large alligators—using 1977 as a break point for the comparisons (Tables 3–5).

TABLE 3.—A COMPARISON OF SMALL (2–4 FT) ALLIGATORS/MILE, BEFORE 1977 AND 1977–1981, BY HABITAT TYPES LISTED IN TABLE 2

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	2.80	0.48	3.78	0.99	0.10	0.14	1.33
1977–81	5.00	0.85	4.10	1.41	0.10	0.51	2.10
Percent change	+76	+77	+8	+42	0	+260	+58

TABLE 4.—A COMPARISON OF MEDIUM (4–7 FT) ALLIGATORS/MILE, BEFORE 1977 AND 1977–1981, BY HABITAT TYPE

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	1.70	0.48	2.90	0.88	0.12	0.32	0.19
1977–81	2.10	0.60	3.30	1.36	0.19	0.63	1.14
Percent change	+24	+26	+14	+55	+58	+97	+500

TABLE 5.—A COMPARISON OF LARGE (7 FT+) ALLIGATORS/MILE, BEFORE 1977 AND 1977–1981, BY HABITAT TYPE

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	0.41	0.21	0.45	0.13	0.02	0.11	0.19
1977–81	0.88	0.19	1.06	0.34	0.07	0.21	0.41
Percent change	+114	−.02	+126	+161	+250	+91	+116

These comparisons show increasing counts for virtually all size classes and habitat types. Table 6 compares pre- and post-1977 size composition found in these counts for 6 habitat types.

TABLE 6.—A COMPARISON OF ALLIGATOR SIZE COMPOSITION FROM NIGHT COUNTS MADE BEFORE 1977 AND 1977–81, BY HABITAT TYPE

Habitat type		Small (2'–4') (percent)	Medium (4'–7') (percent)	Large (7'+) (percent)
1	Pre-'77	51.1	34.1	8.6
	1977–81	63.0	25.9	11.1
2	Pre-'77	40.8	41.2	18.0
	1977–81	48.5	38.9	12.5
3	Pre-'77	53.2	40.4	6.3
	1977–81	45.3	43.7	11.3
4	Pre-'77	49.7	43.9	6.3
	1977–81	45.3	43.7	11.0
5	Pre-'77	41.7	50.0	8.3
	1977–81	28.1	53.1	18.8
6	Pre-'77	24.3	56.8	18.9
	1977–81	37.9	46.7	15.4

Although certain differences are noted in size composition, none are major and no trends are apparent.

Average counts of alligators/mile from Florida lakes and marshes can be compared to counts made in the same habitat types in Louisiana. These averages include data from Tables 3, 4, and 5 as well as alligators that could not be estimated as to size-class, which are omitted from the tables. Florida lakes averaged 11.9 alligators/mile prior to 1977 and 13.8/mile from 1977–81. Florida marshes averaged 11.3/mile prior to 1977 and 13.3/mile from 1977 to 1981. In comparison, Louisiana lakes averaged 1.4/mile during 1971–78 and marshes averaged 5.09/mile in 1977 and 1978. These comparisons of average counts are influenced by a variety of factors and are open to various interpretations. Thus, these numbers do not necessarily indicate that Florida alligator densities are much greater than Louisiana densities. However, they do indicate that Florida night counts show extremely high densities of alligators.

Abercrombie (1982) provides some evidence of increase in larger animals which might suggest recovery. Discussions with State biologists indicate that an actual recovery in numbers is likely limited to those accessible areas which were at one time subject to heavy poaching. This is the result of successful control of all but insignificant levels of illegal activity in Florida. The resilience of alligators that are protected following a period of overexploitation is referred to by Craighead (1969), who studied alligators in the Everglades, and by McIlhenny (1935), in describing three newly established wildlife refuges in southern Louisiana that had been previously subjected to excessive harvests.

Based on the preceding data, some generalizations may be made: (a) Density (alligators counted/mile) shows increases when the pre-1977 and post-1977 periods are compared; (b) small, medium, and large size classes are all well represented, indicating that the populations being surveyed are

successfully reproducing and that survivorship is adequate; (c) the survey routes confirm that the species is well distributed throughout Florida's major habitat types; and (d) there are no significant trends or major shifts in composition of the population by size class, which could otherwise indicate the effects of illegal exploitation (Cott, 1961).

C. *Disease or predation.* Alligators suffer various types of disease and predation, as do most wildlife species, but these factors are a natural part of the alligator's existence and do not threaten the continued welfare of the species.

D. *The inadequacy of existing regulatory mechanisms.* The adequacy of existing Federal and State regulations for protection and management of the alligator is reflected by the healthy status of the alligator in Florida as described above. The following laws and regulations are germane: (1) The 1969 Amendment to the Lacey Act, which extended Federal law enforcement authority to interstate movement of reptiles and their products; (2) The Endangered Species Act of 1973, which provided mandatory protections for alligators in Florida while they were listed as endangered from 1973–78, and which authorizes the current special rules for threatened (including due to similarity of appearance) alligators, governing taking and commerce in alligator products; (3) The annual findings of the Scientific and Management authorities of the Service, which govern the export of species, including the American alligator, listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (4) State of Florida statutes that govern taking and commerce in alligators; (5) Regulations of the Florida Game and Fresh Water Fish Commission establishing and governing nuisance control programs, alligator farms, and harvests; and (6) The Florida Alligator Management Plan. Florida statutes and regulations provide for complete adherence to the Service's special rule on American alligators.

As discussed above, the State has adopted an Alligator Management Plan and is conducting an extensive research program designed to insure against overharvest of the species. Harvest rates or quotas that would result from the sustained yield program would be based on preharvest surveys and tag allotments, or drawings for public areas designed to achieve harvests within estimated sustainable yields. The research program cited above should insure that management programs are effected using the best scientific data and techniques available. Also, the State fills the role of recordkeeper, dealer, and marketer for hides taken during nuisance control and experimental harvest programs. The State will continue this role as seasons are expanded. The only self-marketing done by hunters at this time is the sale of meat. Florida statutes and regulations and the Service's special rule on American alligators regulate commerce in meat through a permitting system designed to preclude unmanaged and therefore illegal marketing of alligator meat.

E. *Other natural or manmade factors affecting its continued existence.* Although factors such as nest flooding or drought may affect alligators, none of these are known to have limited populations on a State-wide basis, nor are they expected to become threatening to State-wide populations in the future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to reclassify the American alligator to threatened due to similarity of appearance. Criteria for removing species from the List of Endangered and Threatened Wildlife are found at 50 CFR 424.11(d). They include extinction, recovery of the species, and original data for classification in error. This rule is based upon evidence that the species is not biologically threatened in Florida. Past reclassification actions for the American alligator have been based upon partial or complete recovery. This rule recognizes that some populations have shown increases (Wood and Humphrey, 1983). However, it also recognizes that on a State-wide basis little direct evidence of abundance exists that conclusively demonstrates an *overall* increase in alligator populations. The original listing of the American alligator as an endangered species occurred in 1967. The best available data with a bearing on status at that time were limited and highly subjective, shedding little light upon actual distribution and abundance. Current data on the alligator in Florida, though still somewhat subjective, provide sufficient evidence that the species does not warrant retention on the Federal list as biologically threatened, a classification intended for species that are considered likely to become endangered within the foreseeable future.

Night count data on Florida alligators evidence high densities compared to similar Louisiana data from populations that are considered recovered. Also, available night count data confirm that the species is well distributed, has good reproduction, and shows no evidence of trends in size-class ratios that could indicate that populations were experiencing major changes.

Florida alligators occupy an estimated 6.7 million acres of habitat; although some habitat loss is occurring, paticularly in southern Florida, given the extensive amounts of habitat in Florida, this loss will not threaten the species' existence within the foreseeable future. The Service considers that sufficient regulatory controls and mechanisms are in place to insure against substantial losses of Florida alligators to illegal activity. Further, it is thought that the comprehensive commitment of the Florida Game and Fresh Water Fish Commission to research and management involving this species will insure continued healthy alligator populations in the State.

Similarity of Appearance

Section 4(e) of the Endangered Species Act authorizes the treatment of a species as an endangered or threatened species even though it is not otherwise listed as endangered or threatened, if it is found: (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

With regard to the American alligator in Florida, the Service finds that each of these factors apply. There is little morphological geographic differentiation within the American alligator, which results in Florida specimens being virtually indistinguishable from live animals, or parts or products of alligators, in other parts of the range where the species is listed as endangered or threatened. In addition, while live alligators are readily distinguished from other crocodilians that are listed under the Act, at least by specialists, untrained enforcement personnel could have considerable difficulty in making correct species identification, which could hamper enforcement efforts.

In addition, small parts and products of processed crocodilian leather are nearly impossible to distinguish when

made into goods, thus hampering the identification of legal alligator products from those of endangered or threatened crocodilians. Such identification difficulties could result in allowing illegal trade in endangered crocodilian products to enter markets and thus further jeopardize these species.

By listing the American alligator under the similarity of appearance provisions of the Act, coupled with the special rules specified in § 17.42, the Service considers that enforcement problems can be minimized while at the same time the conservation of listed populations of the American alligator and other crocodilians can be ensured. The similarity of appearance provisions of the Act have proven effective in the State of Louisiana where various populations of the species have been listed as threatened by similarity of appearance since 1975.

Critical Habitat

Critical habitat for the American alligator was not designated at the time of listing and has not been designated since. Therefore, this rule has no effect on critical habitat for this species.

Effects of Rule

This rule changes the status of the alligator in Florida from threatened to threatened due to similarity of appearance. It is a formal recognition by the Service of a biologically secure status of the American alligator in a part of its range. This rule results in removal of Federal agency responsibilities under section 7 of the Endangered Species Act. No significant adverse effects on the status of the species are expected to occur from this removal.

This final rule makes available to the State of Florida the option of expanding harvests of alligators to additional areas. If the State elects to expand its harvests, these harvests could be expected to increase at a level commensurate with development and implementation of the State research and management program. All taking and commerce in alligators and their parts and products are to be regulated by the Service's special rule on American alligators, 50 CFR 17.42(a), as well as other applicable controls such as the Lacey Act (16 U.S.C. 3371 *et seq.*), which prohibits interstate commerce in illegally taken wildlife or their products.

Increased harvest of alligators is expected to result in an increased volume of alligator exports, although the magnitude of this increase cannot be predicted at this time. The Service has previously expressed its concern about the effects of increased exports on other endangered crocodilians found in international trade. International trade in alligator products is presently subject to the restrictions of CITES, the Service's implementing regulations (50 CFR Part 23), and general wildlife exportation requirements (50 CFR Part 14). Previous determinations by the Service's Scientific and Management Authorities have concluded that export of alligators taken in Louisiana and Florida would not be detrimental to the survival of the alligator or other endangered crocodilians. The Service will continue to review this possible impact and will take appropriate action if evidence indicates that restrictions are warranted. This rule is not an irreversible commitment on the part of the Service. The action is reversible and relisting is possible if the status of the species changes or if the State materially changes its plans or actions in a way that may threaten the species. The Service will continue to monitor and review the State's management program.

National Environmental Policy Act

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

References

The following documents were used in the preparation of this rule. These and other documents supplying background information including all unpublished data are on file at the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

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Wood, J.M., and S.R. Humphrey. 1983. Analysis of Florida alligator transect data. Coop. Fish and Wildlife Research Unit, University of Florida, Gainesville. Tech. Report No. 5, 49 pp.

Woodward, A.R., and W.B. Marion. 1978. An evaluation of factors affecting nightlight counts of alligators. Proc. Ann. Conf. S. E. Assoc. Fish and Wildlife Agencies 32:291–302.

Author

The primary author of this rule is Mr. Wendell Neal of the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

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 revising the listing of the American alligator under "Reptiles" in the List of Endangered and Threatened Wildlife to read as follows:

§ 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						
Reptiles							
*	*	*	*	*	*		
Alligator, American	*Alligator mississippiensis*	Southeastern U.S.A.	Wherever found in wild except those areas where listed as threatened, as set forth below.	E	1, 11, 51, 60, 113, and 134.	NA	NA
Alligator, American	do	do	U.S.A. (Certain areas of GA and SC, as set forth in 17.42(a)(1)).	T	20, 47, 51 and 60, 134.	NA	17.42(a)
Alligator, American	do	do	U.S.A. (FL, LA, TX)	T(S/A)	11, 47, 51, 60, 113, and 134.	NA	17.42(a)
Alligator, American	do	do	In captivity wherever found	T(S/A)	11, 47, and 51	NA	17.42(a)
*	*	*	*	*	*		

§ 17.42 [Amended]

3. Paragraph (a)(1) of § 17.42 is revised to read as follows:

* * * * *

(a) American alligator (*Alligator mississippiensis*). (1) *Definitions.* For purpose of this paragraph (a):

"American alligator" shall mean any member of the species *Alligator mississippiensis*, whether alive or dead, and any part, product, egg, or offspring thereof occurring: (i) In captivity wherever found; (ii) in the wild wherever the species is listed under § 17.11 as Threatened due to similarity of Appearance (T[S/A]); or (iii) in the wild in the coastal areas of Georgia and South Carolina, contained within the following boundaries: From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 of Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with South Carolina State Highway 63 south of Walterboro, South Carolina; thence west on State Highway 63 to junction with U.S. Interstate Highway 95; thence south on U.S. Interstate Highway 95 (including incomplete portions) across the South Carolina-Georgia border to junction with U.S. Highway 82 in Liberty County, Georgia; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south on this border to the Florida border and following the Georgia-Florida border eastward to the Atlantic Ocean.

"Buyer" shall mean a person engaged in buying a raw, green, salted, crusted or otherwise untanned hide of an American alligator.

"Tanner" shall mean a person engaged in processing a raw, green, salted, or crusted hide of an American alligator into leather.

* * * * *

Dated: June 11, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–14827 Filed 6–19–85; 8:45 am]

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federal register

Thursday
June 20, 1985

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12, 33 and 52
Federal Acquisition Regulation; Interim Rule and Request for Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 33, and 52

[Federal Acquisition Cir. 84-9]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-9 amends the Federal Acquisition Regulation (FAR) to comply with revised Department of Justice advice concerning the General Accounting Office (GAO) "stay" provisions in 31 U.S.C. 3553(c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) regarding payment of costs of filing and pursuing a protest and preparing the bid and proposal.

DATES: *Effective Date:* June 20, 1985.

Comments must be received on or before July 22, 1985. Please cite FAC 84-9 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th & F Streets, NW., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755..

SUPPLEMENTARY INFORMATION:

A. Background

FAC 84-9 revises the FAR to implement the GAO bid protest "stay" and "damages" provisions of the Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, which are codified in 31 U.S.C. 3553 (c) and (d) and 31 U.S.C. 3554(c).

With minor test modifications, the substance of the revisions in FAC 84-9 was initially distributed for public comment for a brief period on October 1, 1984 (49 FR 38680), but was withdrawn based on guidance from the Department of Justice that 31 U.S.C. 3553 (c) and (d) and 31 U.S.C. 3554(c) were unconstitutional. Subsequently, OMB Bulletin 85-6 directed Executive Branch agencies not to comply with those provisions. FAC 84-6, which was published for public comment as an interim rule on January 15, 1985 (50 FR 2268), reflected such guidance. On June 5, 1985, as a result of a decision in *Ameron, Inc.* v. *U.S. Army Corps of Engineers*, Civil No. 85-1064, May 28, 1985, (D.C.N.J.), which held the cited provisions to be constitutional, the Department of Justice advised Federal agencies to comply with those provisions pending further appeal.

B. Determination To Issue a Temporary Regulation

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration that the regulations in FAC 84-9 must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this temporary rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, and, therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 12, 33, and 52

Government procurement.

Dated: June 18, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

Federal Acquisition Circular

[Number 84-9]

The material contained in FAC 84-9 is effective immediately.

Dwight Ink,

Acting Administrator.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement (NASA).

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management).

Federal Acquisition Circular (FAC) 84-9 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Protests to the General Accounting Office.

FAR Part 33, Protests, Disputes, and Appeals, is amended to comply with revised Department of Justice advice concerning the General Accounting Office (GAO) "stay" provisions in 31 U.S.C. 3553(c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) regarding payment of costs of filing and pursuing a protest and preparing the bid and proposal. A new contract clause, Protest After Award, applicable to all solicitations and contracts, including those for automated data processing under 40 U.S.C. 759, is added at FAR 52.233-3. Accordingly, a related revision is made in FAR Part 12 with respect to the language that prescribes the contract clause at FAR 52.212-13, Stop-Work Order.

On June 5, 1985, as a result of a decision by the Court in *Ameron, Inc.* v. *U.S. Army Corps of Engineers*, the Department of Justice advised Executive Branch agencies to comply with 31 U.S.C. 3553 and 3554, the bid protest "stay" and "damages" provisions of the Competition in Contracting Act of 1984, Title VII of Pub. L. 98-369. Accordingly, FAC 84-9 revises those portions of FAC 84-6 that were inconsistent with 31 U.S.C. 3553 and 3554.

FAC 84-9 is effective immediately. To the maximum extent practicable, all solicitations shall be modified accordingly. Whether or not an individual solicitation has been modified to reflect the revised regulations, protests will be handled in accordance with the revised regulations.

Therefore, 48 CFR Parts 12, 33, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 12, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 12—CONTRACT DELIVERY OF PERFORMANCE

2. Section 12.505 is amended by revising paragraph (b)(1) by removing paragraph (b)(2), and by redesignating paragraph (b)(3) as (b)(2), as revised paragraph (b)(1) reads as follows:

12.505 Contract clauses.

* * * * *

(b)(1) The contracting officer may, when contracting by negotiation, insert the clause at 52.212-13, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development.

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

3. Section 33.104 is amended by removing the introductory paragraph; by revising paragraphs (b) and (c); and by adding paragraph (g) to read as follows:

33.104 Protests to GAO.

* * * * *

(b) *Protests before award.* (1) When the agency has received notice from GAO of a protest filed directly with GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interests of the United States will not permit awaiting the decision of GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the agency has notified GAO of the above finding.

(3) When a protest against the making of an award is received the award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award should be informed of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance in accordance with 14.404–1(d) to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under paragraph (b)(1), above.

(c) *Protests after award.* (1) When the agency receives from GAO, within 10 calendar days after award, a notice of a protest filed directly with GAO, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c) (2) and (3) below.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified GAO of the above finding.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed directly only with the GAO more than 10 calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

* * * * *

(g) *Award of protest costs.* (1) GAO may declare an appropriate interested party to be entitled to the costs of—

(i) Filing and pursuing the protest, including reasonable attorneys' fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under paragraph (g)(1) of this section shall be paid promptly by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services.

4. Section 33.106 is revised to read as follows:

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233–2, Service of Protest, in solicitations for other than small purchases.

(b) The contracting officer shall insert the clause at 52.233–3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its *Alternate I.*

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.233–3 is added to read as follows:

52.233–3 Protest after award.

As prescribed in 33.106(b), insert the following clause:

Protest After Award (Jun 1985)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor requests an adjustment within 30 days after the end of the period of work stoppage; *provided,* that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(End of clause)

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

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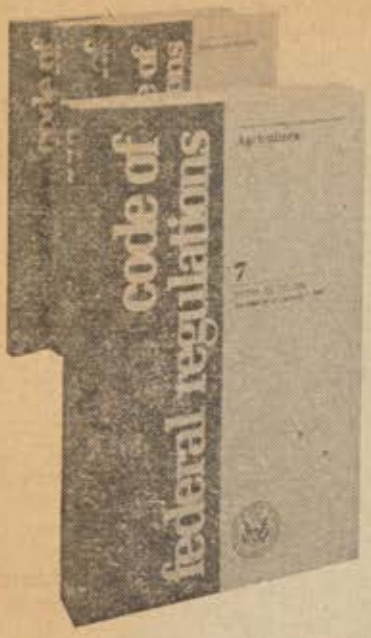

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