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# Federal Register

Tuesday
August 13, 1985

**Briefings on How To Use the Federal Register—**
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

## Selected Subjects



CONTINUED INSIDE

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**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

# Selected Subjects



## 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.

### WASHINGTON, DC

**WHEN:** September 6 and 27; at 9 am (identical sessions).

**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

**RESERVATIONS:** Call Martin Franks, Workshop Coordinator, 202-523-5239.

**FUTURE WORKSHOPS:** Additional workshops are scheduled bimonthly in Washington starting in November. The January 1986 workshop will include facilities for the hearing impaired. Dates will be announced later.

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**Separate Parts in this Issue**



**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## 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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

## Avocados Grown in South Florida; Removal of Certain Container Marking Requirements for Export Shipments

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends current container marking requirements by removing a requirement that containers of Florida grown avocados which are exported be marked with the grade of the fruit. Such action is necessary because certain foreign countries have container grade marking requirements which differ from those prescribed for avocados grown in Florida. Such action is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers.

**EFFECTIVE DATE:** August 13, 1985.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This amendment of the container marking requirements was recommended by the Avocado Administrative Committee established under Marketing Order 915.

This final rule amends § 915.306 Florida Avocado Grade, Pack, and Container Marking Regulation (50 FR 21031) to exempt containers of avocados shipped to export markets from grade marking requirements. "Export" is defined in M.O. 915 to mean shipment of avocados to any destination which is not within the 48 contiguous States of the District of Columbia of the United States, or Canada. Such exemption is based upon the unanimous recommendation of the committee at its June 12, 1985 meeting. The committee advises that the avocado handlers who export avocados, most of which are shipped to the European Economic Community (EEC), report that the container grade marking requirements of the EEC are different from those specified for domestic shipments. While at the present time most of Florida's exported avocados are shipped to the EEC, they may be shipped to other countries where other container marking requirements apply. Therefore, it is appropriate to exempt avocados shipped to any export markets from the container grade marking requirements. However, avocados in export shipments would need to continue to meet minimum grade, maturity, container, and certain other container marking requirements currently in effect under M.O. 915.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action relieves restrictions on the handling of avocados; (2) handlers are aware of this action as proposed by the committee and require no additional time to comply with the rule; (3) the container grade marking requirements in § 915.306 became effective July 22, 1985 for the 1985–86 season, and this rule exempting container grade marking for export shipments should be in effect as soon as possible; and (4) no purpose would be served by delaying the effective date beyond the date of publication in the **Federal Register**.

It is found that this final rule will tend to effectuate the declared policy of the act.

**List of Subjects in 7 CFR Part 915**

Marketing agreements and orders, Avocados, Florida.

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.306 (50 FR 21031) is revised to read as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

**§ 915.306 Florida avocado grade, pack, and container marking regulation.**

(a) On and after August 13, 1985, no handler shall handle any variety of avocados grown in the production area, except for avocados handled within the production area in containers other than those authorized in § 915.305, unless:

(1) Such avocados grade at least U.S. No. 2.

(2) Such avocados are packed in containers in accordance with standard pack.

(3) Such avocados, except for those in export shipments, are in containers marked with the grade of the fruit in letters and numbers at least 1 inch in height on the top and 2 sides of the lid of the container, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

(4) Such avocados are in containers marked with the Federal-State Inspection Service lot stamp number.

(b) The provisions of paragraphs (a)(2), (a)(3), and (a)(4) of this section shall not apply to individual packages of avocados weighing 4 pounds or less, net weight, in master containers.

(c) Terms pertaining to grades and standard pack mean the same as those defined in the United States Standards for Florida Avocados (7 CFR 51, 3050–3069).

Dated: August 7, 1985.

**Thomas R. Clark,**

*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 85–19176 Filed 8–12–85; 8:45 am]
BILLING CODE 3410–02–M

**7 CFR Parts 926 and 944**

## Tokay Grapes Grown in San Joaquin County, California Fruits; Import Regulations; Handling Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation sets quality requirements for shipments of fresh California Tokay grapes and Tokay grapes imported into the United States. Such grapes are required to meet the minimum grade and size requirements for U.S. No. 1 Table grade, with an additional color requirement for the berries on the lower portion of the bunch. Domestically produced grapes are subject to container marking requirements. These actions are needed to assure domestic shipment and imports of ample supplies of grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

**EFFECTIVE DATES:** California Tokay Grape Regulation 22 (§ 926.323) is effective August 13, 1985, through November 15. Tokay Grape Import Regulation 4 (§ 944.604) is effective August 16, 1985, through November 15.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (50 FR 30489) on July 26, 1985, concerning proposed grade and container requirements applicable to shipments of Tokay grapes grown in San Joaquin County, California. Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, a Tokay grape import regulation was also proposed under section 8e (7 U.S.C. 608e-1). This section requires that whenever specified commodities, including Table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The proposed rule provided an opportunity to file comments through August 2, 1985. No comments were received. This final rule contains the same requirements as specified in the proposed rule.

This final rule is issued under the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of fresh Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Industry Committee, established under the order, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The final rule establishes the minimum grade and size requirements specified in the U.S. No. 1 Table grade of the U.S. Standards for Grades of Table Grapes (European or Vinifera type), except that at least 30 percent, by count, of the berries in the lower 25 percent, by count, of each bunch shall show characteristic color. The final rule also requires that each container of California grapes bear a Federal-State Inspection Service lot stamp number in plain letters and figures on one outside end. The minimum grade and container marking requirements for grapes are necessary to maintain orderly marketing conditions by preventing the shipment of immature, poor quality, and excessively small fruit in fresh commercial marketing outlets. Shipment of such low quality fruit would disrupt orderly marketing and tend to depress prices of all grapes since low quality fruit undermines consumer confidence in the quality of all fruit sold in the market and discourages repeat purchases. The specified grade requirements are consistent with the quality and size composition of the available crop and are designed to provide ample supplies of good quality fruit in the interest of producers and consumers consistent with the declared policy of the act. Fruit not meeting these requirements could be sold within San Joaquin County, or utilized in processing outlets such as crushing.

It is further found that it is impracticable to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that (1) a proposed rule was published in the **Federal Register** (50 FR 30489) and no comments were received during the period provided; (2) the requirements in this final rule are the same as those in the proposed rule; (3) California Tokay grape handlers have been apprised of these requirements and the effective date and no additional time is needed to prepare for this regulation; (4) The Tokay grape import requirements are mandatory under section 8e of the act; (5) the import regulation imposes the same grade requirements as are being made applicable to the shipment of Tokay grapes grown in San Joaquin County, California under Tokay Grape Regulation 22; and (6) three days notice, the minimum prescribed by section 8e is provided with respect to this import regulation.

**List of Subjects in 7 CFR Parts 926 and 944**

Marketing agreements and orders, Grapes, California, Fruits, Import regulations.

1. The authority citation for 7 CFR Parts 926 and 944 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

2. New §§ 926.323 and 944.604 are added to read as follows:

(§§ 926.323 and 944.604 expire November 15, 1985, and will not be published in the annual Code of Federal Regulations).

### § 926.323 California Tokay Grape Regulation 22.

(a) During the period August 13, 1985, through November 15, 1985, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade, and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definitions.* "U.S. No. 1 Table grade" and "characteristic color" shall mean the same as in the United States Standards for Grades of Tables Grapes (European or Vinifera type) (7 CFR 51.880-51.912).

**§ 944.604 Tokay Grape Import Regulation 4.**

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 16, 1985, through November 15, 1985, the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, as set forth in the U.S. Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880–51.912), and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch, which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, and quality of Tokay grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of Tokay grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) *Minimum Quantity Exemption:* Any person may import up to 250 pounds of grapes in any one shipment exempt from the requirements of this section.

(f) It is determined that imports of Tokay grapes, during the effective time of this regulation, are in most direct competition with Tokay grapes grown in the San Joaquin County of California, under M.O. 926 (7 CFR Part 926). The grade, size and quality requirements of this section are the same as those applicable to Tokay grapes grown in the San Joaquin County of California.

Dated: August 8, 1985.

**Thomas R. Clark,**

*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 85-19227 Filed 8-12-85; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 85-AWP-1]**

### Alterations to VOR Federal Airways—Hawaii

*Correction*

In FR Doc. 85-18285, beginning on page 31156, in the issue of Thursday, August 1, 1985, make the following correction:

On page 31157, first column, in § 71.127, under the heading **V-12—[Revised]**, fifth line, "Uplou Point" should read "Upolu Point."

BILLING CODE 1505-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

**[Release No. 34-22246A]**

### Delegation of Authority to Director of the Division of Market Regulation; Correction

**AGENCY:** Securities and Exchange Commission.

**ACTION** Final rule; correction.

**SUMMARY:** This document corrects a final rule which was published July 25, 1985 (50 FR 30266). This action is necessary to correct the amendatory language.

**EFFECTIVE DATE:** August 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** France Maca, Esq., Division of Market Regulation (202) 272-2789.

In FR Doc. 85-17709 on page 30267, column one, the amendatory language for number two is corrected to read: "2. By redesignating paragraph (f) of § 200.30-3 as paragraph (g) and adding new paragraph (f) as follows."; and paragraph (e) of the text is designated as paragraph (f).

**John Wheeler,**

*Secretary.*

August 6, 1985.

[FR Doc. 85-19186 Filed 8-12-85; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 162

**[T.D. 85-123]**

### Conforming Amendments to the Customs Regulations

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects minor printing errors in a document which amended the Customs Regulations by making certain conforming changes which were necessary because of various executive, legislative, and administrative actions. The document was published in the **Federal Register** on Tuesday, July 23, 1985 (50 FR 29949).

**FOR FURTHER INFORMATION CONTACT:** Marvin M. Amernick, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20299 (202-566-8237).

**SUPPLEMENTARY INFORMATION:**

Background

In FR Doc. 85-17440, appearing at page 29949 in the issue of Tuesday, July 23, 1985, on page 29956, in the first column, under the heading "PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE", 3 authority citations contain an error. Specifically, the citations for §§ 162.49, 162.61, and 162.62 should read as follows:

"Section 162.49 also issued under 26 U.S.C. 5688;

Section 162.61 also issued under 21 U.S.C. 952, 953, 957;

Section 162.62 also issued under 21 U.S.C. 952, 956;".

The other citations for various sections of Part 162 remain as is.

Also on page 29951, in the last sentence of paragraph 18(a) in the first column, the proper date for E.O. 12033 is January 10, 1978.

Dated: August 7, 1985.

**B. James Fritz,**

*Director, Regulations Control and Disclosure Law Division.*

[FR Doc. 85-19217 Filed 8-12-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 50706-5106]

## Antidumping and Countervailing Duties; Administrative Reviews on Request; Transition Provisions

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Interim-final and final rule.

**SUMMARY:** This rule sets forth procedures for requesting the Secretary of Commerce to review, under section 751 of the Tariff Act of 1930, as amended by section 611 of the Trade and Tariff Act of 1984, entries, exports, and sales of merchandise by manufacturers, producers, and exporters covered by an antidumping or countervailing duty order, finding, or suspension agreement.

Final procedures are set forth for requesting reviews of periods ending prior to September 1, 1985, covered by an order, finding, or suspension agreement published in the **Federal Register** before September 1, 1984. The final procedures for requesting a review (also referred to in this preamble as the transition provisions) provide for a letter of notification from the Secretary of Commerce to all known interested parties. Notified interested parties have 45 days from the receipt of the letter to request a review. Parties not so notified have until October 31, 1985.

Interim-final procedures are set forth for requesting reviews of periods ending after September 1, 1985, covered by an order, finding, or suspension agreement. Interested parties may only made a request in an anniversary month of the date of publication. If during the anniversary month the Secretary does not receive a request for review, the period that could have been reviewed will no longer be reviewable.

If no timely request is received for a reviewable period, each entry during that period will be liquidated at the rate of cash deposit of (or bond for) estimated antidumping or countervailing duties required at the time of entry.

**DATES:** Effective August 13, 1985.

Comments: The Department will consider comments on the interim-final portion of this rule in connection with rulemakings proposing to amend the Department's regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355) if received by the end of the public comment period specified for those rulemakings. The rulemaking for antidumping duties has not yet begun, but the Department expects to publish in the **Federal Register** a notice of proposed rulemaking within the next several months. The rulemaking for countervailing duties has already been initiated with publication of a notice of proposed rulemaking in the **Federal Register** on June 10, 1985 (50 FR 24207). The public comment period for that rulemaking has been extended to September 9, 1985, 50 FR 32088, August 8, 1985.

**ADDRESS:** Address any written comments on the countervailing duty interim regulations and the countervailing duty notice of proposed rulemaking to Deputy Assistant Secretary for Import Administration, HCHB B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell, Assistant General Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230; (202) 377-1411.

**SUPPLEMENTARY INFORMATION:** Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98-573 ("1984 Act"), amended Title VII of the Tariff Act of 1930 ("Tariff Act") with respect to the administration of antidumping and countervailing duty cases.

Under section 751 of the Tariff Act, the Secretary of Commerce conducts administrative reviews of entities and activities covered by antidumping and countervailing duty orders, findings, and suspension agreements to determine, as appropriate, the margin of dumping, the amount of any net subsidy, and compliance with any agreement which resulted in suspension of an investigation. These reviews form the basis for the assessment of antidumping or countervailing duties on reviewed entries of the merchandise covered by an order or finding, for cash deposits of estimated duties on future entries, and a decision by the Secretary whether to continue the suspension of an investigation or to cancel a suspension agreement. Prior to October 30, 1984, the effective date of the 1984 Act, section 751 required the Secretary to review annually every order, finding, or suspended investigation. Section 611(a)(2)(A) of the 1984 Act amended section 751 to provide for reviews on request rather than automatically on an annual basis.

The Department has received numerous requests for an explanation of how the Department will implement the amended review provision. Further delay in establishing procedures for requesting reviews would impede timely execution of this Department's section 751 function. With 200 outstanding orders, findings, and suspension agreements, a continuing increase in the filing of new petitions, and extremely limited resources, there are a large number of unreviewed entries subject to the assessment of antidumping and countervailing duties. The Department cannot afford to expend its limited resources collecting and analyzing information on entries that interested parties do not want reviewed. Domestic interested parties, U.S. importers, and foreign producers have told us that they will continue to sustain substantial adverse effects, both financially and from the standpoint of trade uncertainty, as long as the Department delays reviews. Providing notice of proposed rulemaking and an opportunity for public comment before issuing regulations implementing section 611(a)(2)(A) would mean delaying implementation for several months. Clearly, the costs of such a delay woud outweigh the benefits. Accordingly, the Department decided to issue this rule establishing final procedures to cover requests for reviews of periods ending prior to September 1, 1985, covered by orders, findings, and suspension agreements published in the **Federal Register** prior to September 1, 1984, and establishing interim procedures covering requests for reviews of later periods relating to all orders, findings, and suspension agreements.

On June 10, 1985, the Department published proposed revisions to its regulations relating to countervailing duties (19 CFR Part 355) (50 FR 24207) which in pertinent part would establish final procedures to implement revised section 751 with respect to requests for reviews of periods ending after September 1, 1985, covered by all orders, findings, and suspension agreements—that is, reviews of current periods. In the next few months, the Department will propose revisions to its regulations relating to antidumping duties (19 CFR Part 353) which in pertinent part also would establish final procedures to implement revised section 751 with respect to all requests for review of current unreviewed periods.

To the extent practicable, the rule issued today conforms to existing practices. The rule replaces existing §§ 353.53 (a), (c), and (d) and 355.41 (a), (c), and (d) of title 19 of the Code of Federal Regulations with new §§ 353.53a and 355.10 respectively.

These new sections are described below.

1. *Section 353.53a(a).* Paragraph (a)(1) of new § 353.53A provides foreign governments or domestic interested parties described in section 771(9) (C), (D), (E), or (F) of the Tariff Act with an opportunity to request an administrative review of specific producers or exporters covered by an antidumping order or finding. Similarly, paragraphs (a)(2) and (a)(3) provide producers, exporters, and importers with an opportunity to request a review. These latter reviews are limited to reviewing only the requester, or in the case of an importer, the producer or exporter which supplied the merchandise to the importer. Any such review would cover the producer's or exporter's sales to all importers. Paragraph (a)(4) provides any interested party with an opportunity to request a review of all signatories to an agreement on which a suspension of investigation was based.

Requests under paragraph (a)(1) must be accompanied by a statement of the reasons why the requester desires review of particular producers or exporters. This requirement is not intended to be a difficult hurdle to overcome. Because the Department has limited resources, requests and the statements should help the Department focus on the potential respondents which the requester believes to be most important to the requester. No such requirement is placed on requests under paragraphs (a)(2) or (a)(3), because such requests can cover only one firm. Reviews of suspension agreements, under paragraph (a)(4), must cover all signatories.

Requests for review under paragraphs (a)(1) through (a)(4) may only be made during the anniversary month of an order, finding, or suspension agreement. The anniversary month is the calendar month in which the anniversary of the date of publication of an order, finding, or suspension of investigation occurs.

Paragraph (a)(5) creates a special request window for all periods for which a review cannot be requested under paragraphs (a)(1) through (a)(4) because the relevant anniversary month has passed. This paragraph applies to all unreviewed entries during a period or periods ending prior to September 1, 1985, covered by orders, findings, and suspension agreements published in the Federal Register before September 1, 1984. In each proceeding subject to review under paragraph (a)(5), the Secretary will notify all known interested parties of the special request window. *If interested parties wish the Secretary to conduct an administrative review of any such period, they must request the review not later than 45 days after receipt of the Secretary's letter of notification, or, for persons not notified, not later than October 31, 1985.*

2. *Section 335.10(a).* Paragraph (a)(1) of new § 335.10(a) provides any interested party, including an importer, with an opportunity to request an administrative review of all producers and exporters of merchandise subject to a countervailing duty order or suspension agreement. As with § 353.53a, requests under paragraph (a)(1) may be made only during the anniversary month of an order or suspension agreement.

Paragraph (a)(2) creates a special request window for all periods for which a review cannot be requested under paragraph (a)(1) because the relevant anniversary month has passed. This paragraph applies to all unreviewed entries during a period or periods ending prior to September 1, 1985, covered by orders and suspension agreements published in the Federal Register before September 1, 1984. In each proceeding subject to review under paragraph (a)(2), the Secretary will notify all known interested parties of the special request window. *If interested parties wish the Secretary to conduct an administrative review of any such period, they must request the review not later than 45 days after receipt of the Secretary's letter of notification, or, for persons not notified, not later than October 31, 1985.*

3. *Sections 353.53a(b) and 355.10(b).* Paragraphs (b)(1) through (b)(3) of new §§ 353.53a(b) and 355.10(b) describe the period and the entries, exports, or sales of merchandise that the Secretary will review upon request. The period for the first administrative review may be longer or shorter than for subsequent administrative reviews, because it covers the period from the time the Secretary first applied provisional measures, or the date of suspension of investigation, to the end of the month immediately preceding the anniversary month in antidumping duty cases, and to the end of the most recently completed reporting year for the government of the affected country in countervailing duty cases. These paragraphs reflect the current practice in administrative reviews.

Paragraph (b)(3) of each corresponding section sets forth the periods that the Secretary will review for transition requests (described in §§ 353.53a(a)(5) and 355.10(a)(2)). Paragraph (b)(3) is designed to ensure that all periods potentially subject to administrative review will be reviewed if interested parties so desire. In the letters of notification, the Secretary will identify for the recipient the periods and producers or exporters potentially subject to review at the recipient's request. Interested parties unknown to the Department may obtain the information by telephoning the Department at (202) 377–5253 for antidumping duty cases or at (202) 377–2786 for countervailing duty cases. The Secretary will not conduct an administrative review for any period potentially subject to review unless a timely request is received. If no timely request is received, the Secretary will instruct the Customs Service to liquidate each entry during the period at the rate of cash deposit of (or bond for) estimated antidumping or countervailing duties required at the time of entry.

4. *Sections 353.53a(c) and 355.10(c).* Paragraphs (c)(1) through (c)(9) of new §§ 353.53a(c) and 355.10(c) specify each action the Secretary will take in a review requested under this section. The reference to "a sample of interested parties" in paragraph (c)(2) implements section 620(a) of the 1984 Act. Disclosure of factual information is covered in paragraph (c)(6). Paragraph (c)(7) commits the Secretary to issuing final results of an administrative review not later than 365 days after the month of the initiation of the review. The Secretary will initiate reviews requested under §§ 353.53a(a)(5) and 355.10(a)(2) as rapidly as possible, consistent with available resources.

Even if the Secretary has already issued preliminary results of a review initiated under the regulations in effect prior to the issuance of this rule, the Secretary will not complete the review unless the period covered in the subject of a request for review under this new rule. If there is no request for review, the preliminary results have no force or effect and entries will be assessed as provided in § 353.53a(d) or 355.10(d). If review of the period is requested under this new rule, the Secretary is not required to provide, if already provided under the regulations in effect prior to this rule, an additional post-preliminary results comment period or another hearing.

5. *Sections 353.53a(d) and 355.10(d).* For orders and findings, new §§ 353.53a(d) and 355.10(d) provide for assessment of antidumping and countervailing duties on unreviewed entries at the rate of the cash deposit of (or bond for) estimated duties required at the time of entry when the Secretary has received no request, under paragraph (a) of new §§ 353.53a and 355.10, for an administrative review of that period. This provision also provides for continuation for future entries of the cash deposit of estimated duties at the

latest determined rate. This implements the Congressional intent that the Secretary provide by regulation for duty assessment on entries for which no review has been requested. H.R. Rep. No. 98–1156, 98th Cong., 2d Sess. 181 (1984). In an analogous fashion, if during the anniversary month the Secretary does not receive a request for an administrative review of an agreement on which a suspension of investigation is based, the period that could have been reviewed will no longer be reviewable.

**Administrative Procedure Act**

While under this rule an interested party's failure to request a review within a specified reasonable period of time means that the party would no longer have the right to request a review, rules of this type are procedural rather than substantive within the meaning of section 553 of the Administrative Procedure Act (5 U.S.C. 553). See *Lamoille Valley R. Co.* v. *ICC*, 711 F.2d 295, 328 (D.C. Cir. 1983). Since this rule is procedural, section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) does not require publication in proposed form. Further, no other law requires that this rule be published in proposed form with opportunity for public comment before it is published in final. Because the 1984 Act requires the Department to implement the amendments on the date of enactment (October 30, 1984), the Department has determined that it should make this rule effective immediately on the date of publication.

The Department does invite public comments on the interim-final portion of this rule and will consider them in connection with rulemakings proposing to amend the Department's regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355), if received at the address indicated above by the end of the public comment period specified for those rulemakings. The rulemaking for antidumping duties has not yet begun, but the Department expects to publish in the **Federal Register** a notice of proposed rulemaking in the next several months. The rulemaking for countervailing duties has already been initiated with publication of a notice of proposed rulemaking in the **Federal Register** on June 10, 1985 (50 FR 24207). The public comment period for that rulemaking closes on August 9, 1985.

**Regulatory Flexibility Act**

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

**Executive Order 12291**

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in:

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

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

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. Therefore, preparation of a Regulatory Impact analysis is not required and no preliminary or final Regulatory Impact analysis has been or will be prepared.

**Paperwork Reduction Act**

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 19 CFR Parts 353 and 355**

Business and industry, Foreign trade, Imports, Trade practices.

Dated: July 2, 1985.

**Alan F. Holmer,**

*Deputy Assistant Secretary for Import Administration.*

Accordingly, Parts 353 and 355 of Chapter III, Title 19, Code of Federal Regulations are amended as follows:

## PART 353—[AMENDED]

1. The authority citation for Part 353 is revised to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts, II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

2. 19 CFR 353.53 (a), (c), and (d) are removed.

3. 19 CFR 353.53a is added to read as follows:

**§ 353.53a Administrative review of orders, findings, and suspension agreements.**

(a) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an order or finding (the calendar month in which the anniversary of the date of publication of the order or finding occurred), an interested party, as defined in section 771(9) (B), (C), (D), (E), or (F) of the Act, may request in writing that the Secretary conduct an administrative review of specified individual manufacturers, producers, or exporters ("producers or exporters") covered by the order or finding, if the requesting person states why the person desires the Secretary to review those particular producers or exporters;

(2) During the same period, a producer or exporter covered by an order or finding may request in writing that the Secretary conduct an administrative review of only that producer or exporter;

(3) During the same period, an importer of merchandise may request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer;

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurred), an interested party, as defined in section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which a suspension of investigation was based;

(5) For orders, findings, and suspension agreements published in the **Federal Register** before September 1, 1984, and one or more periods of review described in paragraph (b)(3) of this section:

(i) A person eligible to request an administrative review under paragraphs (a) (1), (2), (3), or (4) of this section must do so not later than 45 days after receipt of the Secretary's letter notifying that person that requests for administrative reviews may be submitted, or, for persons not notified, October 31, 1985; and

(ii) Such request must specify the period of requested review as described in paragraph (b)(3) of this section.

(b) *Period under review.* (1) Except as provided in paragraphs (b) (2) or (3) of this section, an administrative review under paragraphs (a)(1) through (a)(4) of this section normally will cover, as appropriate, entries, exports, or sales of merchandise during the 12 months

immediately preceding the most recent anniversary month.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraphs (a)(1) through (a)(4) of this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of investigation under this Part or the date of suspension of liquidation to the end of the month immediately preceding the anniversary month.

(3) For requests described in paragraph (a)(5) of this section, a review will cover a period ending prior to September 1, 1985, which is subject to an administrative review and which the requesting person specifies.

(c) *Procedures.* After receipt of a timely request under paragraphs (a)(1) through (a)(5) of this section, or on the Secretary's own initiative, the Secretary will:

(1) Not later than 10 days after the anniversary month (or later if a request described in paragraph (a)(5) of this section), publish in the **Federal Register** a notice of "Initiation of Antidumping Duty Administrative Review;"

(2) Normally within 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person or group of persons reviewed; and

(iii) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Antidumping Duty Administrative Review," including the weighted-average dumping margin, if any, and an invitation for argument, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person or group of persons reviewed; and

(iii) For an agreement, the Secretary's final conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** a notice of "Final Results of Antidumping Duty Administrative Review," including the weighted-average dumping margin, if any, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

(d) *Automatic assessment of duties.* (1) For orders or findings, if the Secretary does not receive a timely request under paragraphs (a)(1), (a)(2), (a)(3), or (a)(5) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess antidumping duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section at rates equal to the cash deposit of (or bond for) estimated antidumping duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraphs (a)(1), (a)(2), (a)(3), or (a)(5) of this section, the Secretary in accordance with paragraph (a)(1) of this section will instruct the Customs Service to assess antidumping duties and continue to collect the cash deposit on the merchandise not covered by the request.

## PART 355—[AMENDED]

4. The authority citation for Part 355 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts, I, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948.

5. 19 CFR 355.41 (a), (c), and (d) are removed.

6. 19 CFR 355.10 is added to read as follows:

**§ 355.10 Administrative review of orders and suspension agreements.**

(a) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), an interested party, as defined in section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review of all manufacturers, producers, or exporters ("producers or exporters") covered by an order or an agreement on which suspension of investigation was based.

(2) For orders and suspension agreements published in the **Federal Register** before September 1, 1984, and one or more periods of review described in paragraph (b)(3) of this section:

(i) A person eligible to request an administrative review under paragraph (a)(1) of this section must do so not later than 45 days after receipt of the Secretary's letter notifying that person that requests for administrative reviews may be submitted, or, for persons not notified, October 31, 1985; and

(ii) Such request must specify the period of requested review, as described in paragraph (b)(3) of this section.

(b) *Period under review.* (1) Except as provided in paragraphs (b) (2) and (3) of this section, an administrative review under paragraph (a)(1) of this section normally will cover exports of merchandise during the most recent completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a)(1) of this section will cover, as appropriate, entries or exports during the period from the date of suspension of liquidation under this Part or the date of suspension of investigation to the end of the most recent completed reporting year of the government of the affected country.

(3) For requests described in paragraph (a)(2) of this section, a review will cover a period ending prior to September 1, 1985, which is subject to an administrative review and which the requesting person specifies.

(c) *Procedures.* After receipt of a timely request under paragraphs (a)(1) or (a)(2) of this section, or on the Secretary's own initiative, the Secretary will:

(1) Not later than 10 days after the anniversary month (or later if a request described in paragraph (a)(2) of this section, publish in the **Federal Register** a

notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Normally within 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Countervailing Duty Administrative Review," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's final conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review," including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section and to collect a cash deposit of estimated countervailing duties on future entries. The assessment and the cash deposit will be at the rates found in the final results of review.

(d) *Automatic assessment of duties.* For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section at rates equal to the cash deposit of (or bond for) estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

[FR Doc. 85-19167 Filed 8-12-85; 8:45 am]
BILLING CODE 3510-DS-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 146

[Docket No. 83P-0286]

## Pineapple Juice; Amendment of Standards of Identity, Quality, and Fill of Container; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date for complying with the provisions of the amended U.S. standards of identity, quality, and fill of container for pineapple juice to: (1) Permit the use of other methods of preservation, including refrigeration and freezing, in addition to heat sterilization; (2) remove all references to the words "canned" and "canning" and add the word "processing" where appropriate, consistent with the use of other methods of preservation; (3) permit the use of filtering as a processing aid; and (4) provide for the removal of excess pulp.

**DATES:** Effective July 1, 1987, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun July 8, 1985.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0107.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 9, 1985 (50 FR 19524), FDA issued a final rule amending the standards of identity, quality, and fill of container for pineapple juice (21 CFR 146.185). This amendment will: (1) Permit the use of other methods of preservation, including refrigeration and freezing, in addition to heat sterilization; (2) remove all references to the words "canned" and "canning" and add the word "processing" where appropriate, consistent with the use of other methods of preservation; (3) permit the use of filtering as a processing aid; and (4) provide for the removal of excess pulp.

Any person who would be adversely affected by the final rule could have, at any time on or before June 10, 1985, filed written objections to the final rule and requested a public hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

The preamble to the May 9, 1985 final rule, in response to a comment received on the November 8, 1984 proposal, invited anyone who believes that there is a need to provide for a correction for acidity of pineapple juice from concentrate to submit a petition with supporting data that demonstrate this need. One letter was received stating that a change in the method of Brix determination currently set forth in the standard of quality for pineapple juice is not needed. Because no petition requesting a change in the method of Brix determination has been submitted, however, FDA advises that it has no plans to propose any change in the method of Brix determination.

### List of Subjects in 21 CFR Part 146

Canned fruit juices, Food standards, Fruit juices.

### PART 146—CANNED FRUIT JUICES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.61), notice is given that the effective date for compliance with the standards of identity, quality, and fill of container for pineapple juice, as amended in the

Federal Register of May 9, 1985 (50 FR 19524), is July 1, 1987. Voluntary compliance may have begun July 8, 1985.

Dated: August 6, 1985.

Sanford A. Miller,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-19156 Filed 8-12-85; 8:45 am]

BILLING CODE 4160-01-M

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**21 CFR Part 172**

**[Docket No. 83F-0250]**

## Food Additives Permitted for Direct Addition to Food for Human Consumption: Petroleum Wax

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyalkyl ($C_{16}-C_{22}$) acrylate polymer as a processing aid in the manufacture of petroleum wax. This action responds to a petition filed by Shell Oil Co.

**DATES:** Effective August 13, 1985. Objections by September 12, 1985. The Director of the **Federal Register** approves the incorporation by reference of certain publications at 21 CFR 172.886, effective August 13, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 19, 1983 (48 FR 37708), FDA announced that a petition (FAP 2A3653) had been filed by Shell Oil Co., Houston, TX 77210, proposing that the food additive regulations be amended to provide for the safe use of polyalkyl ($C_{16}-C_{22}$) acrylate polymer as a processing aid in the manufacture of petroleum wax regulated under § 172.886 (21 CFR 172.886).

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

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

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an enviromental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before September 12, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 172**

Food additives, Food preservatives, Incorporation by reference, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 is revised to read as follows:

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

2. In § 172.886 by revising paragraph (c) to read as follows:

**§ 172.886 Petroleum wax.**

* * * * *

(c) Petroleum wax may contain one or more of the following adjuvants in amounts not greater than that required to produce their intended effect:

(1) Antioxidants permitted in food by regulations issued in accordance with section 409 of the act.

(2) Poly(alkylacrylate) (CAS Reg. No. 27029-57-8), made from long chain ($C_{16}-C_{22}$) alcohols and acrylic acid, having: (i) A number average molecular weight between 40,000 and 100,000; (ii) A weight average molecular weight ($MW_w$) to number average molecular weight ($MW_n$) ratio ($MW_w/MW_n$) of not less than 3; and (iii) unreacted alkylacrylate monomer content not in excess of 14 percent, as determined by a method entitled, "Method for Determining Weight-Average and Number-Average Molecular Weight and for Determining Alkylacrylate Monomer Content of Poly(alkylacrylate) used as Processing Aid in Manufacture of Petroleum Wax," which is incorporated by reference (copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), 200 C Street SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408). Petroleum wax

containing poly(alkylacrylate) is limited to use in chewing gum base and shall contain not more than 1,050 parts per million of poly(alkylacrylate) residues as determined by a method entitled "Method for Determining Residual Level of Poly(alkylacrylate) in Petroleum Wax," which is incorporated by reference. Copies are available from the address cited in this paragraph (c)(2).

* * * * *

Dated: July 30, 1985.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-19155 Filed 8-12-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7-85-35]

### Drawbridge Operation Regulations; Black River, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule revocation.

**SUMMARY:** This amendment revokes the regulations for the US 17 drawbridge across the Black River because the bridge has been replaced by a fixed bridge.

**EFFECTIVE DATE:** This revocation is effective on September 12, 1985.

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

**SUPPLEMENTARY INFORMATION:** This rule was not preceded by a notice of proposed rulemaking because it deletes a provision that is of no force. Therefore notice and public procedure thereon are unnecessary.

**Drafting Information.**

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

**Economic Assessment and Certification**

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. We conclude this because the rule merely deletes an inoperative provision from the regulations.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

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

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

**§ 117.919 [Removed]**

2. Section 117.919 is removed.

Dated: July 30, 1985.

**R.P. Cueroni,**

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

[FR Doc. 85-19093 Filed 8-12-85; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF EDUCATION

### Office of Bilingual Education and Minority Languages Affairs

### 34 CFR Parts 76 and 581

### Emergency Immigrant Education Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary issues final regulations to govern grants made under the Emergency Immigrant Education Program. This program provides financial assistance to State and local educational agencies for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 732-1842.

**SUPPLEMENTARY INFORMATION:** The Emergency Immigrant Education Program is authorized under the Emergency Immigrant Education Act of 1984, Title VI of the Education Amendments of 1984, Pub. L. 98-511, 20 U.S.C. 4101-4108.

These final regulations establish a State-administered grant program authorizing grants to State educational agencies (SEAs) for such supplementary educational services as English language instruction, special materials and supplies and such other bilingual educational services as English as a Second Language (ESL), immersion programs, the use of the native tongue for instruction, as well as for the costs associated with providing such services for immigrant children. State educational agencies then make subgrants to local educational agencies (LEAs) that meet the eligibility requirement for numbers of immigrant children enrolled. To establish administrative procedures for this program that are consistent with procedures used for the Department's other State-administered grant programs, 34 CFR 76.102(z) of the Education Department General Administrative Regulations (EDGAR) is redesignated as 34 CFR 76.102(aa) and a new provision is added at 34 CFR 76.102(z). This new provision adds the application submitted by a State under the Emergency Immigrant Program to the EDGAR definition of "State plan." As a result of this amendment all the administrative procedures set out in the EDGAR which govern State plans apply to the Emergency Immigrant Education Program.

To simplify the application process, the SEAs are not required to resubmit any assurances previously submitted to meet the General Education Provisions Act requirements governing programs under which Federal funds are made available to LEAs through or under the supervision of SEAs. Also, there are separate requirements governing the SEA's submission of assurances and the submission of counts of immigrant children. Once a SEA has submitted the required assurances, resubmission of assurances would not be necessary. The previously submitted assurances would govern all the awards made under the program. To make awards in a given fiscal year, the Secretary requests a SEA to submit a count, taken at any time during that current school year, that provides information on the enrollment of immigrant children.

The final regulations in § 581.4(b)(1) repeat the definition of "immigrant children" contained in Section 602(1) of the Act and add the clarification that the term "immigrant" only includes persons who are "immigrants" under the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(15). If the term "immigrant" were not interpreted in accordance with the Immigration and

Nationality Act, persons could be counted and served contrary to the purpose of the program and Congressional intent, including United States citizens' children who were born abroad, e.g., while their parents were traveling abroad or serving with the armed forces overseas; and the children of persons termporarily residing in the United States, e.g., children of foreign diplomats. Thus the term "immigrant children" includes only the children, who are not United States citizens, of lawful permanent resident aliens, refugees, asylees, parolees, persons of other immigrant status, and immigrant residents in the United States without proper documentation.

The term will exclude children of foreign diplomats, United States citizens' children who were born abroad, and children of foreign residents temporarily in the United States for business or pleasure. This is not an exhaustive list of exclusions and only provides examples of the children who are not eligible for assistance under this program. For additional categories of ineligible children, please review the definition of "immigrant" under the Immigration and Nationality Act. A copy of the definition will be included in the program information package for this program.

In determining children who meet the definition of "immigrant children" in § 581.4(b)(1), a State must use the definition of "State" in 34 CFR 77.1(c) of EDGAR. EDGAR defines "State" as it is defined under Section 198(a) of the Elementary and Secondary Education Act of 1965 to mean "any of the 50 States, the Commonwealth of Puerto Rico, and District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands." The final regulations in § 581.4(a) incorporate by reference the definition of "State" contained in EDGAR.

Under 34 CFR 76.730–76.734 (made applicable by the final regulations in § 581.3(a)), a State and a subgrantee must keep records related to grant funds and compliance with program requirements. To ensure that eligible children are identified for program assistance, the final regulations contain provisions regarding determination of children who are eligible to be counted under the Emergency Immigrant Education Program that are similar to provisions in 34 CFR 204.30 of the regulations governing the count of eligible children under the Financial Assistance to State Educational Agencies to Meet Special Educational Needs of Migratory Children Program. The final regulations in § 581.51 requrie SEAs counting immigrant children for assistance under this program to determine that the children meet the definition of "immigrant children" in § 581.4(b)(1) of the final regulations and to make a record of the basis on which the children's eligibility was determined. The final regulations provide that, in determining eligibility, SEAs may rely on credible information from any source, including information contained in previous school records and information provided by the child or child's guardian. The final regulations do not require an SEA to obtain documentary proof of either the child's eligibility or civil status from the child or the child's parent or guardian.

To receive information necessary to carry out the provisions in section 606(b)(3) of the Act, 20 U.S.C. 4105(b)(3), the SEA, in submitting its count of immigrant children, must also report the number of children eligible under any legal authority, for which funds have been made available for the same fiscal year, that has the same purpose as this program. Funds for the same purpose as this program include, but may not be limited to, funds made available under section 412(d) of the Refugee Act of 1980, as amended (8 U.S.C. 1522) and funds made available under the Refugee Education Assistance Act of 1980, as amended (8 U.S.C. 1522 (note)). If there are any additional legal authorities and funding established by Congress for a given fiscal year, such authorities and funding will be identified in the application notice announcing the availability of funds in that fiscal year.

The final regulations in § 581.20 implement the provisions in sections 606(b) and 603(b) of the Act, 20 U.S.C. 4105(b), 4102(b) and explain how the Secretary determines the amount of an award to a State. The final regulations in § 581.40 explain how a State determines the amount for subgrants to eligible LEAs that report immigrant children. Section 581.40 also implements section 604 of the Act, 20 U.S.C. 4103, which authorizes administrative costs for a State, not to exceed 1.5 percent of the State award. No allowances for indirect costs other than those included in the maximum 1.5 percent allowance under § 581.40(a) may be charged to the State grant.

**Summary of Comments and Responses**

On May 6, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** at 50 FR 19146. Following is the summary of the comments received on the NPRM and the Secretary's responses:

*Comment.* Two commenters noted that §§ 581.2 and 581.11(a) of the proposed regulations do not contain the statutory caveat "whichever number is less" in describing the eligibility requirements.

*Response.* A change has been made. The phrase "equal to at least either" has been added to §§ 581.2 and 581.11(a). The eligibility requirement for an LEA to participate in the program is either the LEA has at least 500 eligible immigrant students enrolled in the public and nonpublic elementary and secondary schools, or the number of eligible immigrant children constitutes at least 3% of total LEA enrollment. As long as the LEA meets either one of the requirements, "whichever number is less" does not apply. Furthermore, because of the comparative nature of the phrase "whichever number is less," the SEAs may find it confusing and incorrectly may believe they must compare an absolute number (500) with a percent (3%).

*Comment.* Two commenters asked why the proposed regulations use the term "immigrant status" in §581.11(b)(1)(ii) and do not contain the statutory language "refugee, parolee, asylee, or other immigrant status."

*Response.* A change has been made. The statutory language "refugee, parolee, asylee, or other immigrant status" has been added in § 581.11(b)(1)(ii).

*Comment.* Two commenters stated that the statutory references in §§ 581.11(b) and 581.20(b) do not make reference to the statutory exemption that there will be no reduction in EIEP funds if any other grant (for immigrant children) was reduced or computed at a reduced amount due to a presumption that EIEP funds are forthcoming.

*Response.* A change has been made. The statutory reference to §581.11 has been corrected to read (20 U.S.C. 4105(b)). This statutory reference was given previously as part of the legal authority citation to §581.20.

*Comment.* Two commenters stated that §581.51 does not reference the statutory provision dealing with SEA hearing prior to a reduction of an award or forbidding limitations in the nature of a penalty.

*Response.* A change has been made. The statutory references in §581.51 have been corrected to read (20 U.S.C. 4101, 4104, 4105(c)).

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for

major regulations established in the Order.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an inter-governmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### List of Subjects

*34 CFR Part 76*

Accounting, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Island Trust Territory, Private school, Reporting and recordkeeping requirements, Virgin Islands.

*34 CFR Part 581*

Education, Elementary and secondary education, Grants programs—education, Immigrants, Reports and recordkeeping requirements.

### Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance number 84.162, Emergency Immigrant Education Program)

Dated: August 7, 1985.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

## PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citations for 34 CFR Part 76 would continue to read:

**Authority:** Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

### § 76.1 [Amended]

2. In the table following § 76.1, Section A. Elementary and Secondary Education Programs is amended by adding the following language at the end of Section A:

**§ 76.1 Programs to which Part 76 applies.**

* * * * *

| Name of progam | Authorizing statute | Implementing regulations (34 CFR) | CFDA No. |
|---|---|---|---|
| A. Elementary and Secondary Education Programs | | | |
| Emergency Immigrant Education Program. | Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108) | Part 581 | 84.162 |

3. Section 76.102 is amended by redesignating paragraph (z) as paragraph (aa) and adding a new paragraph (z) to read as follows:

**§ 76.102 Definition of "State plan" for Part 76.**

* * * * *

(z) *Emergency Immigrant Education.* The application under the Emergency Immigrant Education Program.

* * * * *

### § 76.125 [Amended]

4. In the table following § 76.125, Other Elementary and Secondary Programs is amended by adding the following language at the end:

**§ 76.125 What is the purpose of these regulations?**

* * * * *

| CDFA No. and name of program | Authorizing legislation | Implementing regulations Title 34 CFR (Part) |
|---|---|---|
| * * * * * * * | | |
| Other Elementary and Secondary Education Programs | | |
| * * * * * * * | | |
| 84.162—Emergency Immigrant Education Program | Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108) | 581 |

4. A new Part 581 is added to read as follows:

## PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

### Subpart A—General

Sec.



### Subpart B—How Does a State Apply for a Grant?



### Subpart C—How Does the Secretary Make a Grant to a State?



### Subpart D—[Reserved]

### Subpart E—How Does a State Make a Subgrant to an Applicant?



### Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?



### Subpart G—What Compliance Procedures Are Used by the Department of Education?



**Authority:** Emergency Immigrant Education Act of 1984, Title VI of Pub. L. 98-511, 20 U.S.C. 4101-4108, unless otherwise noted.

### Subpart A—General

#### § 581.1 What is the Emergency Immigrant Education Program?

This program provides financial assistance to State educational agencies (SEAs) for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public schools under the

jurisdiction of local education agencies (LEAs) in the States and in elementary and secondary nonpublic schools within the district served by LEAs in the States.

(20 U.S.C. 4106)

**§ 581.2 Who is eligible to apply for a grant under the Emergency Immigrant Education Program?**

An SEA may apply for a grant if it has one or more LEAs in which the sum of the number of immigrant children who are enrolled, during the fiscal year in which funds are made available under this program, in elementary and secondary public schools under jurisdiction of the LEA and in elementary or secondary nonpublic schools within the district served by the LEA, is equal to at least either—

(a) Five hundred (500); or

(b) Three percent of the total number of students enrolled during that same fiscal year in public schools under the jurisdiction of the LEA and nonpublic schools within the district served by the LEA.

(20 U.S.C. 4105)

**§581.3 What regulations apply to the Emergency Immigrant Education Program?**

The following regulations apply to the Emergency Immigrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 76 (State-Administered Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 581.

(20 U.S.C. 4101–4108)

**§ 581.4 What definitions apply to the Emergency Immigrant Education Program?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Equipment
Fiscal year
Grant
Local educational agency
Nonpublic
Project
Public
Secondary school
Secretary
State
State educational agency
Subgrant
Supplies

(b) *Program definitions.* The following definitions apply to this part:

(1) "Elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954.

(2)(i) "Immigrant children" means children who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years.

(ii) For purposes of awards under this program, the term "immigrant" includes only persons who are "immigrants" under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(15)).

(20 U.S.C. 4101)

## Subpart B—How Does a State Apply for a Grant?

**§ 581.10 What assurances must a State submit to receive a grant?**

An SEA must submit to the Secretary the following assurances:

(a) An assurance that the educational programs, services, and activities for which payments under this program are made shall be administered by or under the supervision of the SEA.

(b) An assurance that payments under this program shall be used for supplementary educational services and costs for immigrant children.

(c) An assurance that payments made to an SEA under this program shall be distributed among LEAs within the State on the basis of the number of immigrant children counted in those LEAs, after adjusting each LEA's payment to reflect any reductions made to the SEA's award under § 581.20 (b) and (c), based on the level of appropriations for the fiscal year and the funds provided for immigrant children under programs with the same purpose.

(d) An assurance that the SEA shall not finally disapprove, in whole or in part, any application for funds received under this program without first affording the LEA reasonable notice and opportunity for a hearing.

(e) An assurance that the SEA shall submit those reports required by the Secretary under this program.

(f) The following assurances pertaining to the provisions of services to immigrant children enrolled in elementary and secondary nonpublic schools:

(1) An assurance that the extent consistent with the number of immigrant children enrolled in the elementary or secondary nonpublic schools within the district served by an LEA, the LEA, after consultation with appropriate officials of the schools, shall provide for the benefit of those children, secular, neutral, and nonideological services, materials, and equipment necessary for their education.

(2) An assurance that public agency shall administer and maintain control of funds provided under this program and shall administer and maintain title to any materials, equipment, and property repaired, remodeled, or constructed with program funds.

(3) An assurance that—

(i) Services under this program shall be provided by employees of a public agency or through contracts by a public agency with a person, association, agency, or corporation who or which, in the provision of these services, is independent of nonpublic elementary or secondary schools and religious organizations; and

(ii) Any employment or contract as described in paragraph (f)(3)(i) of this section, be under the supervision of the public agency and that funds provided under employment or contract not be commingled with State or local funds.

(20 U.S.C. 4107)

**§ 581.11 What counts must an SEA provide?**

(a) An SEA shall provide a count, taken during the current school year, of the number of immigrant children enrolled in public and nonpublic elementary and secondary schools for those LEAs in the State, in which the number of immigrant childern enrolled is equal to at least either—

(1) Five hundred; or

(2) Three percent of the total number of students enrolled in elementary and secondary public schools under the jurisdiction of an LEA and elementary and secondary nonpublic schools within the district served by the LEA.

(b)(1) For the immigrant children counted under paragraph (a) of this section, an SEA must also report the number of those children, who are eligible to receive services, and for whom funds are made available during the same fiscal year, under this program and other Federal programs—

(i) That have the same purpose as the Emergency Immigrant Education Program; and

(ii) For which funds are made available for that same purpose because of the refugee, parolee, asylee, or other immigrant status of the children eligible to be served by the funds.

(2) The Secretary identifies, for the purposes of counting children under paragraph (b)(1) of this section, the following Federal programs as programs

that have the same purpose as the Emergency Immigrant Education Program:

(i) Programs(s) implementing section 412(d) of the Refugee Act of 1980, as amended, 8 U.S.C. 1522.

(ii) Programs(s) implementing the Refugee Education Assistance Act of 1980, as amended, 8 U.S.C. 1522 (note).

(3) The Secretary identifies in the application notice announcing the availability of funds under the Emergency Immigrant Education Program any additional legal authorities that may be established by Congress that have the same purpose as the Emergency Immigrant Education Program.

(20 U.S.C. 4105(b))

(Approved by the Office of Management and Budget under control number 1885-0507)

## Subpart C—How Does the Secretary Make a Grant to a State?

### § 581.20 How does the Secretary determine the amount of an award to a State?

To determine the amount of an award to an SEA, the Secretary—

(a) Multiplies by $500 the number of immigrant children reported by each SEA under § 581.11(a) who are enrolled in schools In LEAs that meet the enrollment threshold in § 518.2(b).

(b) Subtracts, from the product under paragraph (a) of this section, the amount of the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program:

(c) Determines each SEA's share of the total funds available under this program based on the ratio of the amount determined for an SEA under paragraph (b) of this section, to the total of the amounts determined for all SEAs, under paragraph (b) of this section; and

(d) If necessary, reduces the allocations to the SEAs to the extent necessary to bring the total amount of awards for all SEAs within the limit of the amount appropriated for the fiscal year.

(20 U.S.C. 4102(b), 4103, 4105(b))

## Subpart D—[Reserved]

## Subpart E—How Does a State Make a Subgrant to an Applicant?

### § 581.40 How does a State determine the amount of a subgrant to an LEA?

(a) An SEA may reserve up to 1.5 percent of its award for the proper and efficient administration of this program.

(b) To determine the amount of a subgrant to an LEA, the SEA—

(1) Subtracts from the State grant, the administrative costs allowable under paragraph (a) of this section;

(2) Multiplies by $500 the number of immigrant children reported by each LEA that meets the enrollment threshold in § 581.2;

(3) Subtracts, from the amount determined under paragraph (b)(2) of this section, the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(4) Determines the LEA's share of the total funds available under this program based on the ratio of the amount determined for an LEA under paragraph (b)(3) of this section, to the total amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs in the State; and

(5) If necessary, reduces the allocations to the LEAs to the extent necessary to bring the total amount of subgrants to the LEAs within the amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs.

(20 U.S.C. 4102(b), 4105(b), 4107(a)(3))

## Subpart F—What Conditions Must Be Met by the State and its Subgrantees?

### § 581.50 How may funds be used under this program?

Subgrants under this program may be used to meet the costs of providing for—

(a) Supplementary educational services necessary to enable immigrant children to achieve a satisfactory level of performance in schools, including but not limited to—

(1) English language instruction;

(2) Other bilingual educational services; and

(3) Special materials and supplies;

(b) Additional basic instructional services that are directly attributable to the presence of immigrant children in the school district, including the costs of providing—

(1) Classroom supplies;

(2) Overhead costs;

(3) Costs of construction;

(4) Acquisition or rental of space; and

(5) Transportation costs; and

(c) Essential inservice training for personnel who will be providing supplementary educational services or basic instructional services to immigrant children.

(20 U.S.C. 4106)

### § 581.51 How is the eligibility of an immigrant child determined?

(a) *Basis requirement.* An SEA may not count a child under § 581.11(a) until the SEA has—

(1) Determined that the child meets the definition of immigrant children in § 581.4(b)(2); and

(2) Made a record of how the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

(2) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

(20 U.S.C. 4101, 4104, 4105(c))

(Approved by the Office of Management and Budget under control number 1885-0507)

### § 581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?

(a) An LEA is required after consultation with appropriate officials of elementary and secondary nonpublic schools within the district served by the LEA, to provide for the benefit of immigrant children enrolled in those schools, secular, neutral, and nonideological services, materials, and equipment necessary for the education of these immigrant children.

(b) If by reason of any provision of law an LEA is prohibited from providing educational services to immigrant children enrolled in elementary and secondary nonpublic schools, of if the Secretary determines that an LEA has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in elementary or secondary nonpublic schools, the Secretary—

(1) May waive the requirement that the LEA serve those children; and

(2) Arrange for the provision of services to those children.

(c) Any wavier of the requirement that an LEA provide services to immigrant children enrolled in elementary and secondary nonpublic schools is subject to consultation, withholding, and notice requirements, in accordance with section 557(b) (3) and (4) of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3806(b), and the regulations in §§ 581.53–581–59.

(20 U.S.C. 4107(a)(6), 4108(b))

**§ 581.53 When does the Secretary implement a bypass?**

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing the services under this part for private school children on an equitable basis as required in § 581.52; or

(2) Has substantially failed or is unwilling to provide the services under this part for private school children on an equitable basis as required in § 581.52.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the LEA for providing supplemental educational services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the supplementary educational services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Emergency Immigrant Education Program funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(20 U.S.C. 4108(b))

**§ 581.54 What notice does the Secretary give?**

(a) Before taking any final action to implement a bypass, the Secretary provides the affected LEA, with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient detail to allow the LEA to respond;

(2) Cites the requirement with which the LEA allegedly failed to comply; and

(3) Advises the LEA that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA by certified mail with return receipt requested.

(20 U.S.C. 4108(b))

**§ 581.55 What bypass procedures does the Secretary follow?**

Sections 581.56–581.58 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(20 U.S.C. 4108(b))

**§ 581.56 What are the functions of a hearing officer?**

(a) If an LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, representatives of the private school children and the Department of Education of the time and place of the hearing.

(20 U.S.C. 4108(b)

**§ 581.57 What are the hearing procedures?**

(a) At the hearing a transcript is taken. The LEA and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, representatives of the private school children, or Department of Education officials.

(20 U.S.C. 4108(b))

**§ 581.58 What are the post-hearing procedures?**

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, representatives of private school children, and the Secretary.

(b) The LEA and representatives of private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(20 U.S.C. 4108(b))

## Subpart G—What Compliance Procedures Are Used by the Department of Education?

**§ 581.60 Under what conditions does the Secretary withhold funds?**

(a) If the Secretary determines, after affording reasonable notice and opportunity for a hearing to an SEA, that the SEA has failed to meet the requirements of this program, the Secretary—

(1) Notifies the SEA that further payments under this program will not be made to the SEA; or

(2) Notifies the SEA that it may not make further payments under this program to specified LEAs whose actions cause or are involved in the failure to meet program requirements.

(b) Payments withheld under paragraph (a) of this section, will not be resumed until the Secretary is satisfied that there is no longer a failure to comply.

(c)(1) If the Secretary determines, after reasonable notice and opportunity for a hearing to an SEA, that any amount of a payment made to a State will not be used by the State for carrying out the purposes of this program, the Secretary makes that amount available to one or more other States to the extent that the Secretary determines that those States are able to use additional funds for carrying out the purposes of the program.

(2) The Secretary considers any additional amount made available to an SEA under this provision from an appropriation for a fiscal year as part of that SEA's award for that fiscal year, but the additional amount remains available until the end of the succeeding fiscal year.

(d) The procedures in 34 CFR Part 78 (Education Appeal Board) governing the withholding of funds apply to any determinations made by the Secretary under paragraphs (a) and (c) of this section.

(20 U.S.C. 4104, 4105 (b) and (c))

[FR Doc. 85–19074 Filed 8–12–85; 8:45 am]
BILLING CODE 4000–01–M

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## VETERANS ADMINISTRATION

### 38 CFR Part 17

### Amount of Aid Payable To State Veterans Homes

**AGENCY:** Veterans Administration.

**ACTION:** Final regulation.

**SUMMARY:** The Veterans Administration is amending its medical regulations (38 CFR Part 17) to provide regulatory authority for the amount of aid payable to State Veterans Homes. The current regulation states the actual dollar amount as specified in 38 U.S.C. 641(a). This amendment removes the actual dollar amount from the regulation and refers the reader to 38 U.S.C. 641(a). This amendment will relieve the agency from republishing the regulation every time the rates change. The actual dollar amounts of the rates will be available to

the public through publication of a notice in the **Federal Register** each time the rates change.

**DATE:** This rule is effective July 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** F. Brent Baker (202) 389-3679, VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

**SUPPLEMENTARY INFORMATION:** These proposed rules were published in the **Federal Register** March 12, 1985, (50 FR 9811). One comment was received and it was supportive of the proposed rule. Therefore, the proposed regulation is hereby adopted as final.

38 CFR 17.166c has historically listed the actual dollar amount of per diem rates for eligible veterans receiving care in State Veterans Homes. Public Law 98-160, Veterans Administration Health Care Programs, raises the possibility of having these rates change more frequently. The VA is removing the actual rates from the regulation in order to avoid the expense of publishing amendments to the regulation whenever the rates change. This amendment inserts a reference to 38 U.S.C. 641(a) into the regulation, to refer the reader directly to the dollar amounts. For those readers who have limited access to the United States Code, the VA will publish the actual per diem rates, whenever they change, in the form of a **Federal Register** Notice. This method would give the public notice of the actual rates, yet avoid the expense of the rulemaking process.

This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291 on the basis that it will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation change is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this will affect only the method by which the public is given notice of the statutory per diem rates for eligible veterans receiving care in State Veterans Homes. It will therefore, have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

The Catalog of Federal Domestic Assistance Program Numbers are: 64.014, 64.015 and 64.016.

**List of Subjects in 38 CFR Part 17**

Health care, Health facilities, Nursing homes, Government contracts, Veterans.

Approved: July 31, 1985.

**Harry N. Walters,**

*Administrator.*

**PART 17—MEDICAL**

38 CFR Part 17, MEDICAL, is amended by revising § 17.166c to read as follows:

**§ 17.166c Amount of aid payable.**

The amount of aid payable to a recognized State home shall be at the per diem rates established by Title 38, U.S.C. section 641(a)(1) for domiciliary care; section 641(a)(2) for nursing home care; and section 641(a)(3) for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home. The VA will publish the actual per diem rates, whenever they change, in a **Federal Register** notice.

(38 U.S.C. 641 as amended by Pub. L. 98-160, sec. 105(a)(1))

[FR Doc. 85-19210 Filed 8-12-85; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 81**

**[EPA No. KS 1590; A-7-FRL-2830-6]**

## Designation of Areas for Air Quality Planning Purposes; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** On April 5, 1983, the Kansas Department of Health and Environment (KDHE) requested that EPA redesignate a portion of Topeka, Kansas, from secondary nonattainment with respect to TSP to attainment. The State's request is supported by air quality monitoring, evidence of an applied control strategy, and modeling which supports the measured air quality improvements.

Today's action approves the KDHE request in accordance with EPA's redesignation policies.

**EFFECTIVE DATE:** September 12, 1985.

**ADDRESSES:** Copies of the state submission are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101;

Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Chanslor at 913/236-2893; FTS 757-2893.

**SUPPLEMENTARY INFORMATION:** In response to section 107(d) of the Clean Air Act, as amended, EPA and the State of Kansas have designated all areas of the State as attaining the National Ambient Air Quality Standards (NAAQS), not attaining the NAAQS, or having insufficient data to make a determination (unclassified). A nonattainment area is one in which the air quality is worse than a standard. An unclassified area is one for which there is insufficient data to determine whether the area is attainment or nonattainment. The areas of the State which are nonattainment for one or more pollutants are identified at 40 CFR Part 81, Subpart C.

On March 3, 1978 (43 FR 8964), EPA designated a portion of Topeka, Kansas, nonattainment with respect to the secondary standard for total suspended particulate matter (TSP). The secondary NAAQS for TSP is a 24 hour value of 150 ug/m$^3$ not to be exceeded more than once per year. The boundaries of the Topeka secondary TSP nonattainment area are as follows: Kansas River on the east and south, Vail Avenue on the west, and Lyman Avenue on the north.

On April 15, 1983, the KDHE requested that EPA redesignate this portion of Topeka to attainment for TSP.

In support of the redesignation request, the KDHE submitted air quality monitoring data showing no violations of the secondary TSP standard for eight consecutive quarters. The KDHE also submitted an analysis based on an EPA approved model demonstrating that (1) point source emission reductions obtained by implementation and enforcement of the particulate emission regulations in the approved Kansas SIP clearly contributed to the improvement of measured air quality in Topeka and (2) that this SIP assures continued maintenance of the secondary TSP standard.

EPA regards this monitoring data and modeling analysis as adequate to support a redesignation to attainment

under the relevant provisions of the Clean Air Act, sections 107(d) and 171(2). Hence, EPA proposed approval of the KDHE request to redesignate the Topeka secondary TSP nonattainment area in the **Federal Register** on January 29, 1985 (50 FR 3928).

**Summary of Public Comments**

The Region VII office received no comments during the 30 day comment period.

**Action**

EPA approves the State request to redesignate the Topeka secondary TSP nonattainment area to attainment.

EPA has examined this redesignation action and finds that it will have no substantive effect on the stringency of the Kansas SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

**List of Subjects in 40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: August 2, 1985.

**Lee M. Thomas,**

*Administrator.*

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

### Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401—7642.

**§ 81.317 [Amended]**

2. Section 81.317 *Kansas* is amended in the TSP table by revising the entire entry for Shawnee County to read as follows:

**Kansas-TSP**

| Designated area (County) | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Shawnee County | | | | X |
| * * * | * | * | * | * |

[FR Doc. 85-19102 Filed 8-12-85; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

**[Docket No. FEMA-6657]**

### Changes in Flood Elevation Determinations; Arizona, et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Interim rule.

**SUMMARY:** This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

**DATES:** These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table. Send comments to that address also.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

**SUPPLEMENTARY INFORMATION:** The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

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

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subject in 44 CFR Part 65**

Flood insurance, Flood plains.

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

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: Maricopa | City of Chandler | Mar. 6, 1985, Mar. 13, 1985, *Arizonan* | Honorable Jerry Brooks, Mayor, City of Chandler, 200 East Commonwealth Ave., Chandler, AZ 85224. | Feb. 19, 1985 | 040040 |
| California: Mendocino | (Uninc. areas) | Jan. 10, 1985 and Jan. 17, 1985, *Ukiah Daily Journal.* | Honorable John Cimolino, Chairman, Mendocino County Board of Supervisors, Mendocino County Courthouse, Room 113, Ukiah, CA 95482. | Jan. 7, 1985 | 060183 |
| Colorado: Arapahoe | City of Cherry Hills Village | May 8, 1985 and May 15, 1985, *Villager.* | Honorable Robert St. Clair, Mayor, City of Cherry Hills Village, 2450 East Quincy, Englewood, CO 80110. | Apr. 18, 1985 | 080013 |
| Florida: Orange County | Unincorporated areas of Orange County. | *Orlando Sentinal,* Feb 13, 1985, Feb. 20, 1985. | Honorable James L. Harris, County Administrator, Orange County P.O. Box 1393, County Courthouse, Orlando, FL 32802. | Feb. 4, 1985 | 120179 |
| Georgia: Muscogee County | City of Columbus | *Columbus Ledger,* Apr. 26, 1985, May 3, 1985. | Honorable J.W. Feighner, Mayor, City of Columbus, P.O. Box 1340, Columbus, GA 31993. | Apr. 15, 1985 | 135158 |
| Illinois: Grundy County | City of Morris | *Morris Daily Herald,* Apr. 11, 1985, Apr. 18, 1985. | Honorable James R. Washburn Mayor, City of Morris, 320 Wauponsee Street, Morris, IL 60450. | Apr. 2, 1985 | 170269 |
| Louisiana: Jefferson Parish | Unincorporated areas | *Times-Picayune,* Nov. 21, 1984 and Nov. 28, 1984. | Honorable Joseph S. Yenni, President of Jefferson Parish, New Courthouse, P.O. Box 9, Gretna, LA 70054. | Nov. 14, 1984, Letter of Map Revision. | 225199C |
| Louisiana: Jefferson Parish | (Uninc. areas) | *Times-Picayune,* Jan. 22, 1985 and Jan. 29, 1985. | Honorable Joseph S. Yenni, president of Jefferson Parish, New Courthouse, P.O. Box 9, Gretna, LA 70054. | Jan. 11, 1985, Letter of Map Revision. | 225199C |
| Louisiana: Jefferson Parish | (Uninc. areas) | *Times-Picayune,* Mar 1, 1985 and Mar. 8, 1985. | Honorable Joseph S. Yenni, President of Jefferson Parish, New Courthouse, P.O. Box 9, Gretna, LA 70054. | Feb. 26, 1985 | 225199 |
| Michigan: Shiawassee County | City of Owosso | *Argus Press,* Mar. 25, 1985, Apr. 5, 1985. | Honorable Allex R. Allie, City Manager, City of Owosso, 301 West Main St. Owosso, MI 48867 | Mar. 18, 1985 | 260596 |
| New York: Westchester | City of Yonkers | *Herald Statesman,* Feb. 20, 1985 and Feb 27 1985. | Honorable Angelo R. Martinelli, Mayor of the City of Yonkers, City Hall, Yonkers, NY 10701. | Feb. 14, 1985 | 360936B |
| Texas: Dallas | City of Irving | *The Irving Daily News,* Mar. 20, 1985 and Mar 27 1985. | Honorable Bobby Joe Raper, Mayor of the City of Irving, P.O. Box 3008, Irving, TX 75061. | Mar. 4, 1985 | 480180 |

Issued: August 6, 1985.

**Jeffrey S. Bragg,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 85-19172 Filed 8-12-85; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 65

## Changes in Flood Elevation Determinations; Connecticut, et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Final rule.

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

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base food elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

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

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a

substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Flood plains.

The authority citation for Part 65 is revised to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: New Haven (FEMA Docket No. 6642). | Town of Orange | *New Haven Journal Carrier*, Nov. 15, 1984 and Nov. 22, 1984. | Hon. Ralph E. Capecelatro, First Selectman for the town of Orange, 617 Orange Center Road, Orange, Connecticut 06477. | Nov. 8, 1985, letter of map revision. | 0900878 |
| Louisiana: Jefferson Parish (unincorporated areas) (FEMA Docket No. 6631). | | *Times-Picayune*, Nov. 19, 1984 and Oct. 26, 1984. | Hon. Joseph S. Yenni, president of Jefferson Parish, New Court House, P.O. Box 9, Gretna, Louisiana 70054. | Oct. 11, 1984 | 2251998 |
| Maryland: Anne Arundel (unincorporated areas) (FEMA Docket No. 6642). | | *Capitol Gazette*, Dec. 28, 1984 and Jan. 4, 1985. | Hon. O. James Lighthizer, Anne Arundel County Executive, Arundel Center, 44 Calvert Street, Annapolis Maryland 21401 | Dec. 21, 1984 | 240008C |
| Massachusetts: Plymouth (FEMA Docket No. 6631). | Town of Bridgewater | *Bridgewater Independent*, Nov. 1, 1984 and Nov. 8, 1984. | Hon. David L. Flynn, Chairman of the Office of Selectmen, Office of Selectmen, Bridgewater, MA 02324. | Oct. 23, 1984 | 250260B |

Issued: August 6, 1985.

**Jeffrey S. Bragg,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 85-19170 Filed 8-12-85; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 65

## Changes in Flood Elevation Determinations; Florida, et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Final rule.

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

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

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

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Flood plains.

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

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Florida: Monroe, County | Unincorporated Areas (Docket No. FEMA-6642). | *The Reporter*, Dec. 20, 1984, Dec. 27, 1984. | Hon. Kermit Lewin, County Administrator, Monroe County, P.O. Box 93, Key West, Florida. | Dec. 10, 1984 | 125129 |
| Illinois: DuPage County | City of West Chicago (Docket No. FEMA-6631). | *West Chicago Press*, Nov. 1, 1984, Nov. 8, 1984. | Hon. A. Eugene Rennels, Mayor, City of West Chicago, 475 Main Street, West Chicago, Illinois 60185. | Oct. 25, 1984 | 170219 |
| Iowa: Black Hawk County | City of Evansdale (Docket No. FEMA-6630). | *Blackhawk Sun Newspaper*, Oct. 17, 1984, Oct. 24, 1984. | Hon. Frederick M. Saul, Mayor, City Of Evansdale, 123 N. Evans Road, Evansdale, Iowa 50707. | Nov. 7, 1984 | 190020 |
| Tennessee: Shelby County | City of Memphis (Docket No. FEMA-6595). | *The Daily News* Feb. 27, 1984 and March 5, 1984. | Hon. Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Main, Memphis, Tennessee 38103. | Feb. 17, 1984 | 470177 |
| Texas: | | | | | |
| Brazos | City of Bryan (FEMA Docket No. 6620). | *Bryan-College Station Eagle* Aug. 1, 1984 and Aug. 8, 1984. | Hon. Ernest Clark, Manager of the City of Bryan, P.O. Box 1000, Bryan, Texas 77805. | July 30, 1984 (Letter of Map Revision). | 480082B |
| Dallas, Tarrant and Ellis Counties. | City of Grand Prairie (FEMA Docket No. 6642). | *Grand Prairie Daily News*, July 12, 1984 and July 19, 1984. | Hon. Jerry Debo, Mayor of the City of Grand Prairie, 317 College Street, Grand Prairie, Texas 75050. | July 5, 1984 | 485472B |
| Dallas | City of Irving (FEMA Docket No. 6620). | *Irving Daily News*, Aug. 1, 1984 and Aug. 8, 1984. | Hon. Bobby Joe Raper, Mayor of the city of Irving, P.O. Box 3008, Irving, Texas 75061. | July 21, 1984 (Letter of Map Revision). | 480180A |
| Vermont: Caledonia | Town of Lyndon (FEMA Docket No.6620). | *The Weekly News* Aug. 21, 1984 and Aug. 28, 1984. | Hon. Paul Southouse, Chairman of the Lyndon Board of Selectmen, Office of the Town Clerk, Lyndonville, Vermont 05851. | Aug. 13, 1984 (Letter of Map Revision). | 500028A |

Issued: August 6, 1985.

**Jeffrey S. Bragg,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 85-19171 Filed 8-12-85; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Final Rule To Determine Buxus Vahlii (Vahl's Boxwood) as an Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines a plant, *Buxus vahlii* (Vahl's boxwood), to be an endangered species. *Buxus vahlii* is only found in the semievergreen seasonal forests that occur on limestone in north and northwestern Puerto Rico. Only about 40 individuals of the species are known to exist. Of the two locales that support populations of *Buxus vahlii*, one is on public land of the Commonwealth of Puerto Rico and the other is on privately owned land. The continued existence of this species is endangered by its very limited numbers and range, potential habitat modification or destruction due to limestone mining and urbanization in the privately owned locale, and possible construction of a coal-fueled power plant on the government land. This final rule will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Buxus vahlii*.

**DATE:** The effective date of this rule is September 12, 1985.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Banco de Ponce Building, Dr. Basora and Mendez Vigo Streets, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709, and at the Service's Regional Office, Richard B. Russell Federal Building, Room 1282, 75 Spring Street, S.W., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert T. Pace at the above Mayagüez address (809/833-5760) or Mr. Richard P. Ingram at the above Atlanta Regional Office address (404/221-3583 or FTS 242-3583).

**SUPPLEMENTARY INFORMATION:**

#### Background

When and where the first collections of *Buxus vahlii* were made is not known. It was first identified, incorrectly, as *Crantzia laevigata* (= *Buxus laevigata*) by Vahl in 1791, and later correctly described as a new species by Baillon in 1859. The range of the species has been a matter of discussion since that time. Although it was originally throuth to occur in St. Croix, U.S. Virgin Islands, as well as in Puerto Rico, this no longer appears to be correct. *Buxus vahlii* has not been collected in St. Croix by any botanist in recent times. Examination by Puerto Rican botanists of specimens of the genus *Buxus* collected on St. Croix (including the type of *Tricera laevigata* var. *sanctae-crucis*) showed that none could be attributed to *Buxus vahlii* (Vivaldi and Woodbury, 1981). An early report listing Jamaica as part of *Buxus vahlii's* distribution has never been confirmed (Little *et al.*, 1974); *B. laevigata* does occur in Jamaica. Thus, *Buxus Vahlii* is now considered to be endemic to Puerto Rico.

*Buxus vahlii* is an evergreen shrub or small tree up to 15 feet (4.6 m) tall with stems up to 3 inches (7.6 cm) thick. The twigs have two characteristic grooves below each pair of leaves. The entire plant is hairless. The more or less oblong leaves are simple, opposite, dark shiny green, up to 1.5 inches (3.8 cm) long and ¾ inch (1.9 cm) wide. *Buxus vahlii* does not reproduce vegetatively; flowering is in December to early April. The flower cluster is small, about ¼ inch (0.6 cm) long, with the solitary female flower at the tip and several male flowers born just below it. The fruit is a horned capsule.

*Buxus vahlii* is found in semievergreen seasonal forests on limestone at elevations between 82 and 656 feet (25 and 200 m) in Hato Tejas (Bayamón) and in Punta Higüero (Rincón) about 70 miles away. The site at Rincón in northwestern Puerto Rico may have been known to Sintenis in 1886, while the other at Hato Tejas in north-central Puerto Rico was discovered in the 1950's by Roy O. Woodbury. A specimen collected by Heller in 1902 from "Limestone hills along the coast 3 miles west of Ponce" had been mislabeled. This area is occupied by dry woodlands very different from the semievergreen forests in which *Buxus vahlii* is found, and both Woodbury and Vivaldi have done field work in the area and agree that it is very unlikely that *Buxus vahlii* could occur there. Similar label errors have been found with another species collected by Heller.

*Buxus vahlii* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps, 1978). In August 1979, The Service contracted with Dr. José L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of some plants thought to be candidates for listing as endangered

or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey indicated that *Buxus vahlii* should be proposed for listing as an endangered species. On December 15 1980, the Service published a notice in the **Federal Register** (45 FR 82480 naming those plant taxa being considered for listing as endangered or threatened species: *Buxus vahlii* was included.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Buxus vahliis* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984 **Federal Register** (49 FR 2485). An additional petition finding required in accordance with section 4(b)(3)(B)(ii) of the Act, was incorporated in the proposed rule for this species. The Service proposed to list *Buxus vahlii* as an endangered species in the July 13, 1984, **Federal Register** (49 FR 28580).

**Summary of Comments and Recommendations**

In the July 13, 1984, proposed rule (49 FR 28580) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Commonwealth of Puerto Rico agencies, municipal governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in *The San Juan Star* (in English) on July 29, 1984, and in *El Nuevo Dia* (in Spanish) on July 30, 1984. Three comments were received and are discussed below. No public hearing was requested, and therefore none was held.

A concerned citizen wrote on July 31, 1984, in support of the proposed listing and requested a drawing of the plant. The Service replied on August 8, 1984, by sending general information and a drawing of the plant.

Dr. José Vivaldi, Director of the Terrestrial Ecology Division of the Puerto Rico Department of Natural Resources, wrote on August 7, 1984, stating that he was in favor of listing *Buxus vahlii* as endangered, but considered the Service's decision not to designate critical habitat to be "ill-advised." The Service responds that designation of critical habitat is not prudent because publication of the exact location of the few remaining plants could lead to taking or vandalism.

Juan A. Bonnet, Jr., Director of the Center for Energy and Environment Research of the University of Puerto Rico, responded on August 21, 1984, that fire is a significant threat to the species. During the dry season, the Punta Higüero area of Rincón is susceptible to fire. The intense use of the beach by campers and surfers has resulted in accidental fires which could spread to the location of the *Buxus* plants. Fire has been added as a potential threat to the species in this final rule.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Buxus vahlii* should be listed as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Buxus vahlii* Baillon (Vahl's boxwood) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Rincón site, which is public land of the Commonwealth of Puerto Rico, has been proposed as a possible locale (although now not the preferred locale) for the construction of a coal-fueled power plant to be constructed by the Puerto Rico Eletrical Power Authority and the Federal Rural Electrification Administration. The power plant would require a large storage area for the coal and cinder. To make such space, part of the property, perhaps including the ravine or its drainage area, might be utilized. This could destroy the 12 to 20 plants and their habitat, modify their habitat by changing the drainage pattern in the ravine, or introduce pollutants leached from the coal or cinders. Air pollution from the power plant could also affect the species.

The beach near the Rincón site is used intensively by surfers and campers, and is periodically used for music festivals. During the dry season (January to April), accidental fires sometimes occur, which could possibly spread to the habitat of *Buxus vahlii*.

The Hato Tejas population of about 24 individuals is located on private land in a group of "haystack" hills (limestone hills with a characteristic haystack shape) that is surrounded by a large shopping center and several commercial and industrial lots. A possible place for expanded development would be the area now occupied by the hills, which could be razed and sold for limestone or fill material. These activities would result in the complete destruction of the habitat; however, there are no known plans for development at present. This population of *Buxus vahlii* is located on the edge of an old limestone quarry. Past mining activities in the area have resulted in the destruction of more than half of the boxwood population since the 1950's (Vivaldi and Woodbury, 1981). The quarry is not active at this time, but could become active if such activities again become profitable.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking has not been a documented factor in the decline of this species, but could easily become so in the future. Both populations are accessible by road and trail. Boxwoods are beautiful shrubs, and several species are grown in cultivation around the world. There is a society devoted to cultivation of the genus. This species may have ornamental potential (Little *et al.*, 1974), and professional cultivation of the species is being attempted.

C. *Disease or predation.* There are many houses on private property on the eastern edge of the government property at the Rincón site, and only about 300 feet from the *Buxus vahlii* population. Some of the residents keep goats, which could affect the boxwood if they were allowed to roam free or escaped into the public area.

D. *The inadequacy of existing regulatory mechanism.* The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists that includes *Buxus vahlii*.

E. *Other natural or manmade factors affecting its continued existence. Buxus vahlii* is found in two small, compact, isolated populations separated by about 70 miles. It has a very narrow ecological niche and is restricted to ravines and ledges in semievergreen seasonal forests on limestone. Only about 40 individuals are known (about half in each population), a reduction from over 60 known individuals in the 1950's. A loss of genetic variation in the species is therefore probable. In addition, seedlings have not been observed.

These factors increase the vulnerability of the species to the other threats described above.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Buxus vahlii* as an endangered species. With so few individuals known and the risk of damage to the plant and/or its habitat so high, endangered rather than threatened status seems an accurate assessment of the species' condition. It is not prudent to propose critical habitat because doing so would increase the risk for the species as detailed below.

### Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *Buxus vahlii* is not prudent at this time.

As discussed under threat factor "B" above, *Buxus vahlii* is potentially threatened by collecting, an activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction; such lands are not involved in this determination. Publication of critical habitat localities would increase the risk of taking or vandalism. The extreme vulnerability of *Buxus vahlii* to collecting would make any collecting quite detrimental to the survival of the species. Thus, determination of critical habitat for *Buxus vahlii* would not be prudent at this time.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if any is designated. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The only potential Federal involvement known at this time is that of the Rural Electrification Administration, at the locality near Rincón. In the event that the Punta Higüero site (which is now not preferred) were chosen for the coal-fueled power plant sponsored by the Puerto Rico Electrical Power Authority and the Federal Rural Electrification Administration, a specific commitment would be needed to protect *Buxus vahlii*. If the site were to be chosen, the species could be affected in various ways, as discussed above.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Buxus vahlii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International trade and interstate commercial trade in *Buxus vahlii* are not known to exist, and the plant is very rare in experimental cultivation. It is anticipated that few permits involving plants of wild origin will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Buxus vahlii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Buxus vahlii* is not known to occur on any Federal lands at this time, so requests for collecting permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

### 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).

### Literature Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv+403 pp.

Baillon, M.H. 1859. Monographie des Buxacées. Paris.

Britton, N.L., and P. Wilson. 1923. Botany of Porto Rico and the Virgin Islands, *In:* Scientific Survey of Porto Rico and the Virgin Islands. Vols. 5 and 6. New York Acad. Sci., New York.

Little, E.L., Jr., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, Vol. 2 U.S. Dept. Agric., Forest Service Agric. Handbook No. 449, Washington, D.C. 1024 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. *Buxus vahlii* Baill. Updated species report submitted to the Fish and Wildlife Service. Mayagüez, Puerto Rico. 59 pp.

### Author

The primary author of this final rule is Mr. Robert T. Pace, U.S. Fish and Wildlife Service, Mayagüez Field Station, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709–3005 (809/833–5760). Status information and preliminary listing documents were provided by Dr. José L. Vivaldi, 1904 Cond. Parque de Las Fuentes, Hato Rey, Puerto Rico 00918. Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 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 § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| * | * | * | * | * | | |
| Buxaceae—boxwood family: *Buxus vahlii* | Vahl's boxwood | U.S.A. (PR) | E | 194 | NA | NA |
| * | * | * | * | * | | |

Dated: July 30, 1985.

**Susan E. Reece,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85–19182 Filed 8–12–85; 8:45 am]

BILLING CODE 4310–55–M

# Proposed Rules

Federal Register
Vol. 50, No. 156
Tuesday, August 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

[Docket No. 0762S]

### General Administrative Regulations—Appeal Procedure

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby proposes to issue a new Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person or organization may request review of determinations made by FCIC. This rule sets forth the various levels of appeal and prescribes the manner and format of the appeal procedure. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than September 12, 1985, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Evironmental Impact Statement is needed.

### Background

The purpose of these regulations is to provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations contained herein set forth the levels of appeal and prescribe the manner and format of such procedure.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 400

Crop Insurance, Administrative regulations—Review and appeal procedure.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to add a new Subpart J to Part 400 of Chapter IV of Title 7 of the Code of Federal Regulations, to be known as 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, to read as set forth below:

## PART 400—[AMENDED]

### Subpart J—Appeal Procedure—Regulations

Sec.



**Authority:** Pub. L. 75-430, 52 Stat. 72 et seq., as amended, (7 U.S.C. 1501 et seq.).

#### § 400.90 Basis, purpose, and applicability.

The regulations contained in this part are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), to prescribe the procedures under which a person may obtain review of determinations made by the Corporation. The regulations are applicable to any request for review filed after the effective date of this part. The procedures contained herein also apply to requests filed prior to the effective date thereof to the extent that they do not adversely affect any part in those proceedings.

#### § 400.91 Definitions.

Unless the context indicates otherwise, words importing the singular include the plural, and words used in the present tense include the future. For the purpose of these regulations:

(a) "Appellant" means any person who requests a review of a determination made by the Corporation and includes an authorized representative of the Appellant.

(b) "Authorized Representative" means a person designated in writing by an appellant to act for and on behalf of the appellant.

(c) "Contract" means a written agreement entered into by a person with the Corporation.

(d) "Contractor" means a person who is a party to a contract with the Corporation.

(e) "Corporation" means the Federal Crop Insurance Corporation or any authorized officer or employee thereof, as applicable.

(f) "Hearing Officer" means the individual designated or appointed by the Corporation to conduct an initial or appeal hearing.

(g) "Person" means any individual, corporation, association, partnership or other legal entity.

(h) "Transcript" means the verbatim record of a hearing.

**§ 400.92 Rights of appeal.**

Appeal is available to:

(a) Any person determined to be indebted to the Corporation as a result of:

(1) Overpaid indemnities; or

(2) Non-payment of premium;

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Part;

(c) Any person whose request for insurance provided for in this Part has been denied.

(d) Any party to a contract who has received notification of a determination by the Corportion regarding any terms or conditions of the contract between the person and the Corporation which the party disputes; or

(e) Any person whose request for relief under the Good Faith Reliance on Misrepresentation provisions of the crop insurance regulations contained in this Part has been denied in whole or in part.

**§ 400.93 Requesting an initial hearing.**

Written requests for an initial hearing must be received by the Director, Kansas City Operations Office, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, Missouri, 64141, within thirty days of the date of notification by the Corporation of the determination or action being appealed from. The request for the hearing must be signed by the Appellant; contain a statement of the matter on which the hearing is sought; and a statement of the Appellant's reasons that the determinations or other matter appealed from is incorrect.

**§ 400.94 Notice of hearing.**

Written notice of the time and place of the hearing shall be given to the Appellant by Certified Mail, return receipt requested, at least thirty days prior to the date of the hearing. The Appellant may waive the requirements of this section.

**§ 400.95 Appeal without appearance.**

The Appellant may elect to waive appearance at a hearing and request that a determination be made on the basis of written material submitted by Appellant and other information available to the Hearing Officer.

**§ 400.96 Absent Appellant.**

If, at the time scheduled for a hearing, the Appellant is absent, the Hearing Officer may, after a lapse of such period of time as is deemed proper and reasonable, dismiss the hearing or may accept information and evidence submitted by other persons present at the hearing.

**§ 400.97 Authority of Hearing Officer.**

The Hearing Officer has the power to:

(a) Rule upon motions and requests;

(b) Adjourn the hearing from time to time and change the time and place of hearing;

(c) Receive evidence;

(d) Admit or exclude evidence;

(e) Hear oral arguments on facts or law;

(f) Do all acts and take all measures necessary for the maintainance of order at the hearing for the efficient conduct of the proceeding; and

(g) Make a written determination based upon evidence submitted at the hearing.

The Hearing Officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation unless the appeal is from a determination made under the good faith reliance on misrepresentation provisions of the crop insurance regulations.

**§ 400.98 Initial hearing.**

(a) The initial hearing will be conducted by a Hearing Officer at a time and place designated by the Hearing Officer taking into consideration the convenience of the Appellant. The hearing will be informal and conducted in a manner deemed most likely to obtain the facts relevant to the issues. The Hearing Officer shall not be a person who participated in determinations giving rise to the hearing.

(b) The Hearing Officer will restrict the hearing to pertinent matters under consideration and may exclude irrelevant, immaterial or unduly repetitious evidence. The Appellant will be given a full and complete opportunity to present evidence relevant to the issue through oral or documentary information. Persons other than those appearing on behalf of the Appellant may be permitted to present information. All persons appearing at the hearing to present information may be questioned by the Appellant.

(c) A transcript may be taken if: (1) The Appellant advises the Hearing Officer at least ten days prior to the hearing, makes arrangements with a certified court reporter or equivalent individual or company for such transcript at Appellant's expense, and agrees that the Corporation may obtain a copy of the transcript at the Corporation's expense, (if the Appellant wants the transcript to be considered a part of the record of the hearing, the Appellant must supply a copy for that purpose unless the Corporation purchases a copy); or (2) the Hearing Officer feels that the nature of the case is such so as to make a transcript desirable, in which case a copy of the transcript will be made available to Appellant at Appellant's expense.

**§ 400.99 Hearing Officer's determination.**

(a) After the close of the hearing, the Hearing Officer will promptly prepare a determination containing a clear and concise statement of the Appellant's and the Corporation's contentions and of the material facts as found by the Hearing Officer. The report shall also contain the issues and the Hearing Officer's determination of those issues.

(b) Except as provided in §§ 400.95 and 400.96, the determination must be based upon information or evidence presented at the hearing or otherwise made known to the Appellant and made a part of the record of the hearing and the Appellant must be given the opportunity to examine and respond to all evidence presented prior to the determination of the Hearing Officer.

(c) The determination of the Hearing Officer shall be mailed to the Appellant by Certified Mail, return receipt requested.

**§ 400.100 Appeal hearing.**

(a) Except as inconsistent with the provisions of this Section, the provisions of this Subpart applicable to the initial hearing shall be applicable to the appeal hearing.

(b) Appellant may appeal from the determination of the Hearing Officer in an initial hearing within thirty days of the date of the determination, to the Deputy Manager, FCIC, United States

Department of Agriculture, Washington, D.C. 20250. The Hearing Officer designated to hold the hearing shall not be a person who participated in the decisions or determinations from which the Appellant is appealing. The hearing will be scheduled at a time and in Washington, D.C., or at such other place as the Corporation may designate taking into consideration the interests of the Appellant.

(c) The hearing will be de novo but the record of the initial hearing will be admitted at the appeal hearing and considered by the Hearing Officer in making a determination. The record at the initial hearing may be supplemented by the Corporation and the Appellant. Evidence which duplicates written evidence or transcribed testimony appearing in the record of the initial hearing will not be admitted by the Hearing Officer absent a showing of good cause. The determination of the Hearing Officer at the initial hearing will not be considered by the Hearing Officer at the Appeal Hearing, however, the Hearing Officer at the Appeal Hearing may adopt relevant portions of the initial Hearing Officer's determination if the appeal Hearing Officer agrees with those portions after independent examination of the record.

**§ 400.101 Reservation of authority.**

Nothing contained in the regulations in this part shall preclude the Manager of the Corporation from determining any question arising under the programs to which the regulations in this part apply or from revising or modifying any determination made by a Hearing Officer.

Done in Washington, D.C., on August 2, 1985.

**Merritt W. Sprague,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 85-19177 Filed 8-12-85; 8:45 am]

BILLING CODE 3410-08-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket Nos. 85-AWA-2 and 85-AWA-3]**

### Proposed Establishment of Airport Radar Service Areas

*Correction*

In FR Doc. 85-18032 beginning on page 31472, as Part III in the issue of Friday, August 2, 1985, make the following corrections:

1. On page 31474, third column, in the fourth line of the third complete paragraph, "Table A" should read "Table 1".

2. On page 31477, third column, tenth line of the second complete paragraph, "but no" should read "but now".

3. On page 31479, in § 71.501:

a. In the second column, the twenty-sixth line under the heading **Portland International Airport, OR—[New]** should have read:

"airport from the 093° T (074° M) bearing".

b. In the third column, sixth line under the heading **Eppley Airfield, Omaha, NE—[New]** "5,000" should have read "5,000".

BILLING CODE 1505-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

### Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers

*Correction*

In FR Doc. 85-18465 beginning on page 31612 in the issue of Monday, August 5, 1985, make the following corrections:

1. On page 31613, in the first column, in footnote 5, in the second line, the FR citation "3521" is repeated; remove the repeated material.

2. On page 31613, in the first column, in footnote 8, in the twelfth line, "GFBNY" should read "FRBNY"; and in the sixteenth line, insert the citation "50 FR 15904, 15905." after "visits."

3. On page 31614, in the second column, under **111. Concentration Charge**, in the second line remove the word "most"; and in the third line, "peril of an" should read "peril to an".

4. On page 31615, in the first column, in the forty-second line, "the" should read "that".

5. On page 31615, in the third column, in the twenty-first line, "on an option" should read "or an option"; and in the twenty-second line, "an" should read "on".

6. On page 31617, in the third column, in footnote 25, in the seventh line, "anticipation" should read "anticipate".

7. On page 31618, in the first column, in the eighth line, insert "during the preceding six months would have the responsibility to compute" between "aggregate" and "the".

8. On page 31619, in the third column, in the first complete paragraph, in the forty-third line, insert "have" between "would" and "no".

9. On page 31619, in the third column, in footnote 33, "35277-73" should read "35277-78".

10. On page 31620, in the third column, in § 1.17(c)(2)(i), in the fifth line, insert "debit" between "a" and "ledger".

11. On page 31621, in the second column, in § 1.17(c)(6), in the seventeenth line, "change" should read "charge".

12. On page 31621, in the third column, in § 1.17(c)(6)(i)(C)(*2*)(*iii*), in the fifth line, "sort" should read "short".

BILLING CODE 1505-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 716

**[OPTS-84017; FRL-2878-5]**

### Submission of Lists and Copies of Health and Safety Studies on Vinyl Acetate

*Correction:*

In FR Doc. 85-18732 beginning on page 32095 in the issue of Thursday, August 8, 1985, make the following correction.

On page 32096, third column, in § 716.17(a)(15), first line, "September 23, 1985" should have read "(insert date 44 days after date of publication of this rule in the **Federal Register**".

BILLING CODE 1505-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA-6673]**

### Proposed Flood Elevation Determinations; Arkansas, et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**DATES:** The period for comment will be ninety (90) days following the second

publication of the proposed rule in a newspaper of local circulation in each community.

**ADDRESSES: SEE TABLE BELOW.**

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U..C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Arkansas | Arkadelphia, Clark County | Ouachita River | Approximately 2.9 miles upstream of Mill Creek confluence. | None | *197 |
| Maps available for inspection at the Arkadelphia City Hall, 610 Caddo Street, Arkadelphia, Arkansas. | | | | | |
| Send comments to Honorable Stell Callaway, Mayor of the City of Arkadelphia, 610 Caddo Street, Arkadelphia, Arkansas 71923. | | | | | |
| Nevada | Caliente (city) Lincoln County | Clover Creek | Intersection of Spring and Main Streets | #1 (Zone A0) | Zone B |
| Maps available for inspection at City Clerk's Office, City Hall, Caliente, Nevada. | | | | | |
| Send comments to the Honorable Keith Larson, Box 158, Caliente, Nevada. | | | | | |
| Nevada | Lincoln County (unincorporated areas). | Clover Creek | At the city of Caliente corporate limits | *4,417 | *4,415 |
| Maps available for inspection at County Surveyor's Office, Lincoln County Courthouse, Pioche, Nevada. | | | | | |
| Send comments to the Honorable Ted Olson, P.O. Box 90, Pioche, Nevada 89043. | | | | | |
| New York | New Paltz, town, Ulster County | Wallkill River | At upstream corporate limits | *195 | *195 |
| | | | Downstream corporate limits of the Village of New Paltz. | *193 | *190 |
| | | | State Route 299 bridge | *193 | *190 |
| | | | At the downstream corporate limits | *192 | *186 |
| Maps available for inspection at the New Paltz Town Hall, New Paltz, New York. | | | | | |
| Send comments to Honorable William Yeaple, Supervisor of the Town of New Paltz, P.O. Box 550, New Paltz, New York 12561. | | | | | |
| Oklahoma | Oklahoma, city, Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties. | Tributary 0 of Canadian River Tributary 1. | Upstream side of SW 134th Street | *1,191 | *1,192 |
| | | | Downstream side of Western Avenue | *1,199 | *1,197 |
| | | Spring Creek West Branch | Upstream side of NW 122nd Street | *1,161 | *1,160 |
| | | | Upstream side of Roxboro Road | *1,171 | *1,170 |
| | | | Approximately 1,050 feet upstream of Roxboro Road | *1,173 | *1,172 |
| | | Mustang Creek Tributary 3 East Branch. | Approximately 150 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch. | *1,283 | *1,284 |
| | | | Approximately 850 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch. | *1,286 | *1,288 |
| | | | Approximately 1,580 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch. | *1,288 | *1,291 |
| Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma. | | | | | |
| Send comments to Honorable Andrew Coats, Mayor of the City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102. | | | | | |
| Oregon | Douglas County (Unincorporated areas). | Umpqua River | At U.S. Highway 101 | None | *11 |

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at Planning Department, Courthouse Annex No. 2, 205 S.E. Jackson Street, Roseburg, Oregon. | | | | | |
| Send comments to Honorable William Vian, Douglas County Courthouse, 106 S.E. Douglas, Room 217, Roseburg, Oregon 97470. | | | | | |
| Oregon | Multnomah County (Unincorporated areas). | Johnson Creek | Intersection of 104th Avenue and Knight Street | *209 | *Zone C |
| | | Columbia Slough | Intersection of Columbia Slough and Alderwood Road | *17 | *14 |
| Maps available for inspection at Planning Department, 2115 Morrison Street, Portland, Oregon. | | | | | |
| Send comments toHonorable Dennis Buchanan, 1120 SW. Fifth, Portland, Oregon 97204 | | | | | |
| Pennsylvania | Municipality of Murrysville, Westmoreland County. | Haymakers Run | At confluence with Turtle Creek | *868 | *868 |
| | | | Upstream side of William Penn Highway (U.S. Route 22). | *874 | *872 |
| | | | Upstream side of Old William Penn Highway | *875 | *873 |
| | | | Upstream side of Franklintowne Drive | *885 | *883 |
| | | | At confluence of Tributary No. 2 | *900 | *900 |
| Maps available for inspection at the Zoning and Engineering Department, Municipal Building, Municipality of Murrysville, Pennsylvania. | | | | | |
| Send comments to Honorable John M. Lynch, Municipality of Murrysville Chief Administrator, P.O. 127, Murrysville, Pennsylvania 15668. | | | | | |
| Texas | Conroe, city, Montgrmery County | Grand Lake Creek | Approximately .04 mile downstream of South Rivershire Drive | None | *143 |
| | | | Downstream side of Gladstell Street | *161 | *158 |
| | | | Upstream side of Interstate Route 45 | *166 | *165 |
| | | | Upstream side of Bellshire Drive | *177 | *177 |
| | | | Approximately 700 feet upstream of Hickerson Street | *184 | *185 |
| | | Silverdale Creek | Approximately .9 mile downstream of Foster Drive | None | *143 |
| | | | Upstream side of Foster Drive | None | *166 |
| | | | Upstream side of Marilyn Street | None | *176 |
| | | | Approximately 400 feet upstream of Wagers Street | *190 | *187 |
| Maps available for inspection at the Development Office, Conroe City Hall, 505 West Davis, Conroe, Texas. | | | | | |
| Send comments to Honorable Carl Barton, Jr., Mayor of the city of Conroe, P.O. Box 3066, Conroe, Texas 77305. | | | | | |
| Texas | Lubbock, City, Lubbock County | Playa System E1 | At Utica Avenue | *3,245 | *3,247 |
| | | | At upstream side of Wayne Avenue | *3,253 | *3,252 |
| Maps available for inspection at the Planning Department, City Hall, Lubbock, Texas. | | | | | |
| Send comments to Honorable Alan Henry, Mayor of the City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457. | | | | | |
| Texas | San Antonio, City, Bexar County | Salado Creek | Approximately 3,525 feet upstream of Interstate Highway 410. | *545 | *544 |
| | | | Upstream side of Loop 13 Southeast Military Drive | *562 | *560 |
| | | | Upstream side of Southcross Boulevard | *574 | *573 |
| | | | At confluence of Tributary A to Salado Creek | *579 | *577 |
| | | | At confluence of Tributary B to Salado Creek | *602 | *601 |
| | | | Upstream side of Rice Road | *608 | *607 |
| | | | At confluence of Tributary C to Salado Creek | *625 | *622 |
| | | | Upstream side of Southern Pacific Railroad | *640 | *636 |
| | | | At confluence of Fort Sam Houston Tributary Tributary to Salado Creek. | *648 | *646 |
| | | | Upstream side of W. W. White Road | *650 | *648 |
| | | | Upstream side of Winans Road | *664 | *663 |
| | | | At confluence of Walzem Creek | *674 | *673 |
| | | | At confluence of Beitel Creek | *693 | *691 |
| | | | At confluence of Tributary D to Salado Creek | *702 | *700 |
| | | | At confluence of Tributary F to Salado Creek | *720 | *718 |
| | | | Approximately 300 feet downstream of Missouri Pacific Railroad. | *730 | *724 |
| | | | Upstream side of Wetmore Road | *737 | *736 |
| | | | At confluence of Mud Creek | *739 | *738 |
| | | | Upstream side of Bitters Road (second upstream crossing). | *754 | *752 |
| | | | Upstream side of Jones Maltzburger Road | *769 | *768 |
| | | | At confluence of U.S. 281 Tributary to Salado Creek | *782 | *780 |
| | | | Upstream side of North Loop Road | *792 | *789 |
| | | | Upstream side of West Avenue | *806 | *804 |
| | | | Upstream side of Blanco Road | *847 | *843 |
| | | | Approximately 1,800 feet upstream of Blanco Road | *853 | *850 |
| Maps available for inspection at the City Clerk's Office, City Hall, Plaza de Armas, San Antonio, Texas. | | | | | |
| Send comments to Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285. | | | | | |
| Washington | Edmonds (City), Snohomish County. | Pudget Sound | At mouth of Shell creek | None | *10 |
| | | Puget Sound | In marina northeast of Edwards Point | *None | *8 |
| Maps available for inspection at Planning Department, 250 5th Avenue N., Edmonds, Washington. | | | | | |
| Send comments to the Honorable Larry Naughton, 505 Bell Street, Edmonds, Washington 98020. | | | | | |
| Wisconsin | Fond du Lac County | Taycheedah Creek | At mouth at Lake Winnebago | *750 | *750 |
| | | | Just downstream of Old County Highway | *1020 | *1018 |
| | | De Neveu Creek | About 0.67 mile downstream of County Highway V | None | *774 |
| | | | About 0.7 mile upstream of U.S. Highway 45 | None | *828 |
| | | Luco Creek | At mouth at Lake Winnebago | *750 | *750 |
| | | | About 0.20 mile upstream of Prairie Road | *752 | *751 |

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Engineering Department, P.O. BOX 150, Fond du Lac, Wisconsin 54935-0150. | | | | | |
| Send comments to Honorable Daniel R. Thompson, City Manager, City of Fond du Lac, P.O. Box 150, Fond du Lac, Wisconsin 54935-0150. | | | | | |
| Wisconsin | City of Milwaukee, Milwaukee and Washington Counties. | Lincoln Creek | At mouth | *622 | *622 |
| | | | Just downstream of West Green Tree Road | None | *693 |
| | | | About 0.5 mile upstream of Chicago and North Western Railroad. | None | *708 |
| Maps available for inspection at the Building Inspectors Office, Municipal Building, 841 N. Broadway, Room 1007, Milwaukee, Wisconsin. | | | | | |
| Send comments to Honorable Henry W. Maier, Mayor, City of Milwaukee, City Hall, Room 201, 200 East Wells Street, Milwaukee, Wisconsin 53202. | | | | | |

Issued: August 6, 1985.

**Jeffrey S. Bragg,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 85-19173 Filed 8-12-85; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Lindera Melissifolia (Pondberry)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine *Lindera melissifolia*) Walt.) Blume (pondberry), a small shrub limited to 12 locations in the southeastern United States, to be an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). *Lindera melissifolia* is endangered by land clearing operations, timber harvesting, drainage activities, and encroachment by competitor species. This proposal, if made final, would implement the protection provided by the Act, for *Lindera melissifolia*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by October 15, 1985. Public hearing requests must be received by September 27, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Currie at the above address (704/259-0321 or FTS 8/672-0321).

**SUPPLEMENTARY INFORMATION:**

#### Background

*Lindera melissifolia* (pondberry) was described as a new species by Thomas Walter in 1788. The material upon which he based this description was collected from what is present-day Berkeley County, South Carolina (Maxon, 1936). This deciduous shrub grows to approximately 2 meters (6 feet) tall and spreads vegetatively by stolons. Pale yellow flowers appear in early spring before the leaves. The fruit, a bright red drupe (a fleshy, single-seeded fruit), matures in late autumn (Tucker, 1984). *Lindera melissifolia* is distinguished from the two other North American members of the genus (*Lindera benzoin* (L.) Blume and *Lindera subcoriacea* Wofford) by its drooping, membranaceous, and ovately to elliptically shaped leaves that have a strong, sassafras-like odor when crushed (Wofford, 1983). Since the description of *Lindera melissifolia* in 1788, the species has been reported from nine southeastern States. It currently is known to occur in six States and is believed to have been extirpated from three. The poorly drained depressions and the margins of limestone sinks in which it grows have been tremendously reduced in number and/or quality by land clearing and drainage activities in recent and historic times (Klomps, 1980; Morgan, 1983; Tucker, 1984). The loss of alteration of its habitat has been and continues to be the most significant threat to the continued existence of *Lindera melissifolia*.

*Lindera melissifolia* is known from only 12 populations in Arkansas, Georgia, Mississippi, Missouri, North Carolina, and South Carolina. The species is believed to have been extirpated from Alabama, Florida, and Louisiana. A summary of the information currently available on the status of this species in each of these States follows:

*Alabama: Lindera melissifolia* was collected in 1839 and 1840 from Wilcox County. It has not been observed or collected since then and is considered to be extirpated from the State (Tucker, 1984; Miller, 1984).

*Arkansas:* Four populations of *Lindera melissifolia* are known from Clay County (Tucker, 1984). All these populations have been adversely affected by timbering, land clearing, and drainage activities. One population is located along the northern border of the county adjacent to Missouri. This population was discovered in 1973 and historically was probably part of a larger population that extended across the Missouri-Arkansas border. Habitat alteration and destruction has reduced this population into two subunits, one on each side of the border (S. Orzell, Arkansas Natural Heritage Program, personal communication, 1985). A second population consists of several colonies that were discovered in 1977; all have subsequently suffered severe adverse effects from timber harvesting. A third population was discovered in 1977 and occurs in an area that is heavily grazed by cattle. *Lindera melissifolia* persists at this site but probably will eventually be replaced by more aggressive weedy species. The site of a fourth population, also discovered in 1977, has since been cleared of timber and now contains few plants.

*Florida:* Steyermark (1949) reports early collections of *Lindera melissifolia* from Florida by Hale and Mohr. The species has not been observed or collected in the State since then and is currently considered to be extirpated from Florida (Tucker, 1984). Cooper (1984) believes that these reports may be

based upon erroneous locality data on the specimens. She further states that the amount of potential habitat for *Lindera melissifolia* in Florida is very limited.

*Georgia:* Rabolli (1984) reports that one population of *Lindera melissifolia* is known in Georgia. This population occurs in Wheeler County and has been severely impacted by domestic hogs. A portion of the population was relocated to adjacent protected State lands in 1984. The continued existence of both of these groups of plants is tenuous at best. An additional 1903 record from Montgomery County apparently involved this same Wheeler County location. Prior to Wheeler County's creation in 1913, this location was a part of Montgomery County.

*Louisiana:* Steyermark (1949) reports an early Hale collection from Louisiana. No specific locality information was recorded with the specimen. The species has not been observed or collected in the State since then and is assumed to be extirpated (Tucker, 1984; Mercer, 1984).

*Mississippi: Lindera melissifolia* occurs in one population in Sharkey County. The population is within lands administered by the U.S. Forest Service, which has designated the actual site a Research Natural Area (Tucker, 1984). Recent field work, conducted by the Mississippi Natural Heritage Program, has failed to reveal the presence of any new populations of *Lindera melissifolia* (Gordon, 1984).

*Missouri:* One population of *Lindera melissifolia* is found in Ripley County on lands owned by the Missouri Department of Conservation. As stated previously, this population was probably part of a larger Arkansas-Missouri population at one time.

*North Carolina:* One extant population of *Lindera melissifolia* occurs in Bladen County, North Carolina. The area in which the plant occurs has been severely impacted by logging activities, conversion of adjacent lands to agriculture and pine monoculture, and drainage ditching (J. Moore, North Carolina Natural Heritage Program, personal communication, 1985). An adjacent site, discovered by Tucker in 1979 (Tucker, 1984) has apparently been destroyed by logging and land clearing operations. One other record from Robeson County has since been determined to refer to the related species *Lindera subcoriacea.*

*South Carolina:* Four populations of *Lindera melissifolia* occur on U.S. Forest Service land in Berkeley County. Radford *et al.* (1968) report that the species also occurs in Colleton County. However, D. Rayner (South Carolina Department of Wildlife and Marine Resources, personal communication, 1985) reports that searches of all major herbaria have failed to reveal the existence of a specimen to document the occurrence of the species in Colleton County. During 1984 Rayner conducted field searches of most of the available habitat in Colleton County and did not locate any populations.

Federal Government actions on this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act, and of its intention thereby to review the status of the plant taxa named within. *Lindera melissifolia* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Lindera melissifolia* was included in that notice as a category-2 species. Category-2 species are those for which listing as endangered or threatened may be warranted, but for which the substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Lindera melissifolia* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and again on October 12, 1984, the Service found that the petitioned listing of *Lindera melissifolia* was warranted, but precluded. Subsequent to this finding the Service received a report on the status of *Lindera melissifolia* (Tucker, 1984). This status report and other available information indicate that the addition of *Lindera melissifolia* to the Federal List of Endangered and Threatened Plants is warranted. Publication of this proposal constitutes the next one-year finding requirement.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lindera melissifolia* (Walt.) Blume (pondberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.—Lindera melissifolia* has been and continues to be jeopardized by destruction or adverse modification of its habitat. The most significant threat is drainage ditching and subsequent conversion of its habitat to other uses. Even ditching without later conversion of land use can alter the water regime in a manner that reduces the plant's vigor or eliminates it from a site. In Clay County, Arkansas, between 1957 and 1977, the bottomland hardwood stands were reduced by 24 percent. Adjacent counties that have similar habitat suffered bottomland hardwood losses of between 11 and 45 percent during this same period (U.S. Fish and Wildlife Service, 1979). In Missouri, Korte and Fredrickson (1977) report a 95 percent loss of lowland forest since settlement times. North Carolina's coastal wetlands are being drained and cleared for agricultural use, home building, and pine plantations. The Bladen County site, which is the only remaining North Carolina location for *Lindera melissifolia* has been adversely impacted by an intensive fire and by clearing and drainage of adjacent lands (Moore, personal communication, 1985). The known South Carolina sites are on National Forest lands. Activities such as timber harvesting, road building, and drainage ditching, if done in a manner not consistent with the protection of the pondberry populations, could adversely affect the species. The Mississippi population of *Lindera melissifolia* also occurs on National Forest lands. The site where the single known population grows has been designated a Research Natural Area and is thereby afforded significant protection by the Forest Service. However, activities on lands immediately adjacent to the Research Natural Area could, if not carried out in a manner designed to protect the pondberry, adversely affect the species

(Orzell, personal communication, 1985). The Georgia site and one Arkansas site are being adversely impacted due to trampling by domestic animals (hogs and cattle).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.—Lindera melissifolia* is not currently a significant component of the commercial trade in native plants; however, the species has potential for horticultural use, and publicity surrounding the listing of the species could generate an increased demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms.—Lindera melissifolia* is afforded legal protection in only two of the States in which it is known to occur. North Carolina General Statute 19–B, 202.12–202.19, provides for protection from intrastate trade (without a permit) and for monitoring and management of State listed species. Missouri's legislation and regulations dealing with rare and endangered species provide for the protection of *Lindera melissifolia* from commercial exploitation without a permit. In Missouri, listed plants, such as pondberry, can be protected through acquisition of significant areas supporting the species. Both North Carolina and Missouri list *Lindera melissifolia* as an endangered species. Although unofficially recognized as an endangered or threatened component of the flora of the other four States in which it occurs, *Lindera melissifolia* has no official protection status in these States. Section 404 of the Federal Water Pollution Control Act (FWPCA) could potentially provide some protection for the pondberry's habitat; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the FWPCA. The Endangered Species Act will provide additional protection for *Lindera melissifolia*.

E. *Other natural and manmade factors affecting its continued existence.* Observations of the species by Tucker (1984) and the Missouri Department of Conservation (Morgan, 1983) have revealed that despite the regular production of mature fruits, no seedlings of *Lindera melissifolia* have been observed at any of the known sites. The cause of this apparent lack of sexual reproduction is unknown, and in the long term it could have significant adverse effects upon the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lindera melissifolia* as endangered. With only a small number of populations of this species known to exist, it definitely warrants protection under the Act; endangered status seems appropriate because of the threats facing most populations. Critical habitat is not being designated for the reasons discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lindera melissifolia* at this time. The species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the pondberry. Although taking and reduction to possession of endangered plants from lands under Federal jurisdiction are prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Lindera melissifolia* more vulnerable and would increase enforcement problems for the U.S. Forest Service. Also, the populations on private lands would be vulnerable to taking. Increased visits to population locations stimulated by critical habitat designation could therefore adversely affect the species. The Federal agency and landowners involved in managing the habitats of the pondbery have been informed of the locations of this species and of the importance of protecting it. Therefore, no additional benefits would result from the notification function of critical habitat designation.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service has jurisdiction over a portion of this species' habitat. Federal activities that could impact *Lindera melissifolia* and its habitat in the future include, but are not limited to, the following: timber harvesting, recreational development, drainage alterations, road construction, permits for mineral exploration, and implementation of forest management plans. It has been the experience of the Service that the large majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Lindera melissifolia*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving

endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Lindera melissifolia* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Lindera melissifolia* only where located on areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). It is anticipated that few, if any, permits will be requested for taking the pondberry from Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

## Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lindera melissifolia*;

(2) The location of any additional populations of *Lindera melissifolia* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Lindera melissifolia*.

Final promulgation of the regulation on *Lindera melissifolia* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Station (see "**ADDRESSES**" section).

## National Environmental Policy Act

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

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## Author

The primary author of this proposed rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 8/672-0321).

## List of Subjects in 50 CFR Part 17

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

## Proposed Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Lauraceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Lauraceae—Laurel family: *Lindera melissifolia* | Pondberry | U.S.A. (AL, AR, FL, GA, LA, MO, MS, NC, SC). | E | | NA | NA |

Dated: July 30, 1985.

Susan Recce,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85-19183 Filed 8-12-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Giant Kangaroo Rat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine endangered status for the giant kangaroo rat, a manmal of south-central California. Mainly because of habitat loss, this species now occupies only about 6 percent of its original range. It is jeopardized by the usurpation of native grasslands for agricultural and other purposes, and by the indiscriminate use of rodenticides. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for the giant kangaroo rat. The Service seeks relevant data and comments from the public.

**DATES:** Comments from the public and the State of California must be received by October 15, 1985. Public hearing requests must be received by September 27, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Kangaroo rats (genus *Dipodomys*) are mammals specialized for rapid travel by hopping on their elongated hind legs, and for transportation of food in their external cheek pouches. They are found mainly in fairly dry, open country of western North America, where they construct burrows for shelter and often for storage of food. The giant kangaroo rat (species *Dipodomys ingens*), found only in south-central California, was described by Merriam (1904) from specimens collected southeast of Simmler, San Luis Obispo County. With a weight of 4.6 to 6.4 ounces (131 to 180 grams), it is the heaviest of all kangaroo rats. Total length is 12.2 to 13.7 inches (311 to 348 millimeters), tail length is 6.2 to 7.8 inches (157 to 198 millimeters), and hind foot length is 1.8 to 2.2 inches (46 to 55 millimeters). The general coloration is brown above and white below. Other distinguishing features include the presence of five toes on each hind foot (some other kangaroo rats have only four), short ears and tail in relation to head and body length, and a broad width across the maxillary processes of the zygomatic arches of the skull (Hall, 1981).

The preferred habitat of the giant kangaroo rat is native annual grassland with sparse vegetation, good drainage, fine sandy-loam soils, and a slope of less than 10 percent (Grinnell, 1932; Williams, 1980). The annual precipitation is 5 inches (127 millimeters) or less. As an adaptation to the sparse rainfall and vegetation, the species makes extensive caches of plant seeds just below the surface of the soil during the spring (Shaw, 1934). The seeds and their sprouts are harvested during the summer and stored in burrows dug by the animals. The burrows are shallow, being approximately 1 foot (300 millimeters) deep, but are still at a depth normally greater than that reached by the sparse rainfall (Grinnell, 1932). If rains did penetrate into the burrows, winter food supplies would spoil.

The original distribution of the giant kangaroo rat is known to have exended from southern Merced County, through the San Joaquin Valley, to southwesten Kern County and northern Santa Barbara County (Hall, 1981). Recent status surveys (see below) indicate that barely 6 percent of this range is still occupied, that substantial populations survive only in a few areas at the southern edge of the original range, and that even the status of those populations is precarious. The main factor in the decline was conversion of native grassland habitat to agricultural production. This problem along with the loss of habitat to urbanization and energy development, and indiscriminate use of rodenticides, is now jeopardizing the survival of the remaining populations. In the Federal Register of December 30, 1982 (47 FR 58454-58460), the giant kangaroo rat was included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was substantial information on hand to support the biological appropriateness of a proposal for addition to the List of Endangered and Threatened Wildlife.

The giant kangaroo rat is only one part of a unique San Joaquin Valley fauna that has become jeopardized by destruction of grassland habitat. Other species that have been eliminated from this area, or greatly reduced in range, include the blunt-nosed leopard lizard (*Gambelia silus*), Nelson's antelope squirrel (*Ammospermophilus nelsoni*), Fresono kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), San Joaquin kit fox (*Vulpes macrotis mutica*), pronghorn (*Antilocapra americana*), and tule elk (*Cervus elaphus nannodes*). The lizard, fox, and Fresno kangaroo rat are classified as endangered by the Service, and the antelope squirrel and Tipton kangaroo rat were included in category 2 of the Service's Review of Vertebrate Wildlife, meaning that available information indicates that a proposal for listing as endangered or threatened is possibly appropriate. Some of the main colonies of the giant kangaroo rat are also found within the foraging range of the California condor (*Gymnogyps californianus*), one of the world's most critically endangered birds.

### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered species or a threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the giant kangaroo rat (*Dipodomys ingens*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Recent status surveys, especially by Dr. Daniel F. Williams of California State College, Stanislaus (1980 and pers. comm.), and Dr. Thomas P. O'Farrell of EG & G Energy Measurements Group, Santa Barbara operations, Goleta, California (pers. comm.) indicate that habitat loss has been the main factor in the decline of the giant kangaroo rat, and continues to jeopardize the survival of the species. The known original range of this mammal covered an area of approximately 2,000 square miles (527,600 hectares) in southern Merced, eastern San Benito, western Fresno, southwestern Kings, eastern San Luis Obispo, western Kern, and northern Santa Barbara Counties. The best

habitats in this area supported population densities of nearly 21 kangaroo rats per acre (52 per hectare).

During the 20th century, conversion of native grassland habitat to crop production resulted in a precipitous drop in the numbers and distribution of the giant kangaroo rat. The species is evidently unable to survive where the processes of cultivation destroy its burrows and food caches. As late as the 1950's, population densities remained relatively high over substantial areas, but agricultural conversion of these areas was stimulated by major water diversion projects in the 1960's and 1970's. Some habitat also has been lost to urbanization and to the development of oil and natural gas fields.

At present, the gaint kangaroo rat is known to occupy not more than about 120 square miles (31,000 hectares) or about 6 percent of the historical range. Moreover, nearly all of the original optimum habitat has been converted to crop production, and much of the area still occupied is only marginal for the species. The kangaroo rat apparently has been completely exterminated in Merced County, and only a few small, isolated colonies survive in San Benito, Fresno, and Kings Counties. The last relatively large blocks of suitable habitat are at the southern edge of the historical range of the species, in the upper Buena Vista Valley of western Kern County, the Elkhorn and Carrizo Plains of eastern San Luis Obispo County, and the Cuyama Valley of northern Santa Barbara County. The best habitat in these areas supports an average population density of about 9 individuals per acre (22 per hectare) after the annual reproductive season. In a small portion of the Buena Vista Valley, density is known to approximate the known historical maximum level.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable.

C. *Disease or predation.* Not now known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission lists the giant kangaroo rat as endangered and, therefore, regultions are in effect that prohibit taking. It may difficult to enforce such regulations, however, with respect to private rodent control operations or to the general application of rodenticides. In any case, State regulations do not protect the habitat of the giant kangaroo rat.

E. *Other natural or manmade factors affecting its continued existence.* Rodent control programs and the indiscriminate use of rodenticides have eliminated or reduced some colonies of the giant kangaroo rat. In some instances, this species was the target of the control program, but in other cases it was inadvertently destroyed. The use of rodenticides is typically initiated by complaints of rodent burrows on rangeland or, occasionally, in dikes. Williams (1980) found ranchers to generally dislike the kangaroo rat, the burrows of which are considered a menace to livestock, and to desire its extermination. He stated that the application of rodenticides poses an imminent threat to the survival of some of the remnant populations of the species. Williams (pers. comm.) also points out that there is some evidence tht the kangaroo rat actually may benefit the livestock industry, by working the soil and thus increasing forage production.

The decision to propose endangered status for the giant kangaroo rat was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. A decision to take no action would constitute failure to properly classify the giant kangaroo rat pursuant to the Endangered Species Act and would exclude the species from protection provided by the Act. A decision to propose only threatened status would not adequately reflect the drastic decline and multiplicity of problems of the species. For the reasons given below, a critical habitat designated is not included in this proposal.

### Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat for the giant kangaroo rat is not prudent at this time. As noted in factors "D" and "E" of the above "Summary of Factors Affecting the Species," the giant kangaroo rat is jeopardized by taking, an activity difficult to enforce. Publication of precise critical habitat descriptions and maps could make this species and its habitat even more vulnerable, and, therefore, place its survival in further jeopardy.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires recovery actions. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in the **Federal Register** of June 29, 1983, 48 FR 29990). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed crictical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The only known Federal activities that may affect the giant kangaroo rat are rodent control operations, the issuance of leases for grazing and other agricultural purposes on Bureau of Land Management (BLM) holdings, and the issuance of leases for oil or natural gas exploration and development on both BLM and Department of Energy (DOE) lands. Portions of the range of the giant kangaroo rat in the Buena Vista Valley are within the Elk Hills Naval Petroleum Reserve (NPR–1) and the Buena Vista Naval Petroleum Reserve (NPR–2) where possible exploration and development may occur. Actions that may affect the giant kangaroo rat in these areas may also affect the San Joaquin kit fox and blunt-nosed leopard lizard, which are currently classified as endangered pursuant to the Act. No major conflicts are known or expected at this time; the Service will work with BLM and DOE to attempt to accommodate both the listed species and the oil and gas expoloration and development. The involved Federal

agencies are already consulting with the Service, and additional impacts due to this listing are expected to be minimal.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It is also illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken unlawfully. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species, and the reasons why any of its habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the distribution of this species; and

(4) Current or planned activities in the involved area, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "ADDRESSES" section.

### National Environmental Policy Act

The U.S. 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 of October 25, 1983 (48 FR 49244).

### References

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Williams, D.F. 1980. Distribution and population status of the San Joaquin antelope squirrel and giant kangaroo rat. California Dept. of Fish and Game, Nongame Wildl. Investig. Rept., EW4, 46 pp.

### Authors

The primary authors of this rule are Dr. Jack E. Williams and Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, 2800 Cattage Way, E–1823, Sacramento, California 95825.

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter, I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 95–159, 93 Stat. 1225; Pub. L. 95–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
| MAMMALS | | | | | | | |
| Rat, giant kangaroo | *Dipodomys ingens* | U.S.A. (CA) | Entire | E | | NA | NA |

* * * * * * *

Dated: July 19, 1985.

Susan Recca,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85–19161 Filed 8–12–85; 8:45 am]

BILLING CODE 4310–55–M

## 50 CFR Part 20

## Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Supplemental proposed rule.

**SUMMARY:** This document supplements proposed rulemakings published in the Federal Register on March 14 and June 4, 1985, (50 FR 10276 and 50 FR 23459) and sets forth proposed frameworks, (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken

and possessed) for late season migratory bird hunting regulations for the 1985–86 season. These seasons generally commence on or about October 1, 1985, and include most of those for waterfowl.

The Service annually prescribes migratory bird hunting regulations frameworks to the States. The effect of this proposed rule is to facilitate the selection of hunting seasons by the States and to further the establishment of the late season migratory bird hunting regulations for the 1985–86 season. The proposals for duck regulations are more restrictive than those of recent years.

**DATE:** The comment period for these proposed late-season frameworks will end on August 22, 1985.

**ADDRESS:** Address comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, D.C. 20240. Comments received on these proposed late-season frameworks will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C. The Service's biological opinion resulting from its consultation under section 7 of the Endangered Species Act is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 14, 1985, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending June 20, July 15 and August 19 (extended to August 22) 1985, respectively, for the 1985–86 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 4, 1985, the Service published in the **Federal Register** (50 FR 23459) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 5, 1985, the Service published for public comment in the **Federal Register** (50 FR 27638) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 26, 1985, the Service published in the **Federal Register** (50 FR 30424) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. In August the Service will published a fifth document containing final framework for other early migratory bird hunting seasons from which State wildlife conservation agency officials selected early season hunting dates, hours, areas and limits for the 1985–86 season. This document is the sixth in the series and deals specifically with proposed frameworks for the 1985 late season migratory bird hunting regulations. Before September 1, 1985, the Service will publish in the **Federal Register** a seventh document consisting of a final rule amending subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules, teal seasons in September; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in four States; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special extended falconry seasons.

On August 20, 1984, the Service discussed in the **Federal Register** (49 FR 33092) concerns about duck populations and duck habitat conditions in the prairie breeding grounds of Canada. At that time the Service expressed its intent to initiate an intensive review of potential management measures for 1985 aimed at improving the status of ducks. On February 15, 1985, the Service announced in the **Federal Register** (50 FR 6366) that because of the recent prolonged drought on the duck breeding grounds of Prairie Canada and the concern by the Service and other wildlife agencies and organizations about the declining status of mallards and northern pintails, particularly breeding populations of mid-continent origin, various harvest strategies would be reviewed prior to establishing duck hunting regulations for 1985–86. The Service recognized that harvest regulations may not offset the effect of continued drought and unfavorable habitat conditions. However, it was felt more conservative approach to harvest regulations would slow the decline of breeding populations and hasten their recovery when habitat conditions improve. In the June 4, 1985 **Federal Register** (50 FR 23461) the Service reiterated its concern for the duck resource, acknowledged comments received, and proposed to consider, as interim guidelines, action strategies if populations of mallards and pintails fall below identified minimum levels. Below minimum population levels the Service indicated it would solicit cooperation of interested groups to reduce harvest by at least 25% from that which would have been expected had regulations remained unchanged. The Service noted a decision whether to employ such strategies would be made through the normal regulations process, including cooperative evaluation of annual survey and harvest data. The Service further noted it may be necessary to reduce the harvest of species other than mallards and pintails.

At the Denver Status meeting the Service presented data which showed that the waterfowl situation is indeed serious this year. Breeding duck populations and the fall flight forecasts are well below desired levels, and are at record low numbers. As an initial guide for consideration by Flyway Councils the Service suggested that duck harvest be no more than 75% of the average harvest in recent years. The intent is better expressed in the **Federal Register** of June 4, 1985, where it was proposed for consideration to reduce harvests of mallards and pintails in 1985 by 25% from those expected if regulations remained unchanged. There is precedent for the proposed 25% reduction in the efforts initiated in 1983 to reduce black duck harvest in the Atlantic Flyway. It was stated in the case of the black duck that such a level of change would have a meaningful effect on harvest rates and would be measurable. While this is a somewhat subjective judgment the proposed "not less than 25%" reduction in expected harvest for 1985–86 was deemed a reasonable starting point. Flyway Councils and other groups were urged to suggest stronger measures if they seemed appropriate. The Service further stated that from experience it does not believe any single regulatory

factor could be manipulated in an acceptable fashion to provide the reductions sought, and urged that restrictions in bag limits, season length and frameworks be considered together to achieve meaningful harvest reductions. This view was reinforced at subsequent Technical Section-Council meetings and at the Service Regulations meetings and Public Hearing where the Service desire to reduce expected harvest was noted.

These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

**Review of Comments Received at Public Hearing**

Twelve statements were offered at the August 1, 1985, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and relevant portions are addressed in the responses.

Mr. Vernon Bevill, repesenting the Atlantic Waterfowl Council noted that not all duck populations are in trouble. He identified mallards breeding in eastern Canada and the northeast United States as a population that is unaffected by prairie drought and is increasing. He mentioned that of the top 5 species in the Flyway's harvest only mallard and black duck have reduced populations. He stated the Council's interest in focusing efforts on restoration of black duck numbers. Further, he stated regulations should be targeted to protect prairie-based breeding populations, not all duck populations. He noted that the Canadian Wildlife Service continued with the same hunting regulations in eastern Canada as were established in 1984. He expressed the need to preserve existing framework dates and season length. Mr. Bevill restated the Council proposal for a New England zone with a 50-day season and 4-bird bag. The reminder of the flyway to be offered an option of 45 days, 3-bird daily bag with 100 point hen mallard and hen pintail or 40 days, 4-bird daily bag with 70-point hen mallard and hen pintail. The conventional daily bag to contain only 1 hen mallard or 1 hen pintail. In closing, Mr. Bevill voiced the Council's support for a Lake Champlain Zone in Vermont.

*Response:* The Service has previously stated its concern about the record low numbers of breeding ducks encountered in 1985 and the record low fall flights forecast this year. Further, it was deemed necessary that some restrictive regulatory actions be taken in 1985. The Service recognizes the Atlantic Waterfowl Council's position regarding duck populations in the northeast portion of the Flyway. However, there is presently no accepted Northeast management unit or zone in the Atlantic Flyway. Such a unit may have merit but extensive documentation and perhaps experimentation is needed before a judgment can be made. In the absence of such an accepted unit, Service regulatory action was directed at the national and flyway level in regard to total ducks, pintails and mallards. On this basis restrictive regulations were established to reduce harvest on ducks in general and on important segments of prairie-nesting ducks entering the Flyway.

In regard to Council and Service interest in the black duck, the Service recognizes the shortened framework and reduced bag limits proposed for 1985–86 may result in abandonment of some State black duck harvest-control strategies used in 1983 and 1984. The proposed bag-limit change will limit black duck take to not more than 1 per day everywhere. The effect of these changes is to reduce bag limits in some States which previously allowed 2 birds daily. A more complete assessment will be made when State selection letters are received. The Service believes the proposed regulations are at least as restrictive for black ducks as those of the last 2 years.

Notice of a request from Vermont for a 3-year zoning experiment to commence in 1985 was published in the June 4, 1985, **Federal Register** (at 50 FR 23464). The Service then indicated it did not support the request because of a desire to assess the cumulative effect of zoning and other special management efforts and the need for additional informtion. Subsequently, on July 10, 1985, Vermont reiterated their request to zone and provided additional supporting information to the Service and Council. The Council reaffirmed their support of the Vermont request. In light of the new information provided, the Service proposes to accept the Council's recommendation regarding establishment of two experimental duck zones in Vermont.

Mr. Richard Bishop, representing the Mississippi Flyway Council, expressed the Council's concern with the status of ducks and the very reduced fall flights forecast for ducks in 1985. He stated Council support for the duck regulations proposed for 1985–86 and urged that the Service retain regulations that treat flyways in a fair and uniform manner.

*Response:* The Service notes the Mississippi Flyway Council's concern for the current status of ducks and acknowledges their support of the proposed duck regulations.

Mr. Steve Lewis, representing the Central Flyway Council, expressed agreement with all proposed 1985–86 regulations for the Central Flyway, as presented, except those for outside dates and number of days for duck hunting. He recommended that there be no change from the outside dates of September 28, 1985, through January 19, 1986, as previously announced, and that season lengths be 55 days in the Low Plains and 78 days in the High Plains. Mr. Lewis indicated there would be a reduced harvest of ducks in the Central Flyway without further regulatory action as a result of the expected reduced fall flight of ducks.

*Response:* The Service notes previously stated concerns about the record low numbers of breeding ducks in 1985 and the record low fall flights forecast this year. These concerns were described in the June 4, 1985, **Federal Register** (at 50 FR 23463) and action points identified at which the Service would solicit cooperation to reduce harvests of mallards, pintails, and if necessary, other ducks in 1985. The same concerns were further detailed at the Denver Status Meeting and subsequent Flyway Technical Section and/or Council meetings. The regulatory actions were to be developed at the national and flyway level. The Service believes more restrictive regulatory actions than those proposed by the Central Flyway are required and therefore has proposed restrictions on frameworks, season length and bag limits for ducks during the coming season.

Mr. Ralph R. Denney, representing the Pacific Flyway Council accepted with reluctance but did not endorse many of the Service's proposals for duck hunting in the Pacific Flyway. He argued that the proposed bag limits were particularly inappropriate for that portion of the Columbia Basin where mallard numbers have been increasing. Although the Council had proposed other duck limits for this area, a reduced daily limit of 5 ducks, with no more than 1 hen mallard and 1 hen pintail, would be more acceptable than those being proposed. He estimated that this alternative bag limit, combined with reductions in seasons, would more than achieve a 25% reduction in harvests from that which would otherwise be expected with prevailing regulations. He disagreed with the Service's use of national population and harvest objectives and uniform nationwide reductions in framework dates, season lengths, and bag limits. He believed that this

approach was contrary to flyway management and could not reflect flyway and regional needs and desires in addressing the problem of declining numbers of ducks. He objected to use of inflexible framework dates for seasons and preferred the floating dates that had been previously used. He advised that the Council had asked its Study Committee to develop duck population thresholds that would trigger either more restrictive or more liberal regulations and thereby, foster harvest management through stabilized regulations. He contended that the Service's proposed regulations would only encourage the Council to seek changes next year. Because an unknown but probably significant portion of the Pacific Flyway's ducks come from areas that are unsurveyed, he requested that the Service, together with the Canadian Wildlife Service and provincial governments, begin to acquire information on duck numbers and production in these areas, especially British Columbia and Yukon Territory, and use them in developing forecasts for fall flights into the Pacific Flyway. The Council endorsed the Service's proposed frameworks for hunting geese, swans, common snipe, common moorhens, coots, and sandhill cranes.

Mr. William H. Geer, also representing the Pacific Flyway Council, expressed many of the same viewpoints as those presented by Mr. Denney. Mr. Geer, while not faulting the need for restoring duck numbers, was very critical of the Service's ability to express the goals and objectives that prompted the proposed 25% reduction in harvest. He said that the uniform, nationwide reductions in harvest being proposed was a simplistic approach, and did not reflect regional differences and take into consideration those recommendations developed by technical people at the flyway level. He advised that all declines in duck numbers were not caused by the same factors and that the proposed restrictions were a "broad brush" approach to solving different problems.

*Response:* The Service concurs with the Pacific Flyway Council's recommended alternative duck limits for a portion of the Columbia Basin, much smaller in size than the previously existing zone, and these limits are proposed in this document. As previously discussed, the Service believes nationwide and somewhat uniform changes in regulations are required to effect significant reductions in harvest over that which would otherwise result. The Service acknowledges that there was possible confusion about the extent of reductions in harvest being sought; however, we have repeatedly indicated that the reductions being recommended were minimum values that could only be obtained through combinations of changes in season length, framework dates, and bag limits. The Service, in consultation with the Council and the Canadian Wildlife Service, will explore the merits of acquiring information on ducks in western areas that are outside those in which surveys of breeding duck populations are presently conducted.

Mr. Gary T. Myers, representing The Wildlife Society, expressed concern over the status of ducks and the possibility that threshold levels have been reached, the losses of habitat and lack of legislation to protect wetlands, and the continued use of toxic lead shot on some public lands. He supported Service proposals to reduce harvests of ducks, cooperative efforts to conserve Alaskan-breeding geese, existing guidelines for managing the Mississippi Valley Population of Canada geese, and management of tundra swans. He encouraged the elimination of toxic lead shot by 1989 and complimented the Service for demonstrating strong leadership.

*Response:* The Service shares the concern over the status of duck populations and loss of habitat. The Wildlife Society's support of proposed regulations is noted. The Service appreciates the Society's support of efforts to conserve populations of geese that are below objective levels and of swan management efforts. Mr. Myers' other comments related to nontoxic shot pertain to subjects outside the purpose of the regulatory hearing and will be considered elsewhere.

Mr. Charles Potter, a freelance writer specializing in wildlife, stated that duck harvest is always 18% of the fall flight, that only 42% of the fall flight returns in the subsequent year to breed and that hunters account for only one-third of this annual mortality. He expressed the view that restrictive regulations at the 25% level will do little good and suggested more restrictive regulations would be needed to effect improvement in populations. Finally, Mr. Potter stated regulations were the wrong approach to the duck problem and identified habitat as the key to improvement in duck populations.

*Response:* The Service notes Mr. Potter's interpretations of harvest in relation to fall flight size but suggests that other parameters, such as harvest rates, survival and mortality of major species, are important in understanding duck population dynamics. His view that a harvest reduction of 25% will be inadequate will be assessed following the breeding ground survey in 1986 and appropriate future regulatory responses will be developed. The Service agrees with Mr. Potter that a healthy and adequate habitat base is essential to the long-term welfare of the waterfowl resource.

Dr. Larry Jahn, representing The Wildlife Management Institute, recommended restrictions in duck hunting regulations for the 1985–86 season, citing the record-low population estimates for mallards, pintails, and all ducks combined, reduced reproductive rates, increasing trends in mallard harvest rates, and surpluses of breeding habitats at current population levels. He urged the Service and the Department of the Interior to enact no less than the proposed 25% reduction in duck harvest, as already enacted in Canada. He further stated that special provisions, such as adjusting season frameworks (opening and closing dates), daily bag and possession limits, special sex (e.g., hen) restrictions, and season length, should be enacted for individual species and populations as needed to meet the overall harvest reduction objective, and emphasized added protection for female mallards and pintails. He stated that the 1985–86 duck harvest regulations should be viewed as a new framework of stabilized/prescriptive regulations, with special features to assist recovery of individual species and populations, that will continue until duck populations reach fail-safe levels.

He emphasized that in addition to curtailing duck harvest rates, an equally important part of an overall program for recovery of low duck populations is improvement of habitat conditions to increase duck reproductive success. He cited examples of new initiatives in Canada and the United States that hold much promise for improving habitat.

In addition to regulatory restrictions for ducks, he indicated that similar actions are needed for several goose populations, including dusky and cackling Canada geese, Pacific white-fronted geese, emperor geese, Pacific brant, and the Mississippi Valley Canada goose population.

He commended the Service and the Canadian Wildlife Service for the open manner and early efforts to involve state and provincial resource management agencies and the public in reviewing waterfowl harvest strategies, the draft North American Waterfowl Management Plan, and other proposals for improving management of migratory birds.

*Response.* The Service agrees that in view of the much reduced status of duck populations this year, actions are needed to reduce duck harvests in the 1985–86 hunting season. The Service also agrees that harvest reductions and better harvest control are needed for the referenced goose populations. The regulatory measures proposed in this document are designed to achieve those objectives.

The preservation and improvement of habitat are vital components of an overall program to maintain and enhance North American waterfowl populations. The new initiatives mentioned by Dr. Jahn will do much to help achieve those objectives.

Mr. Lee Roy Rendleman, representing the Southern Illinois Quotazone Waterfowl Association, commended the Service for the proposed goose season length in the Southern Illinois Quota Zone and the increased emphasis on better regulating Canada goose harvest in areas of States outside of quota/control zones. Mr. Rendleman also commented on toxic shot zones.

*Response*: The Service notes the Southern Illinois Quotazone Waterfowl Association's support of the proposed regulations for Canada geese in the Mississippi Flyway. Nontoxic shot is not the subject of this rulemaking and will be treated eslewhere.

Mr. John M. Anderson, representing the National Audubon Society, commented that the proposed 25% reduction in harvests, as compared to 1984, seems justified in view of the current status of mallards, pintails, and black ducks. He indicated that restrictions, similar to those announced in Canada, were timely and expressed support for the recommendations from the Mississippi Flyway Council. He stated that the Audubon Society endorsed goose and swan regulations as proposed by the Service.

*Response*: The Service acknowledges the National Audubon Society's support of its proposed management programs.

Mr. Lewis Bays, representing the Mississippi Department of Wildlife Conservation, commented on the experimental extension of the framework closing date for duck hunting in Mississippi from January 20 to January 31 that was in effect during 1979–84. He requested that the extension be allowed to continue through the 1985–86 hunting season while the final report is being completed rather than return to the Mississippi Flyway framework closing date, as the Service has previously proposed (50 FR 23463 **Federal Register** dated June 4, 1985). He stated that the preliminary results of the study indicate that the later hunting season has had no impact on mallard harvests in Mississippi. He contended that the proposed return to the flyway framework closing date is discriminatory to Mississippi duck hunters because other kinds of hunting season experiments elsewhere have been permitted to continue through the interim year between completion of the experiment and preparation of a final report. He further suggested that an additional year of data on the experiment would be important for the overall evaluation. He stated that the Service proposal obviates the need for the final report and indicates that the Service has prejudged the results of the experiment.

*Response*: The Service proposal in no way lessens the need for a final report on the Mississippi experiment. The Service has not prejudged the study results, and the final report from Mississippi will play a key part in a decision about future framework changes not only in Mississippi but elsewhere as well. The 6-year period for which data are available will form the basis for evaluation. However, as was mentioned previously, the recent prolonged drought on the duck breeding grounds of prairie Canada and the declining status of mallards and other ducks which has resulted in record low breeding population and fall flight indices this year have greatly increased the concern of the Service and other wildlife agencies and organizations. Further, there is growing concern about the potential impacts of late hunting seasons on duck populations for reasons other than increased harvests. In view of these concerns about the current status of mallards and other ducks, the Service believes that the 1985–86 framework closing date in Mississippi should return to the closing date established for the Mississippi Flyway, particularly in view of the need for general framework restrictions in all flyways this year to help reduce duck harvest.

Mr. James N. Shepard, representing Ducks Unlimited, presented highlights of that group's fall flight forecasts. While their forecasts differed from some flyways for those prepared jointly by the Service and the Canadian Wildlife Service ("1985 Status of Waterfowl and Fall Flight Forecast, July 25, 1985), he said that the comparable areas there was little dissimilarity between the two sets of forecasts. He supported the use of ducks as a renewable resource at their full capacity, stating that they cannot be stockpiled. He noted that the current status of ducks is not inconsistent with habitat losses and that improvements in habitats would be followed by correspondig increases in duck numbers. Mr. Shepard asked for explanations as to substantial duck losses he perceives when comparing the fall flight index for 1984 to the breeding population index of 1985. He asked the Service to expedite an effort to identify those threshold levels at which hunting becomes additive to other forms of mortality confronting ducks. He offered to put together a team to work with the Service to improve methods for assessing the status of duck populations. Lastly, he suggested that the Service and others had decided that the gun and the hunter have caused the decline in duck numbers.

*Response*: The duck breeding population and production surveys conducted jointly by the Service and the Canadian Wildlife Service undergo periodic statistical review by various scientists within and outside the two Services. The Service will review with Ducks Unlimited or any other group those procedures employed in estimating status and harvest of ducks. Various Service spokesmen have stated in recent meetings attended by Mr. Shepard, that hunting is not the primary factor in the recent decline in duck numbers, but neither can it be dismissed. The relationship between hunting mortality and all other forms of mortality in ducks is of considerable interest to the Service, and we will continue to acquire and evaluate information on that subject. The Service shares with Ducks Unlimited the urgency to improve conditions of those habitats used by ducks throughout their life cycle. However, this urgency for attention to habitat is not the Service's sole means of rebuilding duck numbers, and the Service has the responsibility to consider the immediate welfare of populations while longer-term habitat management efforts are underway. The Service indicated in its assessment of the status of ducks and its presentation of proposed regulations that the urgency of the continuing plight of some species, the incomplete nature of habitat recovery with serious drought still prevailing in some key areas, and the decline of other species this year with a resulting large drop in the fall flight forecast add up to a serious situation which requires a much more conservative view toward harvest while duck numbers remain low. A decline in the fall flight forecast is not suprising given these facts, and the knowledge that northern areas were unusually late in becoming free of ice and snow. The Service has not relied solely on the fall flight forecast in its decision to take more conservative action, but rather

looks at the overall population status picture with great concern. At the time the forecast was made, water conditions and late-nesting indices did not look promising in either the Service or Ducks Unlimited field reports, presenting little likelihood that large-scale late nesting would raise expectations. Whether the fall flight forecast dropped precipitously as indicated, or only half as much is not the point requiring attention. The overall picture remains very poor for the coming fall.

**Written Comments Received**

In the **Federal Register** dated June 4, 1985 (50 FR 23459), the Service reviewed comments on proposed season frameworks received from 21 correspondents as of May 3, 1985. Since then, 246 additional comments have been received. They are discussed here by regulatory topics arranged in the same order as in the March 14, 1985, **Federal Register** (50 FR 10276).

2. *Framework dates for ducks and geese in the continental United States.* Thirty-one comments received were expressions of concern that the Service was considering restrictive bag limits and/or reduced season lengths prior to completing surveys of breeding grounds and the analyses of data gathered during the period of stabilized regulations. Many of these indicated that, should the data warrant, the necessary restrictions would be supported. An additional 66 comments provided a variety of opinions on the necessity of duck harvest restrictions and the type of restrictions that were preferred and the area(s) where they should be implemented.

*Response:* The Service continually monitors all available information and considers appropriate management options. An indicated decreasing trend in populations, especially of mallards and pintails, that corresponded to deterioration of breeding habitat in drought areas, appeared to have ended in 1983. However, anticipated improvements in breeding populations and habitats did not materialize and restrictive regulations were among the options considered in July 1984. The 1984–85 fall flights and harvest, disappointing in many areas, clearly demonstrated the substantial impacts of continuing drought in major breeding areas; accordingly, the Service continued consideration of restrictive regulations. The results of the 1985 surveys have demonstrated that such considerations were justified. The Service has chosen to restrict bag limits, season lengths, and outside dates, for duck hunting as a reasonable action to speed recovery of populations as habitats improve when droughts end.

Eighty-one comments were received in opposition to elimination of the experimental extension of the duck season framework closing date (from January 20 to January 31) in Mississippi. It was suggested by many that, should any cut be contemplated there be eleven days taken from the beginning of the season.

*Response:* See the Service's response given above to comments presented at the August 1 public hearing by Mr. Lewis Bays.

4. *Wood duck.* The Service received a request from an individual in Wisconsin asking that the point value on wood ducks be reduced from 70 points to 35 points because of their abundance.

*Response:* There is evidence of increasing harvest rates on wood ducks. The Service does not believe bag limits should be increased pending an analysis of the effects of the added kill on this species.

9. *Special scaup season.* In the June 4, 1985, **Federal Register** (at 50 FR 23464) the Service gave notice of a request received from Florida for a minor boundary change in their Indian River Scaup Season Zone but deferred action on the request pending Atlantic Waterfowl Council review. At their summer meeting the Council endorsed the request.

*Response:* The Service concurs with the Council's recommendation.

12. *Canvasback and redhead ducks.* An individual from Wisconsin requested that in those areas of Wisconsin closed to canvasback hunting, the restriction should be relieved to allow the taking of 1 drake canvasback in the daily bag limit.

*Response:* The Service notes the request, however, the Mississippi Flyway Council recommended no change in the Flyway's canvasback closure areas and the proposed frameworks set forth in this document reflect the Service's concurrence with that recommendation. Further, it appears the canvasback population may be in decline as a result of the drought.

13. *Duck Zones.* By letter dated July 10, 1985, Vermont reiterated their request for a 3-year zoning experiment to commence in 1985.

*Response:* See the Service's response to comments presented at the August 1 public hearing by Mr. Vernon Bevill, Atlantic Waterfowl Council Consultant, discussed above.

A final report on Oklahoma's duck zoning experiment has been received and a recommendation for operational status was submitted by the Central Flyway Council.

*Response.* The Service concurs with the zoning recommendation of the Central Flyway Council.

In the June 13, 1984, **Federal Register** (at 49 FR 24421) the Service proposed the following for Louisiana: Apply Central Flyway duck season length to the West Zone, Mississippi Flyway duck season length in the East Zone, and Mississippi Flyway bag limits in both zones. Although proposed during the 1984–85 regulations development process, no change would be made until the 1985–86 season. In the September 14, 1984, **Federal Register** (at 49 FR 32677) the Service announced that further action on the proposal was deferred pending additional consultations, particularly with the Central and Mississippi Flyway Councils, because of the source and nature of comments received on the proposal. In the March 14, 1985, **Federal Register** (at 50 FR 10285) the Service reviewed the actions to date on the proposal and invited additional comments. The Service announced in the June 4, 1985, **Federal Register** (at 50 FR 23465) that all concerns on the proposed regulations for Louisiana that were expressed in comments received would be explored in an Environmental Assessment targeted for publication in early 1986, that the Service would discuss with the Flyway Councils at their summer meetings their concerns with the proposal, that action was deferred on the proposal until the 1986–87 season, and until then the Service proposes to offer Louisiana the option to extend their season for ducks, coots and mergansers 5 additional days in their West Zone.

By letter dated July 2, 1985, the Texas Parks and Wildlife Commission expressed its continued concern about the continuation of the Louisiana duck hunting zones as published in the June 4, 1985, **Federal Register**. The Commission indicated it believes that the continued liberalization of duck regulations in Louisiana will have an adverse impact on the duck resource, particularly those duck populations originating in the Central Flyway.

The Central Flyway Council reiterated its opposition to the continuation of the current zoning proposal for duck hunting in Louisiana and recommended that the current zone boundary be abandoned, the hunting regulations for the entire State of Louisiana be those which are established for the Mississippi Flyway, and that any future zoning proposals be in conformance with the Service's zoning criteria.

*Response:* The Service notes the concerns of Texas and the recommendation of the Central Flyway Council. As previously stated, the Service intends to address all concerns with the proposed duck hunting regulations for Louisiana in an upcoming Environmental Assessment (EA) prior to the establishment of the 1986–87 regulations. Until that EA is completed and a decision is made for the 1986–87 season, the Service proposes to continue to provide Louisiana the option to extend its 1985–86 season for ducks, coots and mergansers 5 additional days in their West Zone.

14. *Goose and brant seasons.* Letters from the Michigan Duck Hunters Association, Citizen's Waterfowl Advisory Committee of Michigan, and 23 individuals from Michigan requested that their 1985–86 Canada goose season (statewide) be restored to not less than 50 days with a 2-goose daily bag limit and reasonble quotas within management areas.

Letters from five individuals in Illinois expressed the feeling that due to an increase in the 1984 Canada goose wintering flock in southern Illinois and an average hatch this spring, an increase in the Southern Illinois Quota Zone's 1985–86 Canada goose quota and season length from 17,500 geese and 25 days to 22,000 geese and 45 days is justified.

The Wisconsin Conservation Congress and the LaCrosse County Conservation Alliance (Wisconsin) requested that the proposed 1985–86 frameworks provide a 70-day season for Canada goose hunting in Wisconsin's Mississippi River

*Response:* The Mississippi Flyway Council, at its March 17, 1985, meeting, recommended the same overall harvest objective for Mississippi Valley Population (MVP) Canada geese as in 1984–85. The Service concurs with the recommendation and believes that MVP Canada goose harvest should not be increased. In response to a July 1985 recommendation from the Council's Upper Region Regulations Committee, the Service proposes the option for a 40-day Canada goose season in control zones where effective harvest control has been demonstrated. The Service feels restrictions should be continued in areas outside of the control zones and believes the proposed frameworks set forth in this document include measures necessary to control MVP Canada goose harvest in various States. A longer Canada goose hunting season is proposed for Wisconsin's Mississippi River Zone.

Connecticut, by letter dated July 3, 1985, submitted a proposal requesting that the daily bag and possession limit for Canada geese in the State be increased from 3 and 6, respectively, to 4 and 8, respectively, because it would help the State with its local nuisance Canada goose problems by increasing recreational opportunity on an over-abundant resource and reducing State and Federal expenses for nuisance-goose control.

*Response:* The Atlantic Waterfowl Council has recommended no change in the Flyway's 1985–86 frameworks for daily bag and possession limits of geese and the frameworks set forth in this document are in line with that recommendation.

The Central Flyway Council recommended that the framework for the daily bag limit on geese in the Central Flyway portion of Colorado be changed from 2 geese to a daily bag limit of 5 geese which may include no more than 2 dark geese.

*Response:* The proposed frameworks set forth in this document are in line with the Central Flyway Council recommendation.

15. *Tundra swan.* The Atlantic Waterfowl Council recommended that the experimental swan hunt in North Carolina be continued but that the number of swan permits issued be increased from 1000 to 6000 because the number of permits issued in 1984 was not adequate to fully evalute the harvest nor control population increases.

Letters from thirteen individuals supported the experimental swan season in North Carolina and several suggested that the number of permits issued should be increased. Three individuals requested a swan season in Maryland and 1 individual requested a swan season in Alaska. Opposition to the North Carolina hunt was expressed by 11 individuals and Defenders of Wildlife.

*Response.* The proposed frameworks set forth in this document are in line with the Council's recommendation for continuation of the experimental swan season in North Carolina and an increase in the number of permits issued. The Service notes the interest for swan hunting seasons in Maryland and Alaska but believes that the experimental swan hunt in North Carolina should be completed and evaluted before the option for a swan season is expanded to other States.

## Public Comment Invited

Based on the results of recently-completed migratory game bird studies and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowl and coots.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

The Director intends that finally-adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: The need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 22, 1985, is contrary to the public interest.

## Comment Procedure

Interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536 in the Matomic Building, 1717 H Street, NW., Washington, D.C.

All relevant comments received on the late season proposals no later than August 22, 1985, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

## Nontoxic Shot Regulations

The regulations describing areas where nontoxic shot is required appeared in the **Federal Register** dated February 12, 1985 (50 FR 5759). An amendment to those regulations that added areas where nontoxic shot is required because lead shot used by waterfown hunters in those areas poses

a threat to bald eagles was published in the **Federal Register** dated May 7, 1985, (50 FR 19178).

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting. Attention is also directed to the Service's May 7, 1985, Notice of Intent (50 FR 19248), which gave notice that designated areas in five States will not be opened to waterfowl hunting in the 1986–87 season in the absence of consent to steel shot requirements. The Service currently is of the opinion that barring hunting in these areas during the 1985–86 season is not appropriate, in light of (1) the lack of a biological basis to conclude that one year's delay will result in harm; (2) the demonstrable economic impact of a 1985–86 closure, and (3) the probability that requirements will be accepted for the 1986–87 season.

**NEPA Consideration**

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purpose of this Act" [and] ". . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, Mr. Conrad A. Fjetland, Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Other biological opinions of relevance were issued on January 25, April 18, and July 24, 1985.

**Regulatory Flexibility Act and Executive Order 12291**

In the **Federal Register** dated March 14, 1985 (at 50 FR 10276), the Service reported meausures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on subtantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

**Memorandum of Law**

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (at 50 FR 30424).

**Authorship**

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1981 (40 Stat. 755; 16 U.S.C. 704 et. seq.), as amended.

**Proposed Regulations Frameworks for 1985–86 Late Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

*General*

*Split Season:* States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

*Shooting Hours:* From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

*Extra Blue-winged Teal:* States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

*Extra teal:* States in the Atlantic Flyway (except Florida) not selecting the point system may select an extea teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

*Special Scaup-only Season:* States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 8, 1985, and January 31, 1986, all dates inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1985.

4. These areas must be described and delineated in State hunting regulations.

*Or*

*Extra Scaup:* As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

*Point System:* Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New

York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

*Deferred Season Selections:* States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

**Atlantic Flyway**

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

*Ducks, Coots and Mergansers*

*Outside Dates:* Between October 8, 1985, and January 13, 1986.

*Hunting Season:* 40 days.

*Duck Limits:* The daily bag limit of ducks is 4 and may include no more than 3 mallards of which only 1 may be a hen, 2 pintails, 2 wood ducks, and 1 black duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 4 pintails, and 4 wood ducks, (except as noted below). Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit of redheads through the Flyway is 2 daily, except that in areas open to canvasback hunting the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback.

*Merganser Limits:* The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

*Coot Limits:* The daily bag and possession limits of coots are 15 and 30, respectively.

*Areas closed to canvasback hunting are:*

*New York*—Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

*New Jersey*—Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

*Maryland, Virginia,* and *North Carolina*—Those portions of each State lying east of U.S. Highway 1.

*Experimental Canvasback Season:* Areas or portions of areas as specified below, otherwise closed to taking of canvasbacks, may be opened to hunting of canvasbacks during an experimental season. The experimental season must occur during the last 11 days of the regular season in New York, New Jersey and North Carolina and the last 6 days of the regular duck season in Maryland and Virginia, the daily bag under conventional regulations may include no more than 4 canvasbacks, not more than 1 of which may be a female. Under the point system male canvasbacks are 25 points and females 100 points. Possession limits are twice the daily bag limits. The areas eligible for this experimental season are:

*New York*—Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls, and all waters of Lake Cayuga.

*New Jersey*—(1) east of the Garden State Parkway from Route 440, south to Route 36, (Raritan and Sandy Hook Bays, Navesink and Shrewsbury Rivers); (2) east of the Garden State Parkway from Route 88 south to Route 72 (Barnegat, Silver and Manahawkin Bays, Metedoconk and Toms Rivers).

*Maryland*—The waters of Chesapeake Bay and its tributaries to the first upstream bridge, except on the Patuxent River the boundary is the second upstream bridge (Maryland Route 231 bridge near Benedict, MD); includes Potomac River and its tributaries upstream to U.S. Route 301 bridge.

*Virginia*—Starting at the Virginia-Maryland line (301 bridge) these lands and waters enclosed in the areas bounded by: U.S. Highway 301 south to Route 207 and continuing to the junction of U.S. Route 1, south on Route 1 to Route 460, then southeast on 460 to Route 13, then east and north on Route 13 to the Maryland line, then westward on the Maryland-Virginia line to Route 301.

*North Carolina*—That portion of Pamlico Sound and its tributaries designated as coastal fishing waters within two miles of the mainland, extending from Long Shoal Point on the north side of Long Shoal River to that point of marsh near Whortonville on the north side of Broad Creek known as Piney Point and upstream in Pamlico River to the Aurora-Belhaven ferry crossing.

The remaining portions of areas in each of the five participating States presently closed to the taking of canvasback will remain closed.

*Early Wood Duck Season Option:* Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 8 and October 16. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.

*Restrictions on Wood Ducks:* Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

*Restriction on Mottled Ducks:* The season is closed to the taking of mottled ducks in South Carolina.

*Special Scaup and Goldeneye Season:* In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

*Zoning:*

*New York*—New York may, for *Long Island Zone,* select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from

each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easternly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. *North Zone*—Game Management Zones 1 through 5.

b *South Zone*—Game Management Zones 6 through 8.

New Hampshire

*Coastal Zone*—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

*Inland Zone*—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments: *Vermont* will initiate a Lake Champlain Zone in 1985. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Maryland, Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Maryland* may be divided into two zones, *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into a Lake Champlain Zone all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations maybe selected in Massachusetts, Pennsylvania and Vermont. New Jersey and Maryland must select the point system. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

*Zone Definitions:*

Maryland

*Inland Zone*—That portion of the State north and west of U.S. Route 1 from its junction with the Maryland-Pennslyvania border south to its junction with I–95 north of Washington, DC and east and south along I–95 to the Maryland-Virginia border.

*Coastal Zone*—That portion of the State south and east of the above described highway boundaries.

Massachusetts

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *EXCEPT* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey

Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York, on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

*South Zone*—The remaining portion of the State.

Vermont

*Lake Champlain Zone*—Includes the United States portion of Lake

Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Bermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

*Point System Option for all States in the Atlantic Flyway:* As an alternative to conventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by States in the Atlantic Flyway during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas or during the special experimental season); the female mallard, black duck, and mottled duck (except South Carolina) count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall and mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, pintail, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

*Sea Ducks:* In any State in the Atlantic Flyway selecting both point-system regulations and a special sea duck season, sea ducks count 20 points each during the point-system season, but during any part of the sea duck season falling outside the point-system season, sea duck daily bag and possession limits of 7 and 14, respectively, apply.

*Canada Geese*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1985, and January 20, 1986, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese; the daily bag and possession limits are 3 and 6 geese; respectively. In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1986. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut will be 3 and 6, respectively. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1985, to January 20, 1986, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1986, to January 31, 1985, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In South Carolina the season on Canada geese is closed in the counties of Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartanburg, Sumter, Union and York.

*Closures on Canada geese:* The season for Canada geese is closed in Florida and Georgia.

*Snow Geese*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1985, and January 31, 1986, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

*Atlantic Brant*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1985, and January 20, 1986, States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag and possession limits are 4 and 8 brant, respectively.

*Tundra Swans*

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) The season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

**Mississippi Flyway**

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

*Ducks, Coots, and Mergansers*

*Outside Dates:* Between October 8, 1985, and January 13, 1986, in all States.

*Hunting Season:* Not more than 40 days.

*Limits:* The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below) and 2 pintails. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below) and 4 pintails. Except in closed areas, the limits of canvasbacks and redheads are 1 daily and 2 in possession for each species.

*Closed Areas for Canvasback Hunting:* Mississippi River—(1) Entire river, both sides, from Lock and Dam 9 upstream to the confluence of the Chippewa River, (2) Pool 19 bordering Iowa and Illinois.

Michigan—Macomb and St. Clair Counties, including the adjacent Great Lakes waters and interconnecting waterways under the jurisdiction of the State of Michigan.

Wisconsin—In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad from Lock and Dam 9 north to the centerline of the Chippewa River.

*Merganser Limits:* The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

*Coot Limits:* The daily bag and possession limits of coots are 15 and 30, respectively.

*Point System Option:* As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: Except in closed areas, the canvasback, female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

*Coot Limits—Point System:* Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

*Early Wood Duck Season Option:* Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 8 and October 16. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.

*Western Louisiana:* In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

*Pymatuning Reservoir Area, Ohio:* The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by Country Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

*Zoning: Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee,* and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

*Alabama:* South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split.

*Illinois:* North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from the Missouri border along Illinois Highway 155 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

*Indiana:* North Zone: That portion of the State north of State Highway 18. Ohio River Zone: That portion of Indiana south of Interstate Highway 64. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

*Iowa:* North Zone—That portion of Iowa north of Interstate 80. South Zone—the remainder of the State.

*Michigan:* North Zone—The Upper Peninsula. Southeast Zone—That portion of the Lower Peninsula south and east of a line running north from the Michigan-Ohio border along U.S. Highway 127 to US–27 to South County Line Road in Gratiot County, east along South County Line Road to McClelland Road, north along McClelland Road to M–57, west along M–57 to US–27, north along US–27 to M–20, east along M–20 to US–10, east along US–10 to M–13, north along M–13 to US–23, north and east along US–23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then due east ten miles into Saginaw Bay, and from that point along a northeast line to the Ontario border. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

*Missouri:* North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. Highway 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

*Ohio:* The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

*Tennessee:* Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

*Wisconsin:* North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then

easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) The same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

*Geese*

*Definition:* For the purpose of hunting regulations listed below, the term "geese" also includes brant.

*Outside Dates, Season Lengths and Limits:* Between September 28, 1985, and January 20, 1986, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

*Outside Dates and Limits on Snow and White-fronted Geese in Louisiana:* Between September 28, 1985, and February 14, 1986, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits as described above.

*Minnesota:* In the: (a) Lac Qui Parle Zone (described in State Regulations)—the season for Canada geese closes after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 50 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Iowa:* The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time that the season in the remainder of the State.

*Missouri:* In the: (a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 70 days or when 16,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 50-day season on Canada geese may be selected between December 1, 1985, and January 20, 1986, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 50 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

*Wisconsin:* In the: (a) Horicon—Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest port of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 15,000 birds. The season may not exceed 40 days. In the Theresa Zone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 13 and 2 Canada geese per permittee thereafter. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Zone (that portion of the North Hunting Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 10 days. The season may extend for 20 days if the State submits, during the public comment period, a satisfactory plan to effectively monitor the harvest during the season and close the season if excessive harvest of Canada geese is indicated. The monitoring plan should focus on, but not be limited to, the 14 counties outside the Horicon-Central tag zone where permits are required. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Zone (that portion of the South Hunting Zone which includes part of Wood County, Juneau, Sauk, Dan and Green Counties and all counties or portions of counties eastward)—in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 10 days. The season may extend for 20 days if the State submits, during the public comment period, a satisfactory plan to effectively monitor the harvest during the season and close the season if excessive harvest of Canada geese is indicated. The monitoring plan should focus on, but not be limited to, the 14 counties outside the Horicon-Central tag zone where permits are required. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 16 and December 15. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Remainder of the State—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Illinois:* In the: (a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 40 days or when 17,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Vanner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of State—Seasons for Canada geese up to 20 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 15. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Michigan:* In the (a) North Zone—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is September 28. Throughout the North Zone, the season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Middle Zone:

(1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese closes after 40 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Remainder of Middle Zone—The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Southeast Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(d) Southern Michigan Goose Management Area (described in State regulations)—A late Canada goose season of up to 47 days may be held between January 1, 1986, and February 16, 1986. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Ohio:* The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

*Indiana:* In: (a) Posey County—The season for Canada geese will close after 40 days or when 1,800 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Kentucky:* In the: (a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky—Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese will close after 40 days or when 7,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1986.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Tennessee:* In the: (a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season will close after 40 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1986.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1986. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

*Arkansas and Louisiana:* The season for Canada geese is closed.

*Mississippi:* In the: (a) Sardis Zone (described in State regulations)—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1985. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1986.

*Alabama:* The season is closed for all geese in the counties of Henry, Russell and Barbour. Elsewhere in Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

*Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures:* When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone, the Swan Lake Zone in Missouri, Posey County in Indiana, and, if applicable, the West Kentucky Zone and the Northwest Zone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

*Shipping Restriction:* In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

**Central Flyway**

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

*Ducks (including mergansers) and Coots*

*Outside Dates:* October 8, 1985, through January 13, 1986.

*Hunting Season:* Seasons in the Low Plains Unit may include no more than 50 days. Seasons in the High Plains Mallard Management Unit may include no more than 65 days. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

*Daily Bag and Possession Limits:* Conventional limits are 4 ducks daily, including no more than 3 mallards of which no more than 1 may be a female, 3 pintails of which no more than 1 may be a female, 1 canvasback, 1 redhead, 1 hooded merganser and 2 wood ducks; and 8 in possession, incuding no more than 6 mallards of which no more than 1 may be a female, 6 pintails of which no more than 2 may be females, 1 canvasback, 2 redheads, 2 hooded mergansers and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point values of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, canvasback, and mottled duck (Texas only) is 100 points; each wood duck, rehead and hooded merganser is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and of each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

*Zoning:* Duck and coot hunting seasons may be selected independently in described zones of the following States:

*Montana* (Central Flyway portion): Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

*Nebraska* (Low Plains portion): Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

*New Mexico:* Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

*Oklahoma:* Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

*South Dakota* (Low Plains portion): South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

*Wyoming* (Central Flyway portion): Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

*Geese*

*Definitions:* In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

*Outside Dates:* September 28, 1985, through January 19, 1986, for dark geese and September 28, 1985, through February 16, 1986 (February 28, 1986, 1986, in New Mexico), for light geese.

*Possession Limits:* Goose possession limits are twice the daily bag limits.

*Hunting Seasons:* Seasons in States, and independently in described goose management units within States, may be as follows:

*Colorado:* No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

*Kansas:* For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 24 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

*Montana:* No more than 93 days with daily limits of 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway.

*Nebraska:* For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183 and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 8 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 17 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 17 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

*New Mexico:* For dark geese, no more than 93 days with a daily limit of 2.

For light geese, no more than 93 days with a daily limit of 5.

*North Dakota:* For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 3 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

*Oklahoma:* For Dark Goose Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177 to OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For Dark Goose Unit 2 (the remainder of Oklahoma), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

*South Dakota:* For dark geese in the Missouri River Unit (Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson, east of SD Highway 65, Dewey, Gregory, Haakon, north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth and Yankton west of U.S. Highway 81 Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 8 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily

limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

*Texas:* West of U.S. 81, no more than 93 days with a daily limit of 5 which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

*Wyoming:* For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

*Tundra Swans*

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

*Montana (Central Flyway portion):* no more than 500 permits with the season dates concurrent with the season for taking geese.

*North Dakota:* no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

*South Dakota:* no more than 500 permits with the season dates concurrent with the season for taking ducks.

**Pacific flyway**

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide) Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

*Ducks, Coots, Common Moorhens, and Common Snipe*

*Outside Dates:* Between October 8, 1985, and January 13, 1986.

*Hunting Seasons and Duck Limits (except the Columbia Basin):* Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted.

The basic daily bag limit is 5 ducks, including no more than: 3 mallards, including only 1 female mallard; 3 pintails, including only 1 female pintail; and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

*Hunting Seasons and Ducks Limits for the Columbia Basin Portions of Washington, Oregon, and Idaho:* Concurrent seasons on ducks, coots, and common snipe may be selected.

In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons must run concurrently but may differ from the remainder of their respective States. The season length and duck limits are the same as those for the Pacific Flyway, except as subsequently noted.

In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be 86 days and must run concurrently. The basic daily bag and possession limits for ducks are 5 and 10, respectively. No more than 1 female mallard and 1 female pintail may be taken daily and no more than 2 female mallards and 2 female pintails may be in possession. No more than 2 redheads or 2 canvasbacks or 1 of each may be taken daily and on more than 4 singly or in the aggregate may be in possession.

*Coot and Common Moorhen (Gallinule) Limits:* The daily bag and possession limit of coots and common moorhens in 25 singly or in the aggregate.

*Common Snipe Limits:* The daily bag and possession limit of common snipe is 8 and 16, respectively.

*California—Waterfowl Zones:* Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

*Nevada—Clark County Waterfowl Zone:* Season dates for Clark County may differ from those in the remainder of Nevada.

*Colorado, Montana, New Mexico and Wyoming—Common Snipe:* For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1985, and February 28, 1986, and need not be concurrent with the duck season.

*Geese (Including Brant)*

*Outside dates, season lengths and limits on geese (including brant):* Between September 28, 1985, and January 19, 1986, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). The basic daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 19 and November 29, 1985, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively.

*Aleutian Canada goose closure:* There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

*Cackling Canada goose closure:* There will be no open season on the cackling Canada geese in California, Oregon and Washington.

*Canada goose closures in California:* Three areas in California, described as follows, are restricted in the hunting of Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south of Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then

northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23.

*Western Oregon:* In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north of the Lane-Douglas county line, except for Sauvie Island in Columbia and Multnomah Counties, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the season in the Sauvie Island Wildlife Management Area must end upon attainment of the quota of 100 dusky Canada geese and the season in the remainder of Sauvie Island Must end upon attainment of the quota of 60 dusky Canada geese. Hunting of Canada geese on Sauvie Island shall only be by hunters possessing a state-issued permit authorizing them to do so.

*Oregon (Lake and Klamath Counties)—geese:* In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

*Columbia Basin Portions of Washington and Oregon—geese:* In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morow, Sherman, Umatille, Union, Wallowa and Wasco, the goose season may be of 100 days duration.

*Western Washington:* In the Washington counties of Island, Skagit, Snohomish, and Watcom, the season for snow geese may not extend beyond January 1, 1986. In Clark, Cowlitz, and Wahkiakum Counties, except for Ridgefield National Wildlife Refuges and lands to be designated by the State, there shall be no open season on Canada geese. For Ridgefield National Wildlife Refuge the season must end upon attainment of the quota of 20 dusky Canada geese. For lands to be designated by the state in Clark, Cowlitz, and Wahkiakum Counties, the season must end upon attainment of the quota of 20 dusky Canada geese. The season in permitted areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

*California (Northeastern Zone)—geese:* In the Northeastern Zone of California the season may be from October 12 to January 12, except that white-fronted geese may be taken only during October 12 to November 3. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

*California (Balance of the State Zone)—geese:* In the Balance of the State Zone the season may be from November 2 through January 19, except that white-fronted geese may be taken only during November 2 to January 5. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

*Pacific Population of Canada geese—Idaho, Oregon and Montana:* In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season for Canada geese may not extend beyond January 5, 1986.

*Rocky Mountain Population of Canada Geese—Montana and Wyoming:* In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 5, 1986. In Lincoln County, Wyoming, the combined special sandhill crane-Canada goose season and the regular goose season shall not exceed 93 days.

*Idaho, Colorado and Utah:* In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 5, 1986.

*Nevada:* Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese throughout the State.

*Arizona, California, Utah and New Mexico:* In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e., Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively

*Tundra Swans*

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) The season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

*Sandhill Cranes*

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

**Special Falconry Frameworks**

*Extended Seasons:* Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

*Framework Dates:* Seasons must fall within the regular and any special season framework dates.

*Daily Bag and Possession Limits:* Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

*Regulations Publication:* Each State selecting the special season must inform the Service of the season dates and publish said regulations.

*Regular Seasons:* General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

**Note.**—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: August 7, 1985.

**William P. Horn,**

*Asssistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85-19265 Filed 8-12-85; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 50, No. 156
Tuesday, August 13, 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

### Office of the Secretary

### Small Business Innovation Research Program for Fiscal Year 1986; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219) and section 1472 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318), the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Program. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program during Fiscal Year 1986 is approximately $1,300,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of December 2, 1985. The research to be supported is in the following topic areas:

1. Forests and Related Resources;
2. Plant Production and Protection;
3. Animal Production and Protection;
4. Air, Water, and Soils;
5. Food Science and Nutrition; and
6. Rural and Community Development.

The award of any grants under the provisions of the solicitation is subject to the availability of appropriations. All grants awarded will be administered in accordance with the USDA's "Uniform Federal Assistance Regulations" (7 CFR Part 3015), as amended. These regulations primarily consolidate internal policies and procedures relating to USDA's assistance programs and implement various Federally issued assistance policies including applicable Federal cost principles and uniform administrative requirements.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1985, or who have recently requested placement on the list for 1986, will automatically receive a copy of the 1986 solicitation: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 010, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, D.C. 20251, Telephone: (202) 475–5048.

Done at Washington, D.C., this 6th day of August, 1985.

**John Patrick Jordan,**

*Acting Administrator, Office of Grants and Program Systems.*

[FR Doc. 85–19240 Filed 8–12–85; 8:45 am]

BILLING CODE 3410-MT-M

### Soil Conservation Service

### Barrow County Board of Education, Critical Area Treatment Measure, Georgia

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Barrown County Board of Education Critical Area Treatment Measure, Barrow County, Georgia.

**FOR FURTHER INFORMATION CONTACT:** B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for the treatment of critically eroding school ground areas. The planned works as described in the Finding of No Significant Impact consist of the establishment of erosion control measures on 4.5 acres.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901 Resource Conservation and Development Program–Public Law 87–703 16 U.S.C. 590 a-f,q. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 6, 1985.

**B.C. Gramm,**

*State Conservationist.*

[FR Doc. 85–19237 Filed 8–12–85; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA
Title: Federal Fisheries Permit—Amendment 4
Form Number: Agency—N/A; OMB—0648–0097
Type of Request: Revision of a currently approved collection
Burden: +20 respondents; +4 reporting hours
Needs and Uses: Notification by permit holders is required when entering surf clam regulatory areas (notification zones) for enforcement and tracking purposes
Affected Public: Individuals or households, business or other for-profit, small businesses or organizations
Frequency: On occasion; annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 7, 1985.

Edward Michals,

*Departmental Clearance Officer.*

[FR Doc. 85–19241 Filed 8–12–85; 8:45 am]

BILLING CODE 3510-CW-M

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## International Trade Administration

[A–580–001]

### Certain Steel Wire Nails From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping 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 Antidumping 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 antidumping duty order on certain steel wire nails from Korea. The review covers the period from October 1, 1984. The domestic interested parties in this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the domestic interested parties' notification, the revocation will apply to all steel wire nails exported 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:** Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255/3601.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 13, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 35266–67) an antidumping duty order on certain steel wire nails from Korea.

In a letter dated July 16, 1985, Atlantic Steel Company, Florida Wire and Nail Company, and Virginia Wire and Fabric Company, domestic interested parties in this proceeding, informed the Department that they were no longer interested in the order and stated their support for revocation of the order.

Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

#### Scope of the Review

Imports covered by the review are shipments of certain steel wire nails, currently classifiable under items 646.2500, 646.2622, 646.2624, 646.2626, 646.2628, 646.2642, 646.2644, 646.2646, and 646.2648 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 statement of no interest in continuation of the antidumping duty order on certain steel wire nails from Korea provides a reasonable basis for revocation of the order. Therefore, we tentatively determine to revoke the order on certain steel wire nails from Korea effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of certain steel wire nails from Korea which were exported prior to October 1, 1984. 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 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 on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative 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 §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

*Acting Deputy Assistant Secretary for Import Administration.*

August 2, 1985.

[FR Doc. 85–19160 Filed 8–12–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-502]

## Certain Circular Welded Carbon Steel Line Pipe From Venezuela; Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain circular welded carbon steel line pipe (line pipe) from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by October 21, 1985.

**EFFECTIVE DATE:** August 13, 1985.

**FOR FURTHER INFORMATION CONTACT:** Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; Telephone: (202) 377-2830.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

Based upon our investigation, we preliminarily determine that line pipe from Venezuela is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-averaged margin of sales at less than fair value to be 55.7 percent.

If this investigation proceeds normally, we will make a final determination by October 21, 1985.

### Case History

On February 28, 1985, we received a petition filed on behalf of the Committee on Pipe and Tube Imports (CPTI), its subcommittees on standard and line pipe, and the companies which are members of those subcommittees with respect to certain welded carbon steel pipes and tubes. By amendments dated March 12 and 14, 1985, petitioners clarified that the petition was being filed on behalf of the line pipe subcommittee of the CPTI and by some of the individual manufacturers who were members of the subcommittee. Petitioners also withdrew the portion of the petition dealing with standard pipe since it was the subject of an ongoing investigation. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of line pipe from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure or threaten injury to a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on March 20, 1985 (50 FR 12067). On April 15, 1985, the ITC determined that there is a reasonable indication that imports of line pipe are materially injuring a U.S. industry.

On April 8, 1985, a questionnaire was sent to C.A. Conduven. Upon respondent's request we extended the May 15, 1985 due date to May 29 and then again to June 3, 1985. On June 17, 1985, the respondent advised the Department that the Government of Venezuela had entered into a voluntary restraint agreement whereby it would limit the volume of imports of this product and, therefore, the respondent would not be responding to the Department's questionnaire.

### Scope of Investigation

The merchandise covered by this investigation is circular welded carbon steel line pipe with an outsider diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, as currently provided for in items 610.3208 and 610.3209 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Because Conduven accounted for substantially all of the exports of this merchandise to the United States during the September 1, 1984 through February 28, 1985 period of investigation, we limited our investigation to that firm.

### Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act for the reasons explained in the "Case History" section of this notice.

### United States Price

We calculated the purchase price of line pipe, as provided in section 772 of the Act, on the basis of average customs value for the period of investigation, as reported by the Bureau of Census IM145. We used these data as the best information available instead of those provided in the petition in order to obtain a representative figure for the total period of investigation, since petitioners provided United States price information for only one month during the period of investigation.

### Foreign Market Value

We calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was home market pricing information provided in the petition which listed prices for various sizes of API line pipe. These prices were converted to U.S. dollars using the September 1984 quarterly rate certified by the Federal Reserve Bank.

### Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of line pipe from Venezuela that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 55.7 percent of the FOB Venezuelan port value. This suspension of liqudation will remain in effect until further notice.

### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided that ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy

Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

**Public Comment**

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on September 13, 1985, at the U.S. Department of Commerce, Room 5611, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, adddress, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 6, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

**Gilbert B. Kaplan,**

*Acting Deputy Assistant Secretary for Import Administration.*

August 7, 1985.

[FR Doc. 85-19242 Filed 8-12-85; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to Aloha Marketing Services, Inc. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

All products and services.

*Export Trade Facilitation Services (as they relate to the export of Goods and Services)*

Consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communications and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Members*

Merle Martin, Kailua-Kona, Hawaii.

*Export Trade Activities and Methods of Operation*

1. Aloha may enter into agreements with individual U.S. producers of goods and services wherein:

a. The producer grants Aloha the exclusive right to market the producer's products and services in the Export Markets.

b. The producer agrees that it will sell its products in the Export Markets only to overseas distributors designated by Aloha.

c. The term of the contract shall be for up to ten (10) years unless earlier terminated, and shall continue for up to an additional ten (10) years upon the agreement of the parties.

d. Aloha reserves to itself the right to determine (1) territories and distribution methods of the overseas distributors, (2) which distributors shall be entitled to market particular products and services, and (3) whether or not to continue any distributorship.

e. The producer expresely agrees not to make any sales to the Export Markets to a third party who is no longer a part of Aloha's overseas distributor network, for a period of up to ten (10) years from the expiration of the producer's agreement with Aloha.

2. Aloha may enter into agreements with individual distributors for the sale of products and services in the Export Markets, wherein:

a. Aloha grants to the distributor the exclusive right to sell prescribed goods and services within a prescribed territory or territories in the Export Markets.

b. The distributor agrees to pay Aloha a basic license fee and a monthly commission equal to a percentage of sales.

c. The distributor agrees not to sell, directly or indirectly, any similar product or service in the Export Markets without the prior written consent of Aloha.

d. The distributor agrees not to sell similar products or services outside of the prescribed territory or territories in the Export Markets without the prior written consent of Aloha.

e. Aloha agrees not to grant a license for the sale of the products or services, for the prescribed territory or territories and while the contract remains in effect, to anyone except the distributor.

3. Aloha may enter into agreements with individual contractors, whereby the contractor agrees not to use its best efforts to obtain procedures who will enter into export marketing agreements with Aloha, wherein:

a. The contractor agrees not to engage in any export-related activity in competition with Aloha.

b. The contractor agrees not to sell, distribute, or market the products or services (or any substantially similar products or services) of any producer whom the contractor has contacted concerning an export marketing agreements with Aloha, during the term of the contractor's agreement with Aloha and for up to two (2) years after its termination.

c. The contractor agrees to keep confidential and not to disclose Aloha's

customer list and contacts during the term of the contractor's agreement with Aloha and for up to two (2) years after its termination.

d. Aloha retains the right to enter into an agreement with more than one contractor for any geographic area.

e. The contractor agrees not to contact customers or contacts referred by Aloha to the contractor for up to two (2) years after the termination of the contractor's agreement with Aloha.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: August 8, 1985.

James V. Lacy,

*Director, Office of Export Trading, Company Affairs.*

[FR Doc. 85-19223 Filed 8-12-85; 8:45 am]

BILLING CODE 3510-DR-M

## National Bureau of Standards

[Docket No. 50703-5103]

## Proposed Federal Information Processing Standard 104-1, American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice of Proposed Federal Information Processing Standard 104-1.

**SUMMARY:** The purpose of this notice is to announce a proposed Federal Information Processing Standard (FIPS) 104-1 entitled "American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange," which implements American National Standard, ANSI Z39.27-1984, Structure for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange. ANSI Z39-27-1984 adopts, with qualifications, the entities, names, and codes prescribed by ISO 3166, a standard of the International Organization for Standardization (ISO). Proposed FIPS 104-1 is a revision to FIPS 104 which was published as a guideline.

FIPS 104-1 is to be classified as a Federal Program Standard under Title 15, Part 6.5(d), Code of Federal Regulations. The standard is intended for use in international trade applications.

Prior to the submission of this proposal to the Secretary for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two basic sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice. Interested parties may obtain a copy of the technical specifications from the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

**DATE:** Comments and proposals must be submitted on or before November 12, 1985.

**ADDRESS:** Written comments on this proposed FIPS or any alternative proposals should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, ATTN: Proposed FIPS 104-1.

Written comments and proposals received in response to this notice will be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy G. Saltman, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3491.

Dated: August 7, 1985.

Ernest Ambler,

*Director.*

**Federal Information Processing Standards Publication 104-1**

1985 Month Day

*Announcing the Standard for American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

*1. Name of Standard:* American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange.

*2. Category of Standard:* Federal Program Data Standard, Representations and Codes.

A Federal Program Standard is intended for use in a particular program or mission where more than one executive branch department or independent agency is involved with its use. This standard is intended for use in activities concerned with international trade that do not involve the U.S. Department of State or national defense programs.

*3. Explanation:* This Standard implements American National Standard, ANSI Z39.27-1984, Structure for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange. ANSI Z39.27-1984 adopts, with qualifications, the entities, names, and codes prescribed by ISO 3166, a standard of the International Organization for Standardization (ISO).

*4. Approving Authority:* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

*5. Maintenance Agency:* The National Bureau of Standards serves as the maintenance agency for ANSI Z39.27-1984, in coordination with the U.S. Department of State, the U.S. Board on Geograhic Names, and the maintenance agency for ISO 3166. Inquiries concerning the technical content of this publication should be addressed to: Data Administration Group, Information Systems Engineering Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

Change notices to this FIPS PUB will be issued by the National Bureau of Standards. Users who wish to receive such notices should complete the Change Request Form included in this FIPS PUB and return it to the address indicated.

*6. Cross Index:*

a. International Standard ISO 3166: Codes for the Representation of Names of Countries, Second edition—1981-05-15.

b. American National Standard ANSI Z39.27-1984: Structure for the

Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange.

c. Names of Political Entities of the World (Names Approved by the U.S. Board on Geograhic Names as of August 1, 1983), Defense Mapping Agency, Washington, DC 20305; Stock No. GAZGNFORNMPEW1.

d. Federal Information Processing Standards Publication (FIPS PUB) 10–3: Countries, Dependencies, and Areas of Special Sovereignty, and Their Principal Administrative Divisions.

*7. Applicability:* This implementation of ANSI Z39.27–1984 supersedes National Bureau of Standards FIPS PUB 104 of September, 1983. It is made available for general use, except that it does not supersede or replace FIPS PUB 10–3. That FIPS PUB provides an alternate set of codes maintained by the U.S. Department of State, Office of the Geographer, for use in that department and in national defense programs.

*8. Implementation Schedule:* The specifications herein become effective upon publication. Use by Federal agencies is encouraged in applications requiring data interchange with international organizations that have adopted the ISO 3166 codes, and in applications involved with international trade. Agencies not involved with international trade, the Department of State, or national defense programs should adopt either FIPS 10–3 or this FIPS PUB, whichever is most efficient for data interchange and use of data resources.

*9. Specifications:* Federal Information Processing Standards Publication 104–1 (FIPS PUB 104–1), American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange (affixed).

*10. Where to Obtain Copies of This Standard and Related Standards:* Copies of this publication are available for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161; order desk telephone: (703) 487–4650. When ordering, refer to Federal Information Processing Standards Publication 104–1 (FIPS PUB 104–1) and title. When microfiche is desired, this should be specified. The entity names and corresponding codes are available also on magnetic tape.

Copies of other FIPS PUBS are also available from the National Technical Information Service.

Coies of ANSI Z39.27–1984 and ISO 3166 may be obtained from: American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

[FR Doc. 85–19159 Filed 8–12–85; 8:45 am]
BILLING CODE 3510–13–M

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[Docket No. 50600–5100]

## Proposed Federal Information Processing Standard for the Information Resource Dictionary System (IRDS)

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice of Proposed Federal Information Processing Standard.

**SUMMARY:** The purpose of this notice is to announce a proposed Federal Information Processing Standard (FIPS) for Information Resource Dictionary System (IRDS). This proposed standard will adopt the draft proposed American National Standard (dpANS) for the IRDS, which is a voluntary industry standard developed by the American National Standards Institute (ANSI), and currently undergoing public review.

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed Federal Information Processing Standard contains two sections: (1) An announcement section, that provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section (the draft proposed American National Standard IRDS), which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice. Interested parties may obtain a copy of the technical specifications from X3 Secretariat, CBEMA, 311 First Street, NW., Suite 500, Washington, D.C. 20001, (202) 737–8888.

**DATE:** Comments must be submitted on or before November 12, 1985.

**ADDRESS:** Written comments on this proposed standard should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Proposed FIPS IRDS.

Written comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Patricia Konig or Dr. Alan Goldfine, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 921–3491.

Dated: August 7, 1985.

**Ernest Ambler,**

*Director.*

**Federal Information Processing Standards Publication——**

(date)

*Announcing the Standard for the Information Resource Dictionary System*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

*Name of Standard.* Information Resource Dictionary System (IRDS) (FIPS PUB ——).

*Category of Standard.* Software Standard, Data Management Applications.

*Explanation.* This standard announced the adoption of the (draft proposed) American National Standard Information Resource Dictionary System (IRDS) as a Federal Information Processing Standard (FIPS). The IRDS specifies a computer software system that provides facilities for recording, storing, and processing descriptions of an organization's significant data and data processing resources. The IRDS includes the functions traditionally performed by data dictionary systems. The purpose of this standard is to promote portability of valuable information resources that can be used by users within an agency or shared with other agencies. This standard is for use by implementors as the reference authority in developing information resource dictionary systems, and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

*Approving Authority.* Secretary of Commerce.

*Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

*Related Documents.*

a. ISO 8211, "Specification for a Data Descriptive File for Information Interchange."

b. (draft proposed) American National Standard Database Language NDL.

c. (draft proposed) American National Standard Database Language NQL.

d. National Bureau of Standards IR 85–3164, "A Technical Overview of the Information Resource Dictionary System."

e. National Bureau of Standards IR 85–3165, "The Information Resource Dictionary System Command Language."

*Objectives.* The primary objectives of this standard are:

a. To improve identification of existing, valuable information resources that can be used by others in the same organization or shared with other organizations.

b. To help reduce unnecessary development of computer programs when suitable programs exist.

c. To simplify software and data conversion through the provision of consistent documentation.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

*Applicability.* This Federal Information Processing Standard is intended for use in information resource management applications that are either developed or acquired for Government use. Such applications include:

a. Development, modification, and maintenance of manual and automated systems throughout their life cycle.

b. Support to an agency-defined data element standardization program.

c. Support to records, reports and forms management, spanning the range from non-automated to fully-automated environments.

*Specifications.* This standard adopts (draft proposed) American National Standard Information Resource Dictionary System (IRDS). This document defines the scope of the specifications, the syntax and semantics of the IRDS Command Language, the semantics of the IRDS Panel Interface, and requirements for a conforming implementation.

*Implementation.* This standard becomes effective upon publication in the Federal Register of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce. Information resource dictionary systems (or data dictionary systems) acquired for Federal use after this date should conform to the FIPS IRDS. Implementation of this FIPS applies when IRDS software is developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce information resource dictionary systems conforming to the standard. The transition period begins on the effective date and continues for eighteen (18) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, an information resource dictionary system not conforming to the FIPS IRDS may be acquired for interim use during the transition period.

*Interpretation of the FIPS IRDS.* Resolution of questions regarding the implementation and applicability of this FIPS will be provided by NBS. These questions, and all others concerning the technical content and specifications of the IRDS, should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: FIPS IRDS, National Bureau of Standards, Gaithersburg, MD 20899.

*Validation of IRDS Implementations.* A suite of automated validation tests for IRDS implementations is currently under development. The suite will be made available when it is completed.

*Waivers.* Under certain exceptional circumstances, the head of the agency is authorized to waive the application of the provisions of this FIPS PUB. Exceptional circumstances which would warrant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 85–19192 Filed 8–12–85; 8:45 am]
BILLING CODE 3510–13–M

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## National Oceanic and Atmospheric Administration

### Endangered Species; Proposed Permit Modification No. 2; Harold M. Brundage III

Notice is hereby given that Mr. Harold M. Brundage III (P298), Ichthyological Associates, Inc., 100 South Cass Street, Middletown, Delaware 19709, has requested a modification to Permit No. 374 issued on March 24, 1982 (47 FR 13399), as modified on February 11, 1983 (48 FR 6381), under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered species permits (50 CFR Parts 217 and 222).

The Permit Holder is requesting to increase the authorized number of adult shortnose sturgeon that can be radio-tagged each year from 20 to 50.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service,

Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: August 7, 1985.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation.*

[FR Doc. 85-19259 Filed 8-12-85; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Issuance of Permit; Michael Hunt

On May 9, 1985, notice was published in the **Federal Register** (50 FR 19563) that an application had been filed by Mr. Michael Hunt, Box 22, Department of Human Sciences, University of Houston-Clear Lake, Houston, Texas 77058-1058 for a Permit to take an unspecified number of Atlantic bottlenose dolphins (Tursiops truncatus) by harassment for the purpose of scientific research.

Notice is hereby given that on July 31, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 7, 1985.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 85-19212 Filed 8-12-85; 8:45 am]

BILLING CODE 3510-22-M

# DEPARTMENT OF DEFENSE

## Office of the Secretary

## Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

DoD FAR Supplements Part 46, Related Clauses in Part 52.246 and Related Forms.

Information principally concerns certain data required quality assurance effort primarily with respect to Defense Logistics Agency requirements.

Reporting is requried to assure the quality of the items being acquired.

Businesses or others for profit/small businesses or organizations.

Responses: 160

Number of Recordkeepers: 700

Burden Hours: 14,160.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301-3060, telephone (202) 697-8334. This is a revision of an existing collection.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 7, 1985.

[FR Doc. 85-19231 Filed 8-12-85; 8:45 am]

BILLING CODE 3810-01-M

## Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

DoD FAR Supplements Part 15, Related Clauses in Part 52.215 and Related Forms.

Information principally concerns certain data required to enable evaluation of contractors' offers under the negotiated method of contracting.

Reporting is required to obtain cost or price information, information on subcontracting, and various information required to support the acquisition of petroleum products and coal.

Businesses or others for profit/small businesses or organizations.

Responses: 199,100.

Burden Hours: 878,000.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301-3060, telephone (202) 697-8334. This is a revision of an existing collection.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 7, 1985.

[FR Doc. 85-19232 Filed 8-12-85; 8:45 am]

BILLING CODE 3810-01-M

## Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of

respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

**Reinstatement**

Former Spouse Payment from Retired Pay; DD Form 2293

DD Form 2293 is used to apply for former spouse payments from retired pay in accordance with 32 CFR Part 63. The use of this form is optional. However, an application for payment under 32 CFR Part 63 will not be honored without the information requested in the form. The public information collection requirements have not been changed or modified in this reinstatement. DD Form 2293 has been revised to more clearly state the degree of disclosure of military retired pay information made to the former spouse with an approved application.

Former Spouses of members retired from the Uniformed Services.

Responses 3,000
Burden hours 3,000.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. James T. Jasinski, OASD(C)MS, Room 3A882, The Pentagon, Washington, DC 20301, telephone (202) 697–0536.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 8, 1985.

[FR Doc. 85–19228 Filed 8–12–85; 8:45 am]

BILLING CODE 3810–01–M

## Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

DOD FAR Supplements Part 37, Related Clauses in Part 52.237 and Related Forms.

Information concerns certain data required to process service contracts such as those mortuary and communications services.

Reporting is required to obtain information necessary to award and administer service contracts.

Reports do not cover matters required by the Service Contract Act.

Businesses or others for profit/small businesses or organizations.

Responses: 29,071.
Burden Hours: 72,677.

**ADDRESS:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301–3060, telephone (202) 697–8334. This is a revision of an existing collection.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 7, 1985.

[FR Doc. 85–19229 Filed 8–12–85; 8:45 am]

BILLING CODE 3810–01–M

## Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6 ) An estimate of the total number of hours needed to providde the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

DoD FAR Supplements Part 10, Related Clauses in Part 52.210 and Related Forms.

Information principally concerns certain data required to enable evaluation of "or equal" items offered in response to brand name or equal solicitations and bills of material for production maintenance purposes.

Reporting is required for bid evaluation purposes and production maintenance purposes.

Businesses or other for profit/small businesses or organizations.

Responses: 300
Burden Hours: 900

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE (AM) CP, Room 3D116, Pentagon, Washington, D.C. 20301–3060, telephone (202) 697–8334. This is a revision of an existing collection.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 7, 1985.

[FR Doc. 85–19230 Filed 8–12–85; 8:45 am]

BILLING CODE 3810–01–M

## Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 1:00 pm–5:00 pm on 12 September 1985 and 8:00 pm–5:00 pm on 13 September 1985 at the Shelter Island Marina Inn; 2051 Shelter Island Drive;

San Diego, California 92106. Meeting sessions will be open to the public.

The purpose of the meeting is to review the development of DoD's computerized adaptive testing (CAT) system scheduled for nationwide implementation as the operation military selection and classification test. The next Committee meeting will also be discussed.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, D.C. 20301–4000, telephone (202) 697–9271 no later than 30 August 1985.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 7, 1985.

[FR Doc. 85–19234 Filed 8–12–85 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF EDUCATION

### National Advisory Board on International Education Programs; Meeting

**AGENCY:** National Advisory Board on International Education Programs, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

**DATES:** September 17, 18, 1985.

**ADDRESS:** Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, D.C. (Lafayette Room)

**FOR FURTHER INFORMATION CONTACT:** Harry M. Gardner, Postsecondary Relations Staff, ROB–3, Room 3907, 400 Maryland Avenue SW., Washington, D.C. 20202 (202)/245–9700).

**SUPPLEMENTARY INFORMATION:** The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a discussion of the Current Developments in Modern Language Teaching. In addition, a report from the Director, Center for International Education and overviews of activities and operations of the Office of Postsecondary Education will be presented.

The meeting will be held from 9:00 a.m. to 4:30 p.m., the 17th of September in the Lafayette Room of Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, D.C. The Board members will visit the School of Advanced International Studies, the Johns Hopkins University, 1740 Massachusetts Avenue NW., Washington, D.C. on September 18.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets SW., Room 3907, Washington, D.C.

Signed at Washington, D.C., on August 8, 1985.

**Kenneth D. Whitehead,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 85–19203 Filed 8–12–85; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

**[Case No. WH–003]**

### Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Ford Products Corp.

**AGENCY:** Conservation and Renewable Energy Office, Department of Energy.

**SUMMARY:** Today's notice publishes a "Petition for Waiver" from Ford Products, Corporation (Ford) a water heater manufacturer of Valley Cottage, New York, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. The petition requests DOE to grant Ford relief from the DOE test procedure for water heaters for its CF and FG model series oil-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

**DATE:** DOE will accept comments, data and information not later than September 12, 1985.

**ADDRESSES:** Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–003, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513

**Background**

The Energy Conservation Program for Consumer Products was established pursuant to the Energy policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling

Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of water heaters to disclose on an Energy Guide label on each unit to assist consumers in making a purchasing decision.

Ford filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its CF and FG model series oil-fired water heater. Ford believes the inaccurate estimates result from the unrealistically low value of recovery efficiency determined in the DOE test procedure for these models. Ford attributes the lower recovery efficiency value obtained from the DOE test procedure for these water heater models to the inappropriateness of the DOE "cold start" recovery efficiency test methodology for evaluating the recovery efficiency of oil water heaters.

To determine the recovery efficiency of electric, gas-fired and oil-fired storage water heaters, the DOE test procedure requires that the mass of a water heater plus the water in its tank be in thermal equilibrium at a temperature of 70 °F at the beginning of the test. The water hearter then heats the tank of water through a 90 °F temperature rise (i.e. to 160 °F). The amount of energy consumed by the water heater is measured directly. Recovery efficiency is computed as the quantity of heat energy imparted to the water in the tank divided by the measured energy consumption of the water heater.

Ford offers that a "warm start" test described in the petition would correct this inaccuracy, and therefore should be granted.

In addition to comments for or against DOE granting Ford's request for a waiver, DOE invites comments on the efficacy of the alternative test methodology identified by Ford or of any other test methodology which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., August 2, 1985.

**Donna R. Fitzpatrick,**

*Acting Assistant Secretary, Conservation and Renewable Energy.*

June 25, 1985.

Department of Energy

*Office of Conservation & Renewable Energy, Test Procedures for Consumer Products, Mail Station CE-112, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. 20585*

Subject: A Petition for Waiver

Reference: Your Case #WH-002, OHA Case #HEL-0126

Gentlemen: This correspondence is our Petition for Waiver to correct difficulties we have with the D.O.E. Water Heater Test Procedures.

We have in hand a copy of the Decision and Order of the Department of Energy, concerning the Application for Temporary Exception by Bock Water Heaters, Inc., Case #HEL-0126.

We call your attention to our letter to you dated April 3, 1985, where we spell out Ford's definitions of "cold," "warm," and "hot" start recovery efficiency tests. Note that what Bock calls a "warm" start (which is the exception granted), and what Ford calls a "warm" start, are NOT the same test.

The following analysis should serve to show why the "warm" start, which we have proposed, is correct whereas the "hot" start, which has been granted to Bock, is not.

Analysis

Recovery Efficiency Tests

Warm Versus Hot Starts

The mass in a typical 32 gallon oil water heater consists of steel, refractory and insulation amounting to, perhaps, 265 pounds. Of this amount, 115 pounds is steel in direct contact with the stored water (i.e. the tank itself). This steel, in normal operation, is at water temperature. Bringing this steel from 70 to 160 degrees F. represents a charge of 1,200 BTU's which is stored permanently in the heater at its first firing.

As draws and burner firings occur, this steel temperature is dropped from, and returned to, 160 degrees, but the 1,200 BTU charge remains in the system permanently.

In order to measure recovery efficiency without including this permanent 1,200 BTU charge, Ford has devised a "warm" start test which is identical to the D.O.E. procedure, with the following exception:

We start with the empty 115 pound tank at 160 degrees F. The remaining 150 pounds of water heater mass is at a temperature between 160 degrees F. and 70 degrees F., i.e. standby condition. Inlet water temperature is measured at the fill connection every fifteen seconds. These readings are averaged to establish the "start" temperature of the recovery efficiency test.

It is *critical* to note here how this 160 degree empty tank temperature is established.

The water heater is previously filled, then fired until cutout and *allowed to stand until the tank water temperature reaches its maximum.* The tank is then emptied and the filling can begin.

We say this is "critical" because it is exactly this which is the difference between a "hot" start and a "warm" start.

In the "hot" start test granted to Bock, they are allowed to empty the tank immediately after cutout. The 150 pounds of water heater mass which is *not* in contact with water is, at that moment, at various temperatures up to 2,000 degrees F. This represents a charge of heat which is not normally resident in the water heater. To estimate the amount of this charge, note that in any oil water heater recovery test, the water temperature rises between five and 10 degrees after cutout. In a 32 gallon unit, this represents 1,320 to 2,640 BTU's.

Bock, thus, has a head start in the recovery test of perhaps 2,460 BTU's, because they do not have to bring the "non-contact" mass up to operating temperatures at the beginning of their test and yet are allowed to let these temperatures subside at the end.

We believe that the Bock model #32E, and our own CF models, will improve their recovery efficiencies by two points under the "warm" start procedure outlined above and, therefore, Petition that we be allowed to test by that procedure.

We also believe that our FG series heater will improve by four or five percentage points under this method and, therefore, Petition that it also be included.

Furthermore, we believe that any Waiver, Exception or Temporary Exception granted to Bock should be based upon what we have described as a "warm" start test and that what we have described as a "hot" start, should be specifically prohibited.

If Bock is allowed a Waiver based upon their current Temporary Exception, which allows a "hot" start, we must insist upon being granted the same waiver.

We also advise you that we wish this letter to serve as both our own Petition for Waiver and as our further comments to Bock's Petition, you case #WH-002.

Lastly, we advise you that, as separate mailings, we are forwarding this letter also to the Office of Hearings and Appeals as our Application for Exception and as our comments to Bock's matching Applications (OHA case #HEL-0126).

We thank you for your attention in these matters.

Very truly yours,

Ford Products Corporation.

George C. Fanelli, P.E.,

*Chief Engineer.*

[FR Doc. 85-19187 Filed 8-12-85; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 85-13-NG]**

## Natural Gas Imports; Texas Eastern Transmission Corp.; Application To Amend Import Authorization

*Correction*

In FR Doc. 85-18322 beginning on page 31224 in the issue of Thursday, August 1, 1985, the docket number should read as set forth above.

BILLING CODE 1505-01-M

## Federal Energy Regulatory Commission

[Docket Nos. CP82-119-015, et al.]

## Algonquin Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Algonquin Gas Transmission Company

[Docket No. CP82-119-015]

August 7, 1985.

Take notice that on July 16, 1985, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket NO. CP82-119-015 an amendment to its application filed in Docket No. CP82-119-000 for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, all as more fully described in the amendment on file with the Commission and open to public inspection.

By this amendment, Applicant withdraws its request for authorization to construct 3.5 miles of pipeline loop in New Jersey. Such facilities are said to have been authorized by order of February 2, 1984, in Docket No. CP82-119-004, *et al.*, to permit Applicant to render a limited-term firm transportation service under Rate Schedule T-CON. Subsequently, Applicant notes, the Commission deferred, in an order in Docket No. CP82-119-007, *et al.*, the construction of this loop because of a limited-term exchange agreement that permitted the service to be rendered at less cost.

In the interim, Applicant states, it has applied for authority to render additional firm sales services in Docket No. CP84-654-001 and would need to construct facilities including the 3.5 miles of pipeline loop previously authorized to render such services. Withdrawal of the request in this docket for authority to build 3.5 miles of pipeline loop no longer needed in this docket would permit the Commission to consider authorization of those facilities in Docket No. CP84-654-001, Applicant states.

Comment date: August 27, 1985, in accordance with the first subparagarph of Standard Paragraph F at the end of this notice.

### 2. Algonquin Gas Transmission Company

[Dockt No. CP85-707-000]

August 7, 1985.

Take notice that on July 15, 1985, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP85-707-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment and sale of facilities to Connecticut Natural Gas Corporation (Connecticut Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to abandon and sell to Connecticut Natural a portion of its existing M-2 pipeline system consisting of approximately 14,202 feet of 8⅝-inch pipeline located near Farmington, Connecticut. Connecticut Natural, a distribution customer of Algonquin, would intergrate the subject facilities into the overall operation of its distribution system. It is asserted that the facilities would provide the distribution system with additional operational flexibility and economic service to Connecticut Natural's customers. Algonguin states that Connecticut Natural would pay at closing the net book cost of the facilities to be transferred. The net book cost of the subject facilities on April 30, 1985, was $30,645.06, it is asserted Algonquin further states that the proposed abandonment and sale of these facilites would not entrail any abandonment of service an the effect on its remaining system would be *de minimis*.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

### 3. ANR Pipeline Company

[Docket NO. CP85-714-001]

August 7, 1985.

Take notice that on July 17, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-714-001 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to transport natural gas for Bethlehem Steel Corporation (Bethlehem), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transport on a best-efforts basis up to 25,000 dt equivalent of natural gas per day for Bethlehem pursuant to a transportation agreement dated May 3, 1985, among ANR, Bethlehem and Caliche Pipeline Company (Caliche). ANR proposes to commence, under the authorization sought in Docket No. CP85-714-001, the transportation service on November 1, 1985, following the termination of service under its blanket certificate authorization (sought in Docket No. CP85-714-000) for the same transportation service as applied for herein, for a period extending to December 31, 1986.

ANR states the gas to be transported would be purchased by Bethlehem, for use in its Burns Harbor, Indiana, steel mill, pursuant to a gas purchase contract dated April 30, 1985, with Caliche whereby it would sell up to a daily quantity of 25,000 dt equivalent of natural gas at an initial price of $2.25 per million Btu. Caliche would tender the gas for the account of Bethlehem at various points of interconnection of the pipeline systems of ANR and Caliche in Oklahoma and Texas. ANR would redeliver the gas, less 2.0 percent for fuel use and unaccounted-for gas losses, to Natural Gas Pipeline Company of America (NGPL) for Bethlehem's account at the interconnection of NGPL and ANR in Beaver County, Oklahoma. ANR indicates that NGPL and Northern Indiana Public Service Company (NIPSCo) would provide transportation services to accomplish delivery of the gas to Bethlehem's Burns Harbor facility.

ANR states that Bethlehem would pay 6.8 cents per dt equivalent for all gas transported as provided by ANR's Rate Schedule EUT-1 and calculated upon a haul distance of 109 miles and 3.6 cents per 100 miles. ANR states that it requires no new facilities to provide the transportation service. It is indicated that Bethlehem is a qualified end-user and that the gas will be used in blast furnaces, boilers and reheat furnaces that have alternative fuel capability.

ANR also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Bethlehem. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. ANR would file a report providing certain information with regard to the additional or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

### 4. Carnegie Natural Gas Company

[Docket No. CP85-735-000]

August 7, 1985.

Take notice that on July 25, 1985, Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in

Docket No. CP85–735–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the delivery of natural gas for sale to United States Steel Corporation (U.S. Steel) and Tenn-U.S.S. Chemical Company (U.S.S. Chemical), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into contracts with U.S. Steel and U.S.S. Chemical to deliver a total of up to 13,000 dt equivalent of natural gas per day to their respective plant locations in Baytown and Pasadena, Texas, for a period from September 1, 1985, through January 1, 1987. This gas would be purchased from Marathon Oil Company (Marathon) and transported on behalf of Applicant by ANR Pipeline Company (ANR), Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Channel Industries Gas Company (Channel). Applicant would take delivery at Marathon's Eugene Island Block 159 "B" platform, offshore Louisiana, where ANR would gather the gas for Applicant. ANR would then transport the gas to the tailgate of the Lowry Plant in Cameron Parish, Louisiana, where it would be delivered to Tennessee. Tennessee would then transport and deliver the gas to Channel at the interconnection of its pipeline with that of Channel at Sabine, Newton County, Texas. Channel would then deliver the gas to Applicant at Baytown and Pasadena, Texas.

U.S. Steel and U.S.S. Chemical would initially pay Applicant approximately $2.279 per dt which would be based on the spot market price of gas in Vinton, Louisiana. Subsequent deliveries would be adjusted by adding $.10 to the posted price, subtracting the transportation cost from the point of receipt by Applicant to Vinton, and adding the cost of transportation from Applicant's point of receipt to the final delivery points of Baytown and Pasadena.

Applicant states the cost of the new meter stations required at the two delivery points would be approximately $200,000, to be financed with cash on hand.

Comment date: August 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

**5. Locust Ridge Gas Company**

[Docket No. CP85–728–000]

August 7, 1985.

Take notice that on July 22, 1985, Locust Ridge Gas Company (Applicant), 3400 West Marshall Avenue, Suite 201, Longview, Texas 75608, filed in Docket No. CP85–728–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 6,750 Mcf of natural gas per day for Southern on an interruptible basis. Applicant would receive the gas from Southern in Jefferson County, Mississippi, and transport and deliver it to ANR Pipeline Company in Tensas Parish, Louisiana. Applicant proposes to charge Southern 45.34 cents per million Btu for this transportation service.

It is claimed that the proposed transportation service would provide Southern with a means of transporting an additional supply of natural gas without the construction of duplicative facilities.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**6. Northern Natural Gas Company, Division of InterNorth, Inc.**

[Docket No. CP85–720–000]

August 7, 1985.

Take notice that on July 18, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–720–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment and removal of one 810 h.p. compressor unit at its McConnell gathering station in Carson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to declining gas production, one 810 h.p. compressor unit is no longer needed at the McConnell gathering station, since the current production can be gathered and compressed by the other three compressor units at the station.

Northern proposes to use the abandoned compressor elsewhere on its system or to sell it.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**7. Northern Natural Gas Company, Division of InterNorth, Inc.**

[Docket No. CP85–721–000]

August 7, 1985.

Take notice that on July 18, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–721–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to increase and realign the firm entitlement of its utility customer, Circle-Hutch Utility Board (Circle-Hutch), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant is presently authorized to sell to Circle-Hutch 4,373 Mcf of gas per day (Mcfd) of contract demand and 2,700 Mcfd of seasonal service as authorized on July 29, 1983, in Docket No. CP82–500–001.[1] It is further stated that of these authorized volumes, 873 Mcfd of contract demand and 250 Mcfd of seasonal service are designated for delivery to the community of Circle Pines, Minnesota (Circle Pines). Because of considerable recent residential and commercial expansion of Circle Pines, Applicant proposes to decrease Circle-Hutch's presently authorized level of contract demand by 98 Mcfd and to increase Circle-Hutch's presently authorized level of seasonal service by 325 Mcfd. Applicant indicates that the proposed adjustments would result in authority to sell 4,275 Mcfd of contract demand and 3,025 Mcfd of seasonal service gas to Circle-Hutch, which represents a net increase of 227 Mcfd above the currently authorized level of firm entitlement. It is explained that the adjustments are proposed to be effective October 27, 1985.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**8. Ohio River Pipeline Corporation**

[Docket No. CP85–704–000]

August 7, 1985.

Take notice that on July 15, 1985, Ohio River Pipeline Corporation (Applicant) 1630 North Meridian Street, Indianapolis, Indiana 46204, filed in Docket No. CP85–704–000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and

[1] Contract demand is sold under Rate Schedule CD–1 and seasonal service is sold under Rate Schedule SS–1 of Applicant's FERC Gas Tariff.

necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**9. Panhandle Eastern Pipe Line Company**

[Docket No. CP85-703-000]

August 7, 1985.

Take notice that on July 15, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-703-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon certain sales services and for a certificate of public convenience and necessity authorizing the interruptible transportation of up to 1,000 Mcf of natural gas per day for DeKalb Swine Breeders, Inc. (DeKalb), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to receive up to 1,000 Mcf of gas per day at an existing interconnection between the pipeline facilities of Panhandle and Kansas Power and Light Company (KPL) in Reno County, Kansas, and transport the gas[2] for redelivery to DeKalb in Seward County, Kansas.

Panhandle also requests permission to abandon a portion of sales services, at the DeKalb delivery point, performed on behalf of The Gas Service Company (Gas Service), which presently serves DeKalb. Gas volumes attributed to the DeKalb delivery point would be reallocated to the remaining delivery points of Gas Service thereby maintaining its present contract demand levels.

Panhandle proposes to charge DeKalb 5.15 cents per Mcf of gas for the transportation service pursuant to an agreement dated February 19, 1985.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

[2] Panhandle commenced interim transportation service for DeKalb on March 15, 1985, pursuant to § 157.209 of the Commission's Regulations as reported in Docket No. ST85-781-000.

**10. Sabine Pipe Line Company**

[Docket No. CP85-655-000]

August 7, 1985.

Take notice that on June 27, 1985, Sabine Pipe Line Company (Applicant), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CP85-655-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 10,000 Mcf of natural gas per day, on an interruptibel basis, for E.I. du Pont de Nemours and Company (Du Pont), from Applicant's interconnection with Natural Gas Pipeline Company of America (Natural) at Texaco Inc.'s Henry Plant in Vermilion Parish, Louisiana, to Applicant's interconnection with Neches Gas Distribution Company (Neches) in Orange County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Applicant, Du Pont has contracted to purchase outer continental shelf gas from Sun Exploration & Production Company (Sun). Applicant states that Sun would transport this gas onshore, via the Stingray Pipeline Company and U-T Offshore System, to an interconnection with Natural. Next, Applicant says, Natural would transport equivalent volumes to Applicant's own facilities. Applicant states that it would then transport the gas to its interconnection with Neches. In turn, Neches would transport the volumes to an interconnection with Longhorn Pipeline Company (Longhorn), Applicant reports. Finally, Longhorn would deliver the gas to Du Pont, states Applicant.

For transporting Du Pont's gas under this arrangement, Applicant says, it would charge Du Pont a rate set by Rate Schedule T-3 of Applicant's FERC Gas Tariff, Original Volume No. 1. Currently, Applicant indicates, this rate is 10.53¢ for every Mcf actually delivered.

Applicant indicates that its transportation contract with Du Pont is to be operative for five years, with an annual extension thereafter unless cancelled by either party.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**11. Texas Eastern Transmission Corporation**

[Docket No. CP82-423-002]

August 7, 1985.

Take notice that on July 15, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-423-002 an amendment to its application for authorization pursuant to section 3 of the Natural Gas Act to import 50,000 Mcf of natural gas per day from Canada purchased from TransCanada PipeLines Limited (TransCanada) under market competitive pricing provisions and related provisions and to track, on a current as-billed basis, the price or prices of the imported gas, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

The amendment states that on June 11, 1985, Applicant and TransCanada executed a 1985 precedent agreement with attached gas purchase agreement which contains amended price and related provisions. These agreements call for a base monthly demand charge of $28.8958 (U.S.) for each Mcf of daily contract quantity and a base commodity charge of $2.55 per MMBtu (U.S.). The pricing provisions provide for adjustments in the commodity charge, up or down, to reflect changes in the average price of Number 2 heating oil and Number 6 fuel oil competing in Applicant's markets. The demand charge changes with changes in the fixed transportation and processing costs. However, when the demand charges are adjusted, an off-setting adjustment is made in the commodity charge so that the 100% load factor price does not change. Applicant avers the pricing provisions also provide for continued market competitiveness by allowing for renegotiation of price and terms on an annual basis, if necessary, subject to applicable regulatory approvals. The minimum annual quantity requirements have been reduced from 75% to 60%.

Comment date: August 27, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**12. Texas Eastern Transmission Corporation**

[Docket No. CP82-326-002]

August 7, 1985.

Take notice that on July 15, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-326-002 an amendment to its application for authorization pursuant to section 3 of the Natural Gas Act to import 50,000 Mcf of natural gas per day from Canada purchased from ProGas Limited (ProGas) under market competitive pricing provisions and related provisions and to track, on a current as-billed basis, the price of the imported gas, all as more fully set forth in the amendment on file with the

Commission and open to public inspection.

The amendment states that on June 1, 1985, Applicant and ProGas executed an amending agreement which contains the amended price and related provisions. This amending agreement calls for a base monthly demand charge of $28.8958 (U.S.) for each Mcf of daily contract quantity and a base commodity charge of $2.55 per MMBtu (U.S.). The pricing provisions provide for adjustments in the commodity charge, up or down, to reflect changes in the average price of Number 2 heating oil and Number 6 fuel oil competing in Applicant's markets. The demand charge changes with changes in the fixed transportation and processing costs. However, when the demand charges are adjusted, the commodity charge is adjusted in an equivalent amount in the opposite direction.

Applicant avers the pricing provisions also provide for continued market competitiveness by allowing for renegotiation of price and terms on an annual basis, if necessary, subject to applicable regulatory approvals. The minimum annual quantity requirements have been reduced from 75% to 60%. Not less then 38% of Applicant's annual purchase volumes would be made during seven summer months.

Comment date: August 27, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**13. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP85-717-000]

August 7, 1985.

Take notice that on July 17, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-717-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Sun Oil Company (Sun), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the interruptible transportation service it was carrying out for Sun from 1948 to 1970, transporting up to 60,000 Mcf of gas per day from Sun's reserves in the Gulf Coast area to a Sun refinery in Marcus Hook, Pennsylvania, is no longer required because it has been superseded by a firm transportation service authorized in 1970 in Docket No. CP70-193 pursuant to an agreement dated February 3, 1970. It is stated that Transco was transporting the gas pursuant to an agreement dated April 25, 1948, which expired September 30, 1970, and authorized by the Commission in Docket No. G-704. It is further stated that no transportation service has been requested or rendered pursuant to that agreement since 1970.

Comment date: August 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

**14. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP85-734-000]

August 6, 1985.

Take notice that on July 24, 1985, as supplemented August 2, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-734-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for end-users, who are being represented by the Cape Fear Energy Corporation (Cape Fear), as agent, under the authorization issued in Docket No. CP85-734-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Transco would receive the gas at: (1) An interconnection with GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas; (2) an interconnection with GHR at the Miranda Prospect, Duval County, Texas; (3) an interconnection with Valero Transmission Company in LaSalle County, Texas; and (4) the tailgate of the Katy Exxon Plant in Waller County, Texas, and would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to the existing points of delivery between Transco and North Carolina Natural Gas Company (North Carolina Natural). North Carolina Natural would deliver such gas to the end-users or to a municipality for eventual delivery to the end-user as follows:

To Collins & Aikman Corporation at its plant in Farmville, North Carolina—on a peak day 1,200 dt equivalent; on an average day 500 dt equivalent; and on an annual basis 250,000 dt equivalent.

To Firestone Tire and Rubber Company at its plant in Wilson County, North Carolina—on a peak day 2,900 dt equivalent; on an average day 1,700 dt equivalent; and on an annual basis 620,000 dt equivalent.

To Foster Forbes Glass Container, National Can Corporation at its plant in Wilson County, North Carolina—on a peak day 3,000 dt equivalent; on an average day 2,900 dt equivalent; and on an annual basis 1,000,000 dt equivalent.

To Kayser-Roth Hosiery, Incorporated at its plant in Lumberton, North Carolina—on a peak day 500 dt equivalent; on an average day 300 dt equivalent; and on an annual basis 50,000 dt equivalent.

To Burlington Industries at its plant in Raeford, North Carolina—on a peak day 1,200 dt equivalent; on an average day 100 dt equivalent; and on an annual basis 30,000 dt equivalent.

To J. P. Stevens and Company, Incorporated at its plant in Aberdeen, North Carolina—on a peak day 300 dt equivalent; on an average day 150 dt equivalent; and on an annual basis 50,000 dt equivalent.

To J. P. Stevens and Company, Incorporated at its plant in Hannah Pickett, North Carolina—on a peak day 250 dt equivalent; on an average day 200 dt equivalent; and on an annual basis 30,000 dt equivalent.

To Republic Refining Company at its plant in Wilmington, North Carolina—on a peak day 795 dt equivalent; on an average day 650 dt equivalent; and on an annual basis 200,000 dt equivalent.Now is the time for all good men to come to the aid of their country.

To West Point Pepperell Alamac Knitting Division at its plant in Lumberton, North Carolina—on a peak day 2,900 dt equivalent; on an average day 1,100 dt equivalent; and on an annual basis 200,000 dt equivalent.

To Cape Fear Industries, formerly Hercofina at its plant in Wilmington, North Carolina—on a peak day 3,600 dt equivalent; on an average day 1,200 dt equivalent; and on an annual basis 438,000 dt equivalent.

To Gold Bond Building Production at its plant in Wilmington, North Carolina—on a peak day 600 dt equivalent; on an average day 500 dt equivalent; and on an annual basis 175,000 dt equivalent.

To Texfi Industries at its plant in Kinston, North Carolina—on a peak day 2,000 dt equivalent; on an average day 600 dt equivalent; and on an annual basis 135,000 dt equivalent.

To National Spinning Company at its plant in Washington, North Carolina—on a peak day 1,300 dt equivalent; on an average day 700 dt equivalent; and on an annual basis 300,000 dt equivalent.

To Cherry Hospital at its plant in Goldsboro, North Carolina—on a peak day 1,050 dt equivalent; on an average day 900 dt equivalent; and on an annual basis 285,000 dt equivalent.

To the municipality of the City of Rocky Mount, North Carolina (Rocky Mount) for delivery to Abbott Laboratories at its plant in Rocky Mount, North Carolina—on a peak day 1,030 dt equivalent; on an average day 800 dt equivalent; and on an annual basis 190,000 dt equivalent.

To the municipality of the City of Greenville, North Carolina (Greenville) for delivery to Burroughs Welcome at its plant in Greenville, North Carolina—on a peak day 750 dt equivalent; on an average day 600 dt equivalent; and on an annual basis 140,000 dt equivalent.

To the municipality of Rocky Mount for delivery to Texfi K at its plant in Rocky Mount, North Carolina—on a peak day 960 dt equivalent; on an average day 900 dt equivalent; and on an annual basis 225,000 dt equivalent.

It is stated that the total volume of gas to be transported to the end-users on a peak day is 24,335 dt equivalent; on an average day is 13,800 dt equivalent; and on an annual basis is 4,318,000 dt equivalent. Such transportation would continue through October 31, 1985.

Cape Fear is said to act as agent for the end-users in arranging for the interstate transportation of their gas and for making payment for such transportation. Transco states that Cape Fear is considering alternatives in the sources of supply of natural gas for the end-users' requirements. Transco further states that such modifications may involve different suppliers and/or changes in receipt points, but would not involve any increase in peak day, average day or annual volumes to be transported by Transco. Transco, therefore, requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Transco will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

It is stated that Transco's proposed transportation, including the rates to be charged, would be pursuant to Transco's Rate Schedule T–II, FERC Gas Tariff, Second Revised Volume No. 1. It is further stated that the transportation would be in accordance with Transco's current transportation policy which, among other things, requires that the end-users periodically provide Transco with affidavits which state that the subject transportation for Cape Fear, acting as agent for the end-users would not displace sales which Transco would otherwise make under any of its firm sales rate schedules. It is also stated that the two municipalities, Greenville and Rocky Mount, would mark up the volumes they deliver by $.28 per dekatherm equivalent.

Comment date: September 20, 1985, in accordance with Standard Paragraph G at the end of this notice.

### 15. United Gas Pipe Line Company

[Docket No. CP85–719–000]

August 7, 1985.

Take notice that on July 18, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–719–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the maximum daily quantity (MDQ) of natural gas, from 229 Mcf to 6,729 Mcf, sold to Trans Louisiana Gas Company (Trans Louisiana) and construction and operation of facilities to establish two new delivery points in St. Martin Parish, Louisiana, through which to deliver the proposed increased MDQ, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that Trans Louisiana requires an increase in its MDQ in order to meet the demands on Trans Louisiana's system in the Lafayette Parish, Louisiana, service area caused by rapid increases in population growth, commercial establishments and industrial development. Further, United states that it has supplies available to serve the proposed requirements and that the requested MDQ increase would not result in a net increase in demand on its system but rather would replace a small portion of the substantial attrition of market that United has experienced. United asserts that Trans Louisiana will reimburse it for all construction costs, estimated to be $3,950.

United proposes to increase the MDQ at the Town of Edmond Heights, *et al.*, delivery point from 229 Mcf to 4,229 Mcf of gas per day and to establish MDQ's for the Cecilia Henderson and Le Triomphe delivery points of 2,000 and 500 Mcf of gas per day, respectively.

Comment date: August 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85–19226 Filed 8–12–85; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2797-2]

### Assessment of Carbon Tetrachloride As a Potentially Toxic Air Pollutant

**AGENCY:** Evironmental Protection Agency (EPA).

**ACTION:** Notice of Intent to List Carbon Tetrachloride Under section 112 of the Clean Air Act (CAA) and Solicitation of Information.

**SUMMARY:** This notice describes the results of EPA's preliminary assessment of carbon tetrachloride ($CCl_4$) as an air pollutant. Based on the health and risk assessment described in today's notice, EPA now intends to add $CCl_4$ to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will add $CCl_4$ to the list if emission standards are warranted. Through this notice the Agency also is soliciting information from consumers of $CCl_4$ on uses and emissions. Since the potential effects of $CCl_4$ on stratospheric ozone depletion are included as part of a comprehensive assessment examining the effects of trace gases on upper atmospheric ozone, this notice does not provide any conclusions on the need to regulate $CCl_4$ to protect against stratospheric ozone depletion. This notice has no effect on the regulation of $CCl_4$ as a volatile organic compound to attain the national ambient air quality standards for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of $CCl_4$.

**ADDRESSES:** Submit written materials (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–04, 401 M Street SW., Washington, D.C. 20460. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street SW., Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:30 p.m. weekdays, and a reasonable fee may be charged for copying.

**DATES:** Purchasers of $CCl_4$ with information on the uses or emissions of $CCl_4$ willing to provide this information on a voluntary basis should submit this information by October 15, 1985. Information should be submitted to Mr. Jack Farmer, Director, Emission Standards and Engineering Division, MD–13, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (Telephone: 919–541–5571 commercial/629–5571 FTS).

Availability of related information: The final Health Assessment Document (HAD) for $CCl_4$ is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. The National Technical Information Service number (PB–85–124196) should be used when ordering. Paper copies of the HAD are available for $25.00 (price code A–14), and microfiche copies are available for $4.50 (price code A–01). Prices are subject to change. For further information on the availability of this document, please contact: ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS). The HAD was reviewed by the Science Advisory Board (SAB), an independent group of recognized scientists and technical experts that provide advice and critical review of scientific issues to the Administrator. Transcripts of the SAB meetings are available for inspection and copying from the U.S. Environmental Protection Agency, Committee Management Staff. For additional information, please contact Janet Workcuff, A–101, Room M2515, 401 M Street, SW., Washington, D.C. 20460 (Telephone 202–382–5036 commercial/382–5036 FTS).

The source assessment document for $CCl_4$, "Survey of Carbon Tetrachloride Emission Sources", may be obtained from the Environmental Research Library (MD–35), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (phone 919–541–2777 commercial/629–2777 FTS). The EPA number is EPA–450/3–85–018. This document will also be available through the National Technical Information Service (NTIS) and will be available at the address for NTIS provided above. The NTIS number is PB 85–221661. For further information on the source assessment document, please contact Mr. Robert Rosensteel (telephone 919–541–5671 commercial/629–5671 FTS).

**FOR FURTHER INFORMATION CONTACT:** Robert Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

**SUPPLEMENTARY INFORMATION:**

#### Introduction

$CCl_4$ is a volatile liquid that is used principally in the synthesis of chlorofluorocarbons 11 and 12, which are used as refrigerants and foam blowing agents. $CCl_4$ also is used in the production of other chemicals and as an ingredient in liquid grain fumigants. $CCl_4$ has been produced for over 60 years, with early uses as a fire extinguishing agent, a dry cleaning solvent, an industrial solvent and other solvent applications. The Chemical Abstract Service (CAS) number, a widely accepted numerical identification code for chemicals, for $CCl_4$ is 56–23–5.

Because of potential adverse health effects associated with $CCl_4$ exposure, EPA initiated a review to assess the risks to public health from exposure to $CCl_4$ in the ambient air. The results of this review would be used to determine if $CCl_4$ should be regulated under the CAA. As discussed below, this decision does not consider the possible effects of modification of upper atmospheric ozone, which are being assessed separately.

As an early step in this review, a comprehensive HAD was prepared that summarizes the scientific literature on the health and welfare effects of $CCl_4$. It was reviewed at public meetings of the Environmental Health Committee of the SAB on December 8, 1982, and April 25, 1983. The SAB concurred with the major findings of the HAD, including findings that the carcinogenicity of $CCl_4$ is well documented in three animal species and, therefore, is probably carcinogenic in humans (EPA, 1984).

In addition to its direct carcinogenic potential, $CCl_4$ may also contribute to stratospheric ozone depletion, which among other effects may also lead to increases in skin cancer. An assessment is underway to examine the uses, emissions, control practices, and substitution possibilities for a number of trace gases, including $CCl_4$, that may contribute to stratospheric ozone depletion. Because that assessment is underway and because of the interrelationships between these different trace gases, the Agency has decided that any need to regulate $CCl_4$ to protect against stratospheric ozone depletion shall be examined as a part of that assessment.

#### Sources and Emissions

Figure 1 summarizes production, uses, and emissions of $CCl_4$ using a "mass balance" approach, which is based on the recently completed source assessment document. Most of the information provided in the source

assessment document was obtained as a result of information submitted to the Agency in response to information gathering efforts under section 114 of the CAA. As this figure shows, most of the uses of domestically produced $CCl_4$ have been identified. Although some $CCl_4$ is imported, these uses and associated emissions are not expected to significantly affect the materials balance shown in Figure 1.

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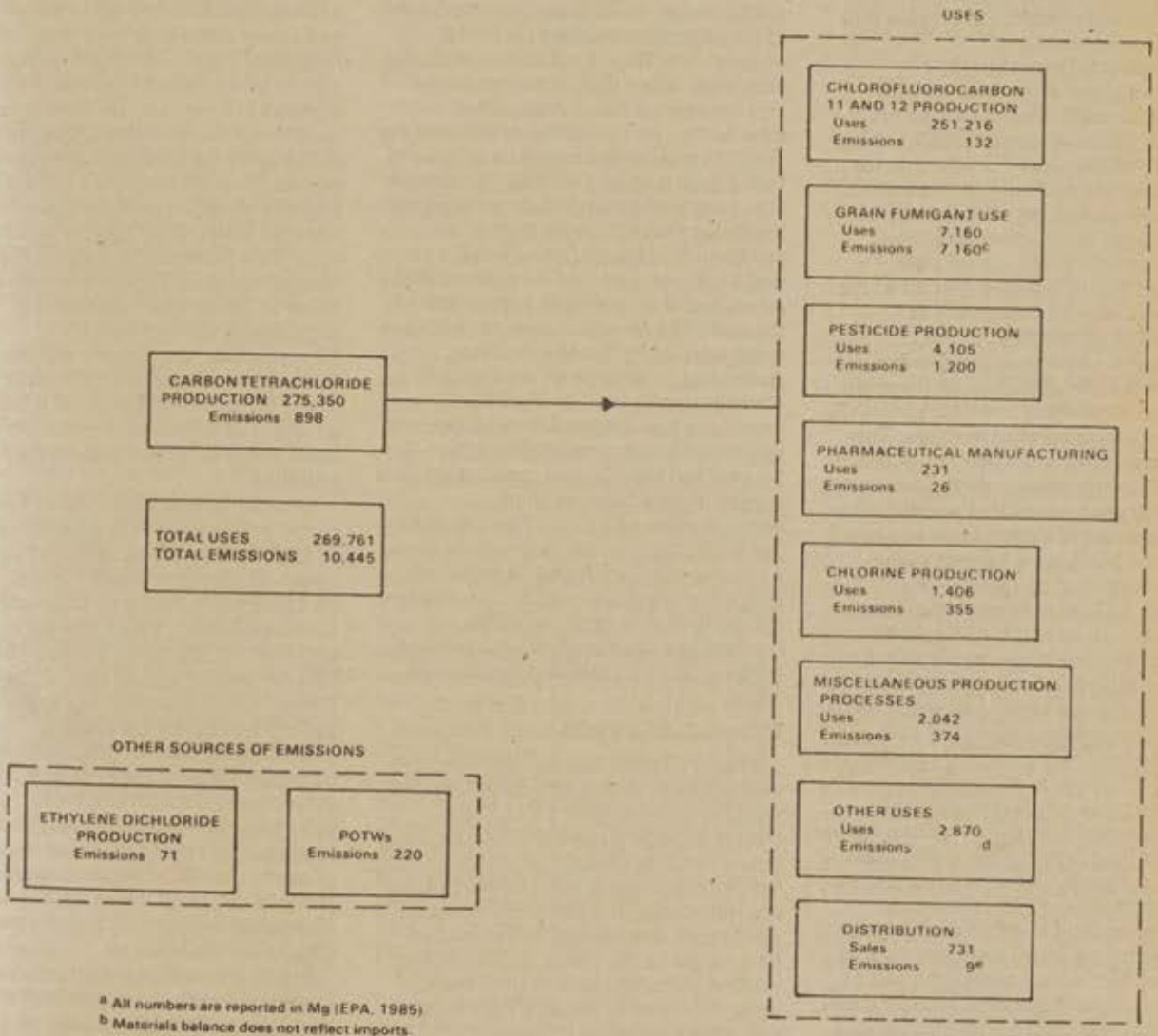
FIGURE 1 USES AND EMISSIONS OF $CCL_4$ FOR 1983[a,b]




[a] All numbers are reported in Mg (EPA, 1985).
[b] Materials balance does not reflect imports.
[c] As indicated in the text, registration for this use has been cancelled.
[d] Most processes are known but uses are claimed confidential and emission estimates are not yet available.
[e] $CCl_4$ sold to distributors who then sell the $CCl_4$ for other unidentified uses. Emission estimates shown here only reflect those emissions associated with the handling of $CCl_4$ for distribution.

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Emission estimates reflect controls currently in place and assume plant operation at full capacity. Production of $CCl_4$ was reported to be 275,350 Megagrams (Mg) for 1983. Of this, 10,934 Mg was used at $CCl_4$ production plant sites (captive uses) in grain fumigant formulation, chlorine liquefaction, and miscellaneous chemical processes and other uses. Synthesis of chlorofluorocarbons 11 and 12 consumed about 91 percent of $CCl_4$ produced in 1983. Use of $CCl_4$ in grain fumigant formulations totaled 7,160 Mg or about 2.6 percent of production for 1983. As explained later in this notice, emissions associated with the use of $CCl_4$ in grain fumigant formulations should not continue beyond 1985. Although Figure 1 shows that all of the $CCl_4$ used in grain fumigation is expected to be released to the atmosphere, some undetermined quantity will be absorbed by the grain. Pesticide production operation use $CCl_4$ as a reaction solvent or medium. This usage accounts for 1.5 percent of the total $CCl_4$ consumed in 1983. There are about 800 pharmaceutical plants in the U.S. and some of these plants use small amounts of $CCl_4$ as a solvent in the manufacturing of pharmaceutical products. $CCl_4$ also is used in chlorine production as a scrubbing liquid to recover chlorine following liquefaction and as a diluent for nitrogen trichloride ($NCl_3$). There are several miscellaneous production processes that use $CCl_4$. These include Hypalon® (synthetic rubber) production, chlorinated paraffins production, symmetrical tetrachloropyridine and two confidential industrial processes. The "other uses" shown in Figure 1 have been identified as uses that have been labeled as confidential but no emission estimates have been developed for these uses at this time. Emissions associated with distribution facilities only include those emissions associated with storage and handling. Given that distributors pass on the $CCl_4$ to other distributors/end users, additional emissions may be expected to be associated with these unknown end uses.

Two additional sources of $CCl_4$ emissions, publicly-owned treatment works (POTWs) and ethylene dichloride (1,2-dichloroethane) production do not result from the direct use of $CCl_4$. POTWs that treat industrial wastewater containing $CCl_4$ are expected to emit $CCl_4$ during treatment or storage. The emission estimates shown in this table for these sources are preliminary and are subject to greater uncertainty than the other emission estimates shown. Emissions of $CCl_4$ associated with wastewater treatment by industries before discharge to public wastewater treatment systems are not included in this estimate. In contrast to other industrial operations that emit $CCl_4$ as a result of use, $CCl_4$ is produced as a by-product in the production of ethylene dichloride.

$CCl_4$ emissions released over periods of years tend to accumulate in the atmosphere. Thus, both U.S. and world emissions affect global accumulation and associated risks. Available information on emissions of $CCl_4$ for the world is relatively limited as compared to the information available on current U.S. uses and emissions. In an analysis assuming that $CCl_4$ was related to production of chlorofluorocarbons 11 and 12, Simmonds and coworkers (1983) estimated that one-third to one-fifth of the world's non-communist emissions were emitted by the U.S. in 1980. According to their analysis, the U.S. contribution to worldwide $CCl_4$ emissions has dropped from 90 percent before 1955 to between 20 and 35 percent in 1980. Current monitoring data suggest a minimum ambient concentration of about 0.79 micrograms per cubic meter of air ($\mu g/m^3$) [or about 0.1 part per billion (ppb)] is relatively uniform around the world. This ambient concentration is reported to be increasing at a rate of about 2 percent per year (Hunt, 1985; Simmonds et al., 1983).

### Risks to Public Health

The HAD provides a comprehensive evaluation of health effects associated with the inhalation of $CCl_4$. These effects include those associated with either acute or chronic exposures. Using the classification system developed by the International Agency for Research on Cancer, the Agency has classified $CCl_4$ in group 2B, which indicates that there is sufficient information from animal studies to classify $CCl_4$ as a probable human carcinogen.

Acute, subchronic and chronic exposures to $CCl_4$ are associated with a variety of effects in both humans and animals. $CCl_4$ is toxic to humans and animals following inhalation, ingestion and dermal exposure. The primary targets of $CCl_4$ exposure appear to be the lungs and the liver. Reported effects of short-term exposure include changes in serum iron and enzyme activity levels, increased kidney and liver weights; and biochemical, physiological and morphological changes in the lung. According to the HAD, the lowest short-term exposure level that might be associated with an effect that might be considered dverse is 309 milligrams per cubic meter ($\mu g/m^3$), or about 50 parts per million (ppm), for about one hour. Similarly, the HAD indicates that the lowest level associated with effects that might be considered to be adverse in subchronic exposures is about 61 $\mu g/m^3$ (10 ppm). Although testing for effects from chronic exposures is very limited and does not support quantitative associations between adverse effects and lower concentrations than those described above, chronic exposures should be expected to produce effects at somewhat lower levels. The highest monitored value is about 0.06 $\mu g/m^3$ (0.009 ppm) for a 24-hour averaging period. Modeling results from specific sources predict a maximum annual average of about 0.28 $\mu g/m^3$ or 0.011 ppm. This information suggest that noncarcinogenic effects are unlikely to occur at concentrations that are expected in the ambient air. Nevertheless, the Agency will continue to examine all public health risks that might be associated with $CCl_4$ emissions as a part of a final determination on the need to list $CCl_4$ as a hazardous air pollutant.

In order to assess the risks of cancer to the public from exposure to low levels of $CCl_4$ in the ambient air, a 95 percent upper-limit risk estimate for the carcinogenic potency of $CCl_4$ was developed (EPA, 1984). The upper-limit unit risk of $CCl_4$ is the incremental lifetime probability of cancer death for an individual continuously exposed to 1 $\mu g/m^3$ over his or her lifetime. The unit risk estimate used in this analysis was developed from a range of unit risk estimates [$1.2\times10^{-6}$ to $1.4\times10^{-4}$ $(\mu g/m^3)^{-1}$] that was based on four animal studies. The HAD concluded that the geometric mean of these unit risk values [$1.5\times10^{-5}\mu g/m^3)^{-1}$] was appropriate for estimating human risk from exposure to $CCl_4$ in the ambient air.

There are two added uncertainties associated with the upper-limit unit risk estimate for $CCl_4$. First, none of the available animal studies were conducted in a way that would allow for the estimation of the slope of the dose response curve at low concentrations, with the appropriate sample sizes and for the proper duration expected for such studies. Consequently, risk projections for lower doses are likely to underestimated by an unknown amount, which would underestimate the unit risk estimate as well as associated cancer risk estimate. Second, information on the relative absorption of $CCl_4$ in the respiratory tract was limited. The HAD concluded that an uptake estimate of 40 percent was appropriate based on a range of absorption of 30 to 65 percent that was taken from studies conducted

in the 1950's or earlier. These studies would probably not meet currently accepted laboratory standards and employed high concentrations, which may have altered the kinetics of uptake from that which would occur at ambient levels. The lack of solubility of $CCl_4$ suggests that it should penetrate to the deeper parts of the lung. Available studies have not examined the potential effect of the penetration of $CCl_4$ to the deeper regions of the lung. However, in most cases, toxicants that reach the deeper regions of the lung manifest toxic effects in that region. These analyses also have not considered the additional risks associated with the ingestion of $CCl_4$ in either food or water.

In order to assess the cancer risks of human exposure to $CCl_4$, dispersion modeling using EPA's Human Exposure Model was performed to estimate human exposure to $CCl_4$ emissions from industrial source categories for this assessment. Using the outputs of this exercise, two estimates of risk are derived. First, an estimate of the lifetime cancer risk to the highest annual average concentration to which any individual is estimated to be exposed for all sources modeled is calculated. This measure is the maximum individual risk. Second, the cancer cases per year that could be associated with exposures within 50 kilometers of all sources in the analysis is estimated. This measure is the aggregate risk estimate. Maximum individual risks and aggregate risks are calculated by the Human Exposure Model are provided in Table 1.

Table 1.—Cancer Risks to Populations Near Emission Sources Based on Dispersion Modeling [1]

| Source category | Maximum individual risk | Aggregate risk (cases/year) | Number of facilities |
|---|---|---|---|
| $CCl_4$ | $4.3 \times 10^{-3}$ | 0.063 | 9 |
| Ethylene dichloride production | $1.6 \times 10^{-3}$ | 0.064 | 18 |
| Chlorofluorocarbon 11 and 12 production | $2.4 \times 10^{-4}$ | 0.017 | 8 |
| Chlorine production | $5.6 \times 10^{-4}$ | 0.064 | 7 |
| Miscellaneous production facilities [2] | $2.9 \times 10^{-3}$ | 0.25 | 8 |
| Total | | 0.46 | |

[1] Risk estimates are based on dispersion modeling using the Human Exposure Model (Zaragoza, 1985).
[2] Includes pesticide production for only one facility as well as other miscellaneous production processes.

As indicated earlier, $CCl_4$ has a long residence in the atmosphere, longer than for other pollutants that the Agency has reviewed as potentially toxic air pollutants. Because of this longer atmospheric residence time and associated global accumulation of emissions, it is necessary to examine ambient concentrations and the accumulation of $CCl_4$ over time in order to assess the risk associated with the persistence of $CCl_4$. However, aggregate risk estimates, calculated using monitoring information to estimate exposure, are substantially greater than those estimated from dispersion modeling because of the persistence of $CCl_4$. In order to address the risks associated with the global loading of $CCl_4$, a separate analysis was needed to estimate risk associated with the accumulation of $CCl_4$.

In order to estimate current U.S. population risks from exposure due to the global accumulation of $CCl_4$, monitored values of $CCl_4$ from remote rural, urban, and source-dominated areas have been examined. Assuming 65 and 165 million people are exposed to rural concentration of 0.79 $\mu g/m^3$ and urban concentration of about 1.53 $\mu g/m^3$, respectively, the risk estimation procedure results in an estimated 69 cancer cases/year for the entire U.S. population (Hunt, 1985; Zaragoza, 1985).

Because emissions are transported throughout the world and because of the differences in population, U.S. emissions are expected to contribute to even greater aggregate risks outside the U.S. than within the U.S. If it were assumed that populations outside the U.S. are being exposed to remote background concentrations of 0.79 $\mu g/m^3$, then 760 cancer cases per year outside the U.S. would be associated with inhalation of $CCl_4$. (This estimate of cancer risk is in addition to the 69 U.S. cases/year.) If it were assumed that the U.S. emissions contribute about one-third of the loading of $CCl_4$ in the atmosphere, then the predicted contribution of U.S. emissions to worldwide cancer incidence (outside the U.S.) would be about 250 cases per year (Zaragoza, 1985).

Table 2 summarizes cancer risks for the U.S. and the rest of the world that could be associated with emissions from the following U.S. sources: $CCl_4$ production, ethylene dichloride production, production of chlorofluorocarbons 11 and 12, pesticide production, miscellaneous production, chlorine production and POTWs. Grain fumigant use has been excluded because the use of $CCl_4$ for this purpose will cease as of December 1985. In addition, pharmaceutical manufacturing and distribution were not included because of the lack of source specific information and the relatively small emissions from these two source categories. For purposes of this analysis, risk estimates only show the increase in risks that can be associated with the U.S. sources used in this analysis. (There are also risks associated with past emissions from these sources as well as other world sources.) Details of the methodology used to derive these estimates are provided in the exposure and risk assessment (Zaragoza, 1985).

TABLE 2. INCREASES IN CANCER RISK ASSOCIATED WITH FUTURE EMISSIONS OF $CCl_4$ From U.S. Sources [1]

| Year | United States | | World | |
|---|---|---|---|---|
| | Aggregate risk (cases per year) | Cumulative aggregate risk (total cases) | Aggregate risk (cases per year) | Cumulative aggregate risk (total cases) |
| 1 | 0.49 | 0.49 | 0.66 | 0.66 |
| 20 | 1.0 | 15 | 13 | 140 |
| 40 | 1.5 | 41 | 28 | 560 |
| 60 | 1.9 | 76 | 44 | 1,300 |
| 80 | 2.3 | 118 | 62 | 3,400 |
| 100 | 2.7 | 170 | 83 | 3,800 |

[1] Risk estimates assume a population growth rate of 0.4 percent for the U.S. and 1.0 for the rest of the world as well as constant emissions of 3250 Mg/yr (Zaragoza, 1985). Estimates for various years have been developed assuming that $CCl_4$ decays at the rate of $(1\text{-}e^{(T/R)})$, where T is time in yers and R is the residence time (57 years).

Available information suggests that U.S. emissions in the past were greater than current U.S. emissions described in this notice. As such, the estimates of current risks associated with U.S. emissions shown in Table 2 are expected to underestimate the contribution of U.S. sources to risks. Given the slow decay of $CCl_4$ in the atmosphere and current atmospheric loading, current ambient concentrations of $CCl_4$ will contribute to risks for decades even if all future emissions were eliminated today. The aggregate risk (cases/year) reported for each year is for that year only. The cumulative aggregate risk is the risk for years from the beginning of the analysis. Thus, the cumulative risk for year 40 is the risk from years 0 through 40. As this table suggests, the accumulation of $CCl_4$ plays a major role in determining atmospheric concentrations.

The results of the preliminary risk assessment show the increased cancer risks associated with the inhalation of $CCl_4$ for the ambient air are sufficient to warrant further study of $CCl_4$. Although the Agency considers all health information in coming to decisions on the need to continue the study of potentially toxic air pollutants, the cancer risk associated with the accumulation of $CCl_4$ in the ambient air has been most important in determining the need for further study.

### Call for Information

Recognizing the uncertainties in the uses, emissions, and related risks associated with $CCl_4$, the Agency has determined a need to collect additional information in order to refine emission and risk estimates. As described earlier

in this notice, EPA has sent letters under the authority of section 114 of the CAA to known producers and major industrial users of $CCl_4$, including producers of chlorofluorocarbons 11 and 12. The EPA has also sent letters to and received information from ethylene dichloride producers, which generate $CCl_4$ as a by-product. Because the Agency may not have identified all the uses of $CCl_4$, EPA is soliciting, through this notice, information on a voluntary basis from other purchasers of $CCl_4$ on annual comsumption, process description, manufacturing location(s) air emissions, and types and efficiencies of controls. Other relevant information includes locations and production capacities of $CCl_4$-emitting facilities (e.g., industrial waste water treatment facilities), dispersion modeling parameters for $CCl_4$-emitting facilities, estimates of $CCl_4$ emission points within the plant, the effectiveness and the costs associated with the installation of alternative control devices, and monitoring data. Information that is regarded as confidential should be separated from nonconfidential information and confidential information should be so labeled; confidential information will be handled in accordance with the established procedures for such information under 40 CFR Part 2.

Purchasers of $CCl_4$ with information to submit on a voluntary basis should provide this information by October 15, 1985. For further information on the submission of information requested in this notice please contact Mr. Robert Rosensteel (Telephone 919–541–5671 commercial/629–5671 FTS). Information should be submitted to Mr. Jack Farmer, Director, Emission Standards and Engineering Division, MD–13, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

### Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contributes to morality or serious irreversible, or incapacitating reversible, illness. Section 112(b)(1)(A) provides that the Administrator shall maintain ". . . a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques (e.g., 49 FR 23522, 23498, 23558 (June 6, 1984) (emission standards for benzene)).

Based on the health and risk assessment described in today's notice, EPA now intends to add $CCl_4$ to the section 112(b)(1)(A) list. The EPA will decide whether to add $CCl_4$ to the list only after studying possible techniques that might be used to control emissions of $CCl_4$ and after further assessing the public health risks. The EPA will add $CCl_4$ to the list if emission standards are warranted. The EPA will publish this decision in the **Federal Register.**

### Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to a final action.

During the first phase, EPA identifies the industrial processes that are significant emitters of the pollutant and the specific emission points within each process and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environment, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, $CCl_4$ is emitted from production of $CCl_4$, synthesis of chlorofluorocarbons 11 and 12, pesticide production, chlorine production, ethylene dichloride production, and a variety of other industrial applications and miscellaneous uses. Within a source category there is wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not necessarily contained in stacks or ducts (i.e., some are fugitive emissions) and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

### Miscellaneous

As indicated earlier in this notice, emissions of $CCl_4$ from any country contribute to both U.S. and world risks. Therefore, the reduction of risks from global loading will be most effective if emission reductions are achieved worldwide. In order to address a similar problem for ozone modification, the Agency has been involved in negotiations under the United Nations Environmental Program to consider this issue. Given that $CCl_4$ also contributes to stratospheric ozone modification, the Agency will also explore the possibility of adding $CCl_4$ to the list of compounds that might be controlled through international cooperation.

$CCl_4$ is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the Resource Conservation and Recovery Act, the CAA (section 112) and the Toxic Substances Control Act (48 FR 23552; May 25, 1983). Section 103(a) of the CERCLA requires any release of $CCl_4$ to the environment (including the air) that is equal to or greater than 5,000 pounds in any 24-hour period must be reported to the National Response Center [NRC] (Telephone 800–424–8802 or 202–426–2675 for the Washington, D.C., metropolitan area). Since $CCl_4$ is already listed under section 101(14) of the CERCLA, a decision to list $CCl_4$ under section 112 of the CAA would not pose any additional reporting requirements.

In 1980, the EPA published a rebuttable presumption against registration of $CCl_4$ under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), based, in part, on potential carcinogenicity. On March 16, 1984, the Agency sent letters, under the authority of section 3(c)(2)(B) of FIFRA, to pesticide manufacturers using $CCl_4$ as an active ingredient, which requested information on the content of $CCl_4$ in raw grains and grain-based consumer products as well as certain long-term health studies. As a result of this action,

manufacturers have either voluntarily canceled their registration for this use or have had sale and distribution of their $CCl_4$ products suspended by the Agency for failure to comply with this requirement. Production of fumigants containing $CCl_4$ was discontinued as of December 1984, and sales (distribution and use) of existing stocks are to be discontinued as of the end of 1985.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Managment and Budget (OMB) for review. Any written comments from OMB and any written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

Dated: August 2, 1985.

**Lee M. Thomas,**

*Administrator.*

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[FR Doc. 85–19197 Filed 8–12–85; 8:45 am]

BILLING CODE 6560–50–M

[AD-FRL 2672-3]

## Decision Not To Regulate Manganese Under the Clean Air Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice Regarding Manganese.

**SUMMARY:** The Environmental Protection Agency has determined that present ambient air concentrations of manganese do not pose a significant risk to public health and that no regulation directed specifically at manganese is necessary at this time under the Clean Air Act. This determination has no effect on the regulation of particulate matter, which can include manganese, for which a national ambient air quality standard (NAAQS) to protect public health and welfare has been established. This decision does not preclude State and/or local air pollution control agencies from specifically regulating emission sources of manganese.

**ADDRESSES:** All information relevant to this decision is in Docket No. A–84–9 located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of related information: The final Health Assessment Document (HAD) for Manganese (EPA 600/8–83–013F) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 703–487–4650. Request Document Number PB 84–229954 (cost $28.00).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Schell, Strategies and Air Standards Division, MD–12, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 (919–541–5645).

**SUPPLEMENTARY INFORMATION:** Manganese is a common element existing in the earth's crust mainly in the form of oxides and carbonates. Manganese is emitted as a component of particulate matter during processes that utilize ores and during combustion of fossil fuels. Manganese (CAS Number 7439–96–5) was originally placed under assessment because of a potential for significant public exposure and concern that it might be carcinogenic in humans.

EPA's assessment is contained in a report entitled "Health Assessment Document for Manganese" (EPA 600/8–83–013F). A draft of this report was made available for public review. It was reviewed at a public meeting held by EPA's Science Advisory Board (SAB) on November 10, 1983. The SAB is an independent group of nationally recognized non-government scientists formed to advise the Administrator on scientific matters. The findings of the report were (1) that public exposure to manganese is presently far below any level associated with non-carcinogenic serious health effects, and (2) that evidence currently available does not indicate that manganese is carcinogenic. The SAB requested minor changes to the document but agreed with these major findings. Transcripts of the SAB review are available for inspection and copying at the U.S. Environmental Protection Agency, Vicki Bailey, Committee Management Staff, A–101, Room 2515, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382–5036. The final document incorporates the changes requested by the SAB and is available through the U.S. Department of Commerce, National Technical Information Service.

The HAD for Manganese reports that the toxicity of numerous manganese compounds has been tested in animals by all common routes of exposure. Chronic occupational exposure to particulate matter containing concentrations of manganese of 5 milligrams per cubic meter ($mg/m^3$) or greater has resulted in a severe central nervous system disorder in humans known as manganism. This is a result of manganese being absorbed into the blood stream over an extended period of time and accumulating in the brain. Manganese fumes as well as fumes of many other heavy metals have been known to cause an acute illness called metal fume fever in workers immediately exposed in confined occupational settings to high concentrations of metallic fumes such as those associated with welding operations. Particulate matter which may or may not contain manganese has been associated with increased incidence of common respiratory ailments in both occupationally exposed people and in the general population. The respiratory effects elicited by particulate matter containing manganese are not attributable to the concentration of manganese in the particulate matter. Exposure to particulate matter of any composition can be associated with an increased incidence of respiratory effects. An analysis of the health effects associated with exposure to particulate matter and the concentrations required to elicit those effects is contained in the EPA

staff paper (EPA 450/5-82-001) and the criteria document on particulate matter (EPA 600/8-82-029). The HAD also reports that five negative animal carcinogenicity studies have been conducted using routes of exposure other than ingestion or inhalation. No epidemiological studies have been conducted that associate manganese exposure with cancer in humans.

The principal sources of manganese air emissions are from steel production, iron and steel foundries, ferroally production, sewage sludge incineration, synthetic manganese dioxide production, dry cell battery production, fossil fuel combustion, cement production, and cooling towers when manganese compounds are used as biocides. Fossil fuel combustion, steel and ferroalloy production are the largest sources of manganese air emissions. These three source categories account for approximately 3600 metric tons of manganese per year of the estimated 4100 metric tons of manganese emitted from all the above sources.

In order to assess the potential for noncarcinogenic health effects to occur from ambient exposures to manganese, a preliminary analysis was conducted to determine if ambient manganese concentrations would be likely to exceed levels that could be associated with adverse health effects. The approach used in this analysis involved four steps. First, target protective levels were identified for both neurotoxic and respiratory effects. Second, manganese emissions from the major source categories were modeled to estimate both long-term and short-term concentrations of manganese. Next, total suspended particulate matter concentrations measured in the vicinity of selected manganese emitting facilities were obtained. Finally, the target protective levels were compared with the modeled manganese concentrations and the monitored particulate matter concentrations.

The target protective levels identified for respiratory effects were the primary NAAQS for particulate matter that were established to protect the public health with an adequate margin of safety. These levels were selected on the basis that the respiratory effects elicited by particulate matter containing manganese are identical to those elicited by particulate matter not containing manganese. The target protective levels identified for neurotoxic effects were those recommended by the World Health Organization (WHO) and the American Conference of Governmental Industrial Hygienists (ACGIH). These levels are considered reasonable and conservative given that the HAD reports that neurotoxic effects have only been documented in workers chronically exposed to manganese concentrations around 5000 micrograms per cubic meter ($\mu g/m^3$) or higher. Protective levels were not identified for metal fume fever since this acute occupational hazard is confined to the immediate workplace and will not occur at ambient concentrations.

The modeling exercise used worst case meteorological conditions, in a conservative screening model and the most current emissions data available for each major source of manganese emissions. The highest manganese concentrations predicted by the model were 250 $\mu g/m^3$ for 15-minutes and 125 $\mu g/m^3$ for 8-hours. All of the modeled concentrations were well below the protective levels for comparable averaging times.

This conclusion is further supported by the fact that monitored total suspended particulate concentrations within three miles of three of the five currently operating ferroalloy facilities in the U.S. indicate that both the 24-hour and the annual NAAQS for particulate matter have been attained since at least 1981.

Neither the modeling or monitored results suggest that noncarcinogenic health effects would be expected from exposure to ambient concentrations of manganese associated with manganese emissions from industrial sources. Furthermore, ambient concentrations in the urban ambient air have decreased from an annual average of 0.11 $\mu g\ Mn/m^3$ in 1953–1957 to 0.033 $\mu g\ Mn/m^3$ in 1982.

The EPA has determined that no regulation directed specifically at manganese is necessary at this time under the Clean Air Act to protect the public health. Manganese sulfate is presently scheduled for carcinogenicity testing by the National Toxicology Program (NTP), using the oral route of exposure, with a projected completion date of September 1987. Preliminary mutagenicity studies conducted by NTP to date have not indicated any reason for concern. EPA will follow these activities as well as any future research, and will reinstitute assessment if warranted by the results of that research.

EPA's decision not to regulate manganese as a hazardous air pollutant has no effect on the regulation of particulate matter, which includes manganese. EPA has established NAAQS for particulate matter, under section 109 pof the Clean Air Act, to protect the public health and welfare.

Dated: August 2, 1985.

**Lee M. Thomas,**

*Administrator.*

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[ADL-FRL-2741-8]

## Air Pollution Control; Assessment of Chlorinated Benzenes as Potentially Toxic

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent not to regulate chlorinated benzenes under the Clean Air Act (CAA).

**SUMMARY:** This notice describes the results of EPA's preliminary assessment of chlorinated benzenes with respect to

their potential as air pollutants. The EPA has concluded that the health risk from ambient exposure to any of the chlorinated benzene compounds is not sufficient to warrant regulation of any of these specific compounds under the CAA at this time. This conclusion is based on the lack of evidence for noncarcinogenic effects at ambient exposures for any of the chlorinated benzene compounds and the low risk of cancer estimated to result from ambient air exposures to hexachlorobenzene, the only chlorinated benzene that has been associated with carcinogenic effects. A 60-day comment period is being provided. A revised notice will be published if warranted by information obtained from interested parties. The Agency recognizes that new information could warrant reevaluation of risks associated with air exposures to these pollutants and possibly this decision.

This notice has no effect on the regulation of chlorinated benzene compounds as volatile organics or particles to attain the national ambient air quality standards (NAAQS) for ozone and particulate matter. Similarly, this notice has no effect on the regulation of chlorinated benzenes under other authorities. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of chlorinated benzenes.

**DATE:** Written comments pertaining to this notice must be received on or before October 15, 1985.

**ADDRESSES:** Submit written materials (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, ATTN: Docket No. A–84–39, 401 M Street SW., Washington, DC 20460. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street SW, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

*Availability of Related Information*

The final health assessment document (HAD) for chlorinated benzenes is available through the U.S. Department of Commerce, National Technical Information Service, 5258 Port Royal Road, Springfield, Virginia 22161 (NTIS #PB85–150332—Paper $43.00, A–99; on microfiche $4.50, A–01; prices are subject to change). Further information on the availability of this document is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS).

**FOR FURTHER INFORMATION CONTACT:** Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Chlorinated benzenes are a group of chemicals that may have from one to six chlorine atoms on a benzene ring. In all, there are 12 chlorinated benzenes: monochlorobenzene, three isomers of dichlorobenzene, three isomers of trichlorobenzene, three isomers of tetrachlorobenzene, pentachlorobenzene and hexachlorobenzene. As a group, these chemicals exist as liquids or solids under standard conditions and tend to persist in the environment. Some of these compounds tend to bioaccumulate in food chains.

Chlorinated benzenes are used for a variety of purposes: chemical manufacturing, solvents, electrical equipment insulators, pesticides, herbicides and fungicides. In 1983, about 450 million pounds of chlorinated benzenes (consisting primarily of monochlorobenzenes and dichlorobenzenes) are reported to have been produced.

An early step in the review of the hazards of chlorinated benzenes in the ambient air was the preparation of a comprehensive HAD, which summarizes scientific information on the effects of chlorinated benzene compounds on public health and welfare. The availability of the draft document was announced for public review in a **Federal Register** notice (49 FR 18616, May 1, 1984). In addition to review by the public, this document also has been reviewed by independent scientists. Comments on the draft document have been incorporated into the final HAD.

Other EPA review activities involving the assessment of the adverse health effects associated with exposure to the chlorinated benzenes are being conducted under section 4 of the Toxic Substances Control Act (TSCA). Through the Interagency Testing Committee established by TSCA, EPA was required to determine the health effects testing needs for the chlorinated benzenes. To accomplish this, the Agency issued three notices in the **Federal Register** related to test rules for chlorinated benzenes. The last notice (49 FR 50408) declared EPA's commitment to further analyze new and available data for the purpose of completing action on its test rule decision by June 1986.

**Health Effects of Chlorinated Benzenes**

The chlorinated benzenes are fat soluble compounds that accumulate in animal and human tissues. The potential for bioaccumulation increases with increasing chlorination so that hexachlorobenzene has the highest potential for bioaccumulation.

The HAD reports a variety of noncarcinogenic effects that have been associated with exposure to chlorinated benzene compounds. Table 1 provides a summary of the health effects of the various chlorinated benzenes. An observation in the HAD on the effects of chlorinated benzenes is that there is an apparent trend of increasing toxicity with increasing chlorination of the benzene ring.

As indicated in Table 1, evidence is sufficient for a determination of carcinogenicity only for hexachlorobenzene. For this reason, potential carcinogenic risk estimates of chlorinated benzenes from the ambient air are limited to hexachlorobenzene.

Additional research to assess the potential carcinogenic effects of 1,4-dichlorobenzene is currently underway by the National Toxicology Program (NTP). The results of this research are scheduled to be available in the latter part of 1985, and will be analyzed to determine if other action by EPA will be needed. The effects reported in Table 1 are not all-inclusive, but focus on those that (1) appear to be more likely at lower concentrations, or (2) appear to be associated with human populations.

TABLE 1.—SUMMARY OF EFFECTS REPORTED TO BE ASSOCIATED WITH CHLORINATED BENZENE COMPOUNDS

| Chemical/CAS No. | Effects reported | Exposure estimates [1] |
|---|---|---|
| Monochlorobenzene/108-90-7 | *Noncarcinogenic:*<br>*Short-term* exposure studies show lethality is only associated with very high concentrations. Other effects of short-term exposures are not reported.<br>*Long-term* studies associated kidney necrosis and regeneration with exposures of several months following exposures of 230 to 345 mg/m³ in animals. Available information does not suggest affects from exposures that are below 345 mg/m³.<br>*Cancer:* The HAD concludes that studies examining the carcinogenic potential of monochlorobenzene provide limited to inadequate evidence from animal studies (marginal increases in neoplastic nodules in male test animals). Given this information and that there is no human evidence for the carcinogenic potential, the HAD finds that no conclusion can be made concerning the carcinogenicity of monochlorobenzene in humans.<br>Occupational Limits: 75 ppm (345 mg/m³)/8 hour work day (OSHA standard) | *Modeling* shows peak concentrations of 5.6 mg/m³ for eight hours.<br>*Monitoring* information indicates that concentrations up to 0.03 mg/m³ for several months have been observed in urban areas. (This average is based on a few very high measurements and a number of lower measurements.) The estimate is subject to considerable uncertainty.<br>*Production:* 160,000 Mg/yr. |
| 1,2 Dichlorobenzene (ortho-dichlorobenzene)/95-50-1. | *Noncarcinogenic:*<br>*Short-term* exposures are associated with death in animals following exposures of about 4,800 mg/m³ for 7 hours. Odor is noticeable at about 300 mg/m³ and considered to be strong and noticeable at 600 mg/m³. Symptomatic effects of reported exposure include dizziness, headaches, fatigue nausea, and eye and nose irritation.<br>*Long-term* epidemiological studies and case studies suggest pathologic effects on bone marrow and other organs of the blood forming system. Effects on specific organ systems, especially the liver, have also been reported. Exposure regimes tested in animals are quite limited and only associate effects with subchronic exposures of about 500 mg/m³ for up to 15 days.<br>*Cancer:* The HAD states that available evidence is clearly inadequate for developing conclusions concerning the carcinogenicity of 1,2 dichlorobenzene in humans.<br>Occupational Limits: 50 ppm (300 mg/m³)/ceiling (both ACGIH and OSHA) | Peak concentrations of about 42 mg/m³ for about 1 hour are predicted from *modeling*.<br>*Monitoring* information indicates concentrations in remote area average about 0.01 µg/m³ and about 1 µg/m³ in urban or suburban areas as well as near soures.<br>*Production:* 68,000 Mg/yr. |
| 1,3 Dichlorobenzene (meta-dichlorobenzene)/541-73-1. | Not tested by inhalation or for cancer by any route of exposure | Concentrations are reported to range from about 0.00004 mg/m³ in remote/rural areas to about 0.0009 mg/m³ near production facilities.<br>Peak concentrations are expected to reach about 6 mg/m³ for one hour according to *modeling* results. The highest *monitored* concentration reported in the HAD is about 0.0017 mg/m³, which was reported for urban settings.<br>*Production:* 25,000 Mg/yr. |
| 1,4 Dichlorobenzene (para-dichlorobenzene)/106-46-7. | *Noncarcinogenic:*<br>*Short-term* exposures are reported to become painful at about 300 to 480 mb/m³ and discomfort is reported to be severe at about 960 mg/m³.<br>*Long-term* exposures of at least 90 mg/m³ for two weeks are associated with effects on the blood forming system and liver.<br>*Cancer:* Not tested. (Testing underway by the National Toxicology Program.)<br>Occupational Limits: 75 ppm (450 mg/m³/40 hour workweek and 110 ppm (675 mg/m³)/15 minute (STEL). | |
| 1,2,3-Trichlorobenzene/87-61-6 | Not tested for inhalation toxicology but has been shown to cause skin irritation and affect the liver in controlled animal studies. | |
| 1,2,4-Trichlorobenzene/190-82-1 | *Noncarcinogenic:*<br>*Short-term* studies of case reports in humans indicate acute exposure to 1,2,4 trichlorobenzene is associated with eye and respiratory irritation. Odor is apparent at about 26 mg/m³ and eye and throat irritation is reported at 26 to 44 mg/m³.<br>*Long-term* toxicological studies with laboratory animals report morphological (microscopic) effects following 4 weeks to 220, 440, and 880 mg/m³.<br>*Cancer:* Not tested<br>Occupational Limits: 40 mg/m³/ceiling (ACGIH) | The HAD reports that concentrations of trichlorobenzene might be expected to range from below the limits of detection to about 0.00018 mg/m³, based on *monitoring* information. |
| 1,3,5-Trichlorobenzene/108-70-3 | Information is very limited. A study exposing rats to concentations as low as 74 mg/m³ for up to 13 weeks reported damage to the respiratory tract. | |
| 1,2,4,5-Tetrachlorobenzene/95-94-3 | Results of an occupational study suggest chromosomal aberrations. Toxicological studies show increases in liver and kidney weights. | |
| 1,2,3,5-Tetrachlorobenzene/634-90-2 | Not tested for inhalation toxicology. Controlled animal studies show this compound to affect survival of rat pups following administration to the female rat. | Monitored concentrations of tetrachlorobenzenes are reported from about 0.0002 mg/m³ in remote areas to a high of 0.0062 mg/m³ in urben and suburban areas. |
| 1,2,3,4-Tetrachlorobenzene/634-66-2 | Poorly characterized by any route of exposure and not tested by inhalation. | |
| Pentachlorobenzene 608-93-5 | *Noncarcinogenic Effects:* Not tested by inhalation. The primary targets include the liver, kidneys, and blood system. Also associated with effects on reproduction.<br>Cancer: Has not been examined. | Not reported in HAD. |
| Hexachlorobenzene 118-74-1 | *Noncarcinogenic Effects:* Not tested by inhalation. Associated with changes in enzyme levels and altered organ weights. The liver, kidney and spleen appear to be target organs and increases in neurotoxic effects and prophyria cutanea tarda. These effects have been observed in both animals and humans.<br>Cancer: There are several studies that show hexachlorobenzene exposure to be associated with an increase in tumors in animals. Using the IARC criteria for the classification of chemicals, hexachlorobenzene would be classified in category 2B, which indicates that there is sufficient information from animal studies to classify hexachlorobenzene as a probable human carcinogen. | See text for monitored values. |

[1] Information on production derived from 1977 production and emissions estimates (SRI, 1982). Modeling results are provided in the exposure/risk assessment (Zaragoza, 1985). Other information derived from the HAD

## Sources and Emissions

Given that hexachlorobenzene is a carcinogen and has been reported in most human adipose (fat) tissue sampled, the exposure and potential risks of hexachlorobenzene are examined in greatest detail. Among other chlorinated benzenes, there is information on the inhalation toxicology of monochlorobenzene, para-dichlorobenzene, ortho-dichlorobenzene, and both 1,2,4 and 1,3,5 trichlorobenzenes only. Of these, emissions source information was only available for monochlorobenzene, para-dichlorobenzene and ortho-dichlorobenzene, each of which was assessed for potential effects from noncarcinoginic health effects.

In order to assess the potential for short-term effects of exposure to chlorinated benzenes, annual emission rates were used for short-term modeling. This procedure would underestimate short-term exposures if emissions were not uniform and continuous. As such, the resulting peak concentrations may underestimate peak concentrations in the ambient air.

Hexachlorobenzene is currently neither produced within nor imported into the U.S. for commercial purposes.

Hexachlorobenzene is, however, formed as a distillation process waste by-product during the production of several chlorinated solvents and pesticides. Potential sources of air emissions of hexachlorobenzene include: chlorinated solvent and pesticide production, pesticide application, incineration of hexachlorobenzene-containing wastes, landfilling and open disposal of wastes. Because hexachlorobenzene is a solid and has a low vapor pressure, evaporation losses of hexachlorobenzene from chlorinated solvent and pesticide production are expected to be negligible (Brooks and Hunt, 1984). The hexachlorobenzene-containing waste is in the form of a heavy, tarry residue that is a solid at ambient temperatures.

The majority of hexachlorobenzene in the U.S. (estimated to be in the range of 4,400 to 13,300 megagrams [Mg] for 1983) is estimated to be generated during the production of three chlorinated solvents: carbon tetrachloride, trichloroethylene, and perchloroethylene (Brooks and Hunt, 1984). As indicated earlier, air emissions of hexachlorobenzene are thought to be negligible from these processes. However, the disposal of hexachlorobenzene wastes (still bottoms) from these processes can result in the release of some hexachlorobenzene emissions to the ambient air. Most of these wastes are incinerated in accordance with Resource Conservation and Recovery Act (RCRA) regulations. These regulations require an incineration efficiency of 99.99 percent, followed by caustic scrubbing for the control of hydrogen chloride emissions. Those wastes from chlorinated solvents production that are not incinerated (about 1,300 to 3,600 Mg/yr) are placed in landfills.

Hexachlorobenzene is also generated during the production of at least three pesticides, including pentachloronitrobenzene (PCNB), dimethyl tetrachloroterephthalate (Dachtal®), and chlorothalonil (Daconil®). Hexachlorobenzene generated during the production of PCNB and Dacthal® for 1983 is estimated to be 1,130 Mg/yr. Most of this hexachlorobenzene is disposed of by landfilling (Brooks and Hunt, 1984). There is no available information on hexachlorobenzene generated from the production of Daconil®. The Agency is presently evaluating the need to list hexachlorobenzene wastes from PCNB and Daconil® under RCRA.

An important consideration is that hexachlorobenzene is present as a contaminant in pesticide products at levels of about 0.5 percent. Thus, hexachlorobenzene release also is expected to result from the application of pesticides. Hexachlorobenzene emission estimates are summarized in Table 2.

**Table 2.—Summary of Hexachlorobenzene Emissions for 1983[a]**

| Source category | Air emissions (kg)[b] |
|---|---|
| Production | |
| Chlorinated Solvents | Negligible. |
| Pesticides (PCNB, Dacthal®) | Negligible. |
| Pesticide Application | Unknown.[c] |
| Incineration of Wastes | 310-977[d] |
| Landfilling of Wastes | 0.015 |

[a] Source: Hunt and Brooks (1984)
[b] Kilograms (kg).
[c] Emissions are difficult to quantify and are under study.
[d] Represents an upper bound as no hexachlorobenzene removal from caustic scrubbing is assumed. Only wastes from chlorinated solvents production are incinerated.

As reported in the HAD, monitoring information for hexachlorobenzene in the ambient air is limited. In a survey of hexachlorobenzene in the vicinity of eight industrial plants, concentrations of hexachlorobenzene ranging from less than 0.02 micrograms per cubic meter ($\mu g/m^3$) (probably or a long-term average) to a peak of 24 $\mu g/m^3$ (20-hour average) were reported (Li et al., 1976). The majority of hexachlorobenzene was detected as particulate matter even though gaseous hexachlorobenzene was also detected. Hexachlorobenzene concentrations have only been examined in a limited number of urban areas. The average values in urban areas range from a low of about 0.01 nanograms per cubic meter ($ng/m^3$) to about 0.3 $ng/m^3$ (Bidleman, 1981). Hexachlorobenzene has even been observed in the air at a remote north Pacific site far from any industrial source, where it averaged 0.10 $ng/m^3$. This is a reflection of its persistence and mobility in the environment.

### EPA's Hexachlorobenzene Task Group

Available information suggests that the body burden of hexachlorobenzene is likely to be greater than zero even in the general population. However, the sources of this hexachlorobenzene and the relative importance of exposures from different media are not well known. Recognizing these limitations and the absence of multi-media risk estimates, the Agency formed a task group for hexachlorobenzene to better define the sources, emissions, and risks that might be associated with human exposure to hexachlorobenzene from all media. The charge of the task group primarily focuses upon a number of assessment exercises and brings together the resources of a variety of programs within the Agency. The task group intends to:

(a) Identify sources and routes of exposure for the public, occupational and environmental components;

(b) Define the exposure and body burden levels that may be associated with health effects;

(c) Compare these levels with measured or estimated levels of exposure so that the populations and environmental components at risk can be identified; and

(d) Identify information gaps and target routes of exposure as well as associated risks and develop recommendations for specific sources that may require regulation.

The task group activities were initiated in November 1984, and the final results are not expected until 1986. However, because available information indicates that air emissions from industrial sources that might be regulated under the CAA are relatively well controlled, appear to provide a minor contribution to total exposure, and are associated with low risks, the Agency decided to proceed with announcing the conclusions presented in this notice. Should new information from the task group efforts or other activities become available that might alter this conclusion, the Agency would reevaluate this decision.

### Risks to Public Health

In order to assess the potential for noncarcinogenic health effects, health effects information was compared with monitoring information provided in the HAD and modeling that was performed as a part of the Agency's assessment. This exercise was limited to chlorinated benzenes for which modeling inputs were available (i.e., monochlorobenzene, o-dichlorobenzene, p-dichlorobenzene, and hexachlorobenzene). Short-term modeling of monochlorobenzene, o-dichlorobenzene and p-dichlorobenzene was based upon annual emission estimates and not short-term emissions, which would underestimate short-term concentrations if emissions were not continuous.

As indicated in Table 1, the estimated exposures are consistently lower than reported noncarcinogenic effect levels. It should be emphasized, however, that hexachlorobenzene is fat soluble and may accumulate in the body. Moreover, hexachlorobenzene exposure may occur via several routes (e.g., inhalation, ingestion of food, and dermal). Although the anticipated contribution of air exposures of hexachlorobenzene does not appear to be sufficient to approach adverse effect levels, the likelihood that the air contribution of

hexachlorobenzene would, in combination with other exposures, reach some toxic level has not been evaluated. This question is being addressed by the hexachlorobenzene task group and the Agency will examine this question when such information becomes available

In order to assess the cancer risks of human exposure to hexachlorobenzene, dispersion modeling using EPA's Human Exposure Model was performed to estimate human exposure to hexachlorobenzene emissions from the source category of greatest potential concern for this assessment (incineration of hexachlorobenzene wastes). Using the outputs of this exercise, two estimates of risk are derived. First, an estimate of the lifetime cancer risk to the highest annual average concentration to which any individual is estimated to be exposed for all sources modeled is calculated. This measure is the maximum individual risk. Second, the cumulative cancer cases per year that would result from exposure to all sources in the analysis is estimated. This measure is the aggregate risk estimate.

In order to assess the risk of cancer to the public from exposure to low levels of hexachlorobenzene in the ambient air, an upper-limit risk estimate of carcinogenic potency for hexachlorobenzene was developed (EPA, 1984). The upper-limit risk is the additional lifetime probability of cancer for an individual exposed continously to one $\mu g/m^3$ of air over his or her lifetime (approximately 70 years). The HAD notes that the primary site of cancer is the liver and that fourteen data sets show significant tumor incidences at various sites. The HAD developed the upper-limit unit risk value from data for liver cancer in female rats (EPA, 1984; Lambrecht, 1983). This was done after comparing results of all studies and selecting the data with the highest potency. Thus, a unit risk value of $4.9\times10^{-4}(\mu g/m^3)^{-1}$ was judged to be appropriate for estimating the potential carcinogenic risk that might be associated with the inhalation of hexachlorobenzene from the ambient air.

Using this upper-limit value and information from the dispersion modeling analysis, estimates of increased cancers were calculated that might be associated with exposure to hexachlorobenzene resulting from the incineration of hexachlorobenzene wastes emitted to the ambient air. Using the range of emissons shown in Table 2, the maximum individual risks were estimated to range from $1.4\times10^{-5}$ to $2.3\times10^{-6}$, associated with maximum modeled concentrations of 0.028 to 0.0047 $\mu g/m^3$, respectively. The range of aggregate cancer risks for the 6,500,000 people living within 50 kilometers of sources incinerating hexachlorobenzene wastes was estimated to range from one case per 700 years to one case per 4,500 years (Zaragoza, 1984).

## Summary

Based on this assessment, the Agency concludes that available information does not support the regulation of any of the chlorinated benzenes under the CAA at this time. Comment on this decision is requested. The Agency will reevaluate public health risks and this decision if warranted by comments.

Dated: August 2, 1985.

**Lee M. Thomas,**

*Administrator.*

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[FR Doc. 85–19198 Filed 8–12–85; 8:45 am]

BILLING CODE 6560–50–M

## Air Pollution Control; Decision Not To Regulate Vinylidene Chloride and Solicitation of Information

[AD–FLR–2834–4]

**AGENCY:** The Environmental Protection Agency.

**ACTION:** Notice of Decision not to regulate vinylidene choloride and solicitation of information.

**SUMMARY:** This notice announces the results of the Environmental Protection Agency's (EPA) assessment of vinylidene chloride (VDC) as a potentially toxic air pollutant. The EPA has concluded that routine emissions from VDC facilities are unlikely to result in ambient concentrations that pose a public health hazard from noncarcinogenic health effects; that the available scientific evidence for the carcinogenic potential of VDC for humans is only limited; and that an analysis of the public health hazard if VDC were assumed to be carcinogenic indicates that the possible cancer risks are small. Given the health hazard conclusions, specific regulation of VDC is not warranted at this time under any section of the Clean Air Act (CAA). This determination has no effect on the regulation of VDC as a volatile organic compound in order to attain and maintain the national ambient air quality standards (NAAQS) for ozone. In addition, this determination does not preclude any State or local air pollution control agency from specifically regulating emission sources of VDC.

**ADDRESS:** Submit comments (duplicate copies are preferred) by October 15, 1985 to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–38, 401 M Street SW., Washington, DC. The docket is located in the West Tower Lobby Gallery I in Waterside Mall and may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying. All information relevant to this decision is contained in this docket.

*Availability of related information:* The final Health Assessment Document (HAD) for Vinylidene Chloride (EPA–600/8–83–031 F) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 703–487–4650. Information on the availability of the HAD is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency,

Cincinnati, Ohio 45268 (513–684–7562 commercial; 684–7562 FTS).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Schell, Strategies and Air Standards Division, MD–12, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (919–541–5645 commercial; 629–5645 FTS).

**SUPPLEMENTARY INFORMATION:**

Vinylidene chloride (VDC) is a synthetic organic chemical used primarily in the production of plastic food wrap and synthetic fibers. The Chemical Abstract Service Number, a widely-accepted numerical identification code for chemicals, is 75–35–4 for VDC. Current source information on VDC indicates that there are two facilities producing VDC and 33 additional facilities using it to produce other products; only nine of these sources have significant emissions. It is estimated that these nine facilities together emit approximately 300 metric tons per year of VDC.

The EPA initiated this regulatory assessment because of preliminary evidence of cancer in animals and structural similarity of VDC to vinyl chloride, a know human carcinogen. As a first step in this assessment process, a HAD for VDC was prepared, summarizing available information on the effects of VDC on man and the environment. There is limited direct evidence for the carcinogenicity of VDC, as well as limited supporting evidence for a carcinogenic potential. The evidence in support of a carcinogenic potential for VDC is based on mutagenicity in several test systems, interaction with DNA and structural similarity to compounds known to be carcinogens. The HAD concludes that using the International Agency for Research on Cancer (IARC) criteria and the EPA proposed Guidelines for Carcinogenic Risk Assessment (49FR 46294, November 23, 1984), the evidence for the carcinogenicity of VDC in experimental animals is limited and the epidemiologic evidence is inadequate to evaluate the carcinogenic potential.

A total of 18 chronic studies in animals were evaluated for evidence of carcinogenicity. The exposure regimes for these studies were as follows: 11 were inhalation, 5 were gavage, 1 was subcutaneous injection, and 1 was skin application. Evidence for carcinogenicity was found in one study in which Swiss mice were exposed to VDC by inhalation for 4-hours daily for 12 months. A statistically significant increase of kidney adenocarcinomas, a rare tumor type, was observed in the male mice. Statistically significant increases in mammary carcinomas and pulmonary adenomas were observed in the mice of both sexes, although the importance of this is uncertain because no clear dose-response relationship was evident. Another study demonstrated VDC to be a tumor initiator in mouse skin. The remaing 16 animal studies, ten of which were inhalation exposure studies, were negative. The negative findings may be partially explained by study design characteristics such as, less than lifetime dosing, below maximum tolerated dose levels, and single dose studies, which individually , or in combination, reduce the sensitivity of detecting a carcinogenic response. While there have been a number of cancer bioassay studies, the inadequacy of test conditions demonstrates the need for additional testing to elucidate the potential for human carcinogenicity. The mutagenic activity of VDC, its chemical structure, its activity as a tumor initiator in mouse skin, and the ability of metabolites to react with DNA further support the need for additional testing.

There is only one epidemiologic study for VDC in which no carcinogenic effect could be attributed to exposure. However, the study had limiting characteristics which made it inadequate to evaluate the carcinogenic potential of vinylidene chloride.

The mutagenic activity, chemical structure and DNA interaction of VDC does indicate concern for VDC's human carcinogenic potential as does the single positive animal inhalation study documenting a rare tumor type (kidney adenocarcinomas). However, these tumors occurred only in one sex of one strain of one species. While these circumstances give rise to concern over possible carcinogenic potential for humans, the overall weight of evidence (i.e., the likelihood) for carcinogenicity is not of sufficient strength to warrant regulatory action at this time. However, even if VDC were assumed to be carcinogenic, the magnitude of the public health cancer risk is low. Using the unit risk number provided by EPA's Carcinogen Assessment Group (CAG) and preliminary emission estimates, EPA estimates the cancer risk to the most exposed individuals to be $8.3 \times 10^{-4}$ and the aggregate risk to be 0.07 cases per year. Thus, the EPA has concluded that the available evidence does not support specific regulation of VDC as a carcinogen under any section of the Clean Air Act at this time.

The draft report entitled "Health Assessment Document for Vinylidene Chloride" (EPA–600/8–83–031 A) was made available for public review on October 31, 1983 (48 FR 50159), and was reviewed at a public meeting held by the EPA's Science Advisory Board (SAB) on April 27, 1984. The SAB is an independent group of nationally recognized non-government scientists formed to review the EPA's scientific documentation. The draft HAD concluded that the evidence for VDC carcinogenicity in animals was limited, and the currently available epidemiological data was inadequate for assessing the carcinogenic potential in humans. The SAB noted the preliminary status of the single positive inhalation study and did concur with the overall conclusions as reported in the draft HAD that included the preliminary results of the single positive bioassay. Transcripts of the SAB review are available for inspection and copying at the U.S. Environmental Protection Agency, Room 2515, 401 M Street SW., Washington, DC 20460, telephone (202) 381–5036.

The HAD reports that no cases of human toxicity associated with VDC exposure at ambient or occupational concentrations have been documented. However, animals exposed to VDC [25 parts per million (ppm) ppm for 18 months] experienced liver and kidney toxicity, while rats exposed to 5 ppm continuously for 90 days experienced decreased weight gain when compared to controls.

A preliminary analysis was conducted to examine the potential for long/term and short-term concentrations of VDC in the ambient air surrounding industrial facilities to approach or exceed those concentrations at which noncarcinogenic health effects have been reported. This rough analysis, which used worst case meterological conditions in a conservative screening model, estimated the maximum modeled point source annual average concentration to be 0.0042 ppm with 15-minute maximum concentrations of 2 ppm and 8-hour maximum concentrations of 1 ppm. Summarized monitored data for VDC (Brodzinsky ans Singh, 1982) indicate that the median quarterly ambient air level of VDC for source-dominated areas is around 0.0036 ppm. These modeled and monitored concentrations are below the Threshold Limit Value (TLV) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) to protect against liver and kidney toxicity in exposed workers (20 ppm for 15-minutes, 10 ppm for 8-hours). The modeled and monitored average concentration are also below (by at least a factor of 1000) levels associated with noncarcinogenic health effects in animals [5 ppm for 90 days (decreased weight gain) and 25

ppm for 18 months [liver and kidney toxicity)]. A preliminary analysis that assumed that humans are 1000 fold more sensitive to VDC than animals indicated that these noncarcinogenic effects would not occur in humans at concentrations expected to occur in the ambient air.

Given the low levels of public exposure, the uncertainty regarding the carcinogenic potential for humans and the margin of safety between ambient levels and non-cancer health effects, the EPA has determined that the information currently available is not sufficient to support a decision to regulate VDC under any section of the Clean Air Act at this time. The EPA solicits any additional data pertinent to this assessment. The EPA will assess the need for further research on VDC and will reconsider the conclusion presented here if warranted by the results of further studies or research.

Dated: August 2, 1985.

**Lee M. Thomas,**

*Administrator.*

**References:**

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[FR Doc. 85-19201 Filed 8-12-85; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Charisma Broadcasting Corp. et al.; Hearing Broadcasting Order

In re Applications of: MM Docket No. 85-234; Charisma Broadcasting Corp., File No. BPCT-850207KG; Chriswell Center for Biblical Studies, File No. BPCT-850225KF; Arlington 68 TV, Inc., File No. BPCT-850418KZ; United Broadcast Group, Ltd., File No. BPCT-850419KE; MPC-TV Limited Partnership, File No. BPCT-850419KF; HRH Communications, Inc., File No. BPCT-850419KG; Southwest Communications, Ltd., File No. BPCT-850419KO; Arlington Minority Broadcasters, File No. BPCT-850422KF; Johnson Television, Ltd., File No. BPCT-850422KG; Briscoe Broadcasting, Ltd., File No. BPCT-850422KH; Channel 68, North Texas Television Limited Partnership, File No. BPCT-850422KI; The Louray Corp., File No. BPCT-850422KM; Metroplex Media, Inc., File No. BPCT-850422KP; Sammy A. Thornton, File No. BPCT-850422KR; Native American Broadcasting Co., a Limited Partnership, File No. BPCT-850422KU; Arlington Communications, Inc., File No. BPCT-850422KV. For Construction Permit, Arlington, Texas.

Adopted: July 30, 1985.

Released: August 8, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 68, Arlington, Texas; a motion for leave to amend and accompanying amendment filed by Arlington 68 TV, Inc.[1]; a late-filed amendment filed by Arlington Minority Broadcasters; [2] a late-filed amendment filed by Metroplex Media, Inc.[3]; and a motion to assign new file number and to dismiss application filed by Arlington TV 68, Inc.[4]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Chriswell Center for Biblical Studies, United Broadcast Group, Ltd., Arlington Minority Broadcasters, Johnson Television, Ltd., Channel 68, North Texas Television Limited Partnership, Sammy A. Thornton and Native American Broadcasting Company each would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Metroplex Media, Inc. has not supplied this data. Accordingly, Metroplex will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch. Mass Media

[1] On June 24, 1985, after the "B" cut-off date, June 7, Arlington 68 TV, Inc. submitted a motion for leave to amend and an amendment to update its application pursuant to § 1.65 of the Commission's Rules. The motion will be granted and the amendment will be accepted.

[2] On June 21, 1985, Arlington Minority Broadcasters amended its application to propose installation of auxiliary power equipment and to specify the population within its Grade B contour. Good cause exists for accepting the amendment; however, no comparative advantage will accrue to the applicant because of our action herein.

[3] Metroplex Media, Inc. filed an unsigned copy of an amendment on June 7, 1985 (the "B" cut-off date). At the time it was filed, counsel for the applicant indicated that the signed original had not arrived in sufficient time to file it at the Commission. The signed copy was filed on June 12, 1985 (3 business days after the "B" cut-off date). All parties to this proceeding clearly had notice of the amendment on June 7. Furthermore, no objections to accepting the amendment have been filed. In view of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. These circumstances are governed by a long-standing Commission policy which dictates that the amendment and signature be accepted *nunc pro tunc. Bocanegra/Gerald Broadcasting Group*, Mimeo No. 1470, released December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hart*, 44 FCC 2068 (1960). Accordingly, the signed original of the amendment will be accepted *nunc pro tunc*.

[4] On June 7, 1985, ("B" cut-off date) Sandra Carol Blevins filed an amendment to her application to change the applicant from a sole proprietorship to a limited partnership and to change the name of the applicant to Native American Broadcasting Company, a Limited Partnership. On July 19, 1985, Arlington 68 TV, Inc. filed its motion against the Blevins application on the grounds that the amendment is a major change under the provisions of § 73.3572(b) of the Commission's Rules. In changing from a sole proprietorship to a limited partnership, Ms. Blevins is now the sole general partner, retaining a 20 percent equity interest in the applicant with a single limited partner acquiring an 80 percent equity interest. We must reject Arlington 68 TV, Inc.'s contention that Ms. Blevins' amendment constitutes a major change requiring dismissal of the application and assignment of a new file number. The major change rules have traditionally been defined in terms of control rather than equity. *See Grace Missionary Baptist Church*, 80 FCC 2d 330 (1980); *Anax Broadcasting, Inc.*, 877 FCC 2d 483 (1981). The rules as discussed in *Grace Missionary* and *Anax* define a major change in the ownership of an applicant as one which, if it had involved a change in the ownership of an existing station, would require a long form (Form 314 or 315) application rather than a short form (Form 316) application. The Commission recently amended its major change rules to define control in terms of equity ownership for corporation. *See Processing of Broadcast Applications*, 56 RR 2d 941 (1984). However, the Commission did not address limited partnership interests and, more importantly, did not overrule the *Anax* case. We believe, therefore, that the policy enunciated in *Anax* is still good law. That policy provides that for partnership, the general partner controls the partnership and that the long form need be used only where transfer of a controlling interest is involved. *Anax Broadcasting, Inc.*, at 488. Here, Ms. Blevins' 20 percent interest as the sole general partner is the *controlling* interest. Pursuant to the limited partnership agreement, the limited partner has no right to participate in the management of the applicant. All general power and authority is vested in Ms. Blevins, the general partner. Under the circumstances, the amendment is a minor change and does not involve a change of control. The petition to dismiss will be denied.

Bureau, within 20 days after this Order is released.

5. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. A negative response to this question must be accompanied by an explanation. Chriswell Center for Biblical Studies (Chriswell) answered negatively to item 10; however, it did not submit the required explanation. Accordingly, Chriswell will be required to submit its response in the form of an amendent, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Sandra Carol Blevins, the general partner of Native American Broadcasting Company (Native American), is employed part-time in an unspecified capacity at Station KXVI(AM), Plano, Texas. Her husband, Ike Blevins, is also employed at Station KXVI as Chief Engineer and Acting General Manager. Plano is within Native American's proposed City Grade contour. Therefore, the employment of Mr. & Mrs. Blevins may be inconsistent with the Commission's cross-interest policy. However, Native American has represented that, if it is the successful applicant, Mr. and Mrs. Blevins will sever all connection with the licensee of Station KXVI(AM), Plano, Texas. Accordingly, if Native American is granted a construction permit, it will be subject to an appropriate condition.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Chriswell Center for Biblical Studies, United Broadcast Group, Ltd., Arlington Minority Broadcasters, Johnson Television, Ltd., Channel 68, North Texas Television Limited Partnership, Sammy A. Thornton and Native American Broadcasting Company, whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent with respect to issue 1.

10. It is further ordered, That the June 24, 1985, motion for leave to amend filed by Arlington 68 TV, Inc. is granted and the accompanying amendment is accepted.

11. It is further ordered, That the June 21, 1985, amendment filed by Arlington Minority Broadcasters is accepted for § 1.65 purposes only.

12. It is further ordered, That, the amendment filed by Metroplex Media, Inc. on June 12, 1985, is accepted *nunc pro tunc*.

13. It is further ordered, That the petition to dismiss filed by Arlington 68 TV, Inc. is denied.

14. It is further ordered, That Metroplex shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

15. It is further ordered, That Chriswell Center for Biblical Studies shall submit its explanation for its negative answer to Section II, item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, That, in the event that Native American Broadcasting Company is the successful applicant, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Ike and Sandra C. Blevins have severed all connection with the licensee of Station KXVI (AM), Plano, Texas.

17. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

18. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85-79273 Filed 8-12-85 8:45 am]

BILLING CODE 6712-01-M

## Niagara Communications, Inc., and Coastal Marine Telephone, Inc.; Hearing Designation Order

In re Applications of: PR Docket No. 85-233; Niagara Communications, Inc. for a new Local Service (VHF) Public Coast Station at Ship Bottom, New Jersey. File No. 185-M-L-24; Coastal Marine Telephone, Inc. for a new Local Service (VHF) Public Coast Station at Manasquan, New Jersey. File No. 276-M-L-25.

Adopted: July 30, 1985.
Released: August 6, 1985.

1. The applications of Niagara Communications, Inc. (NIAGARA) and Coastal Marine Telephone, Inc. (COASTAL MARINE) propose to establish new local service (VHF) public coast stations at Ship Bottom, New Jersey and Manasquan, New Jersey, respectively. These stations provide ship/shore VHF radiotelephone service which is primarily of a local nature rather than of a regional or high seas nature.[1]

2. Both applications propose to establish service on the same working frequency, 161.875 MHz. The service areas proposed by the Ship Bottom, New Jersey and Manasquan, New Jersey applications overlap, as computed pursuant to Subpart R of Part 81 of the rules. Section 81.303 of the rules, 47 CFR 81.303, prohibits duplication of service areas by local service (VHF) public

[1] 47 CFR 81.3 (i), (k) and (l).

coast stations operating on the same frequency in order to prevent destructive interference. Therefore, these applications are mutually exclusive. No other local service (VHF) frequency is available in the area for assignment to a public coast station. Accordingly these applications must be designated for comparative hearing.

3. In view of the foregoing, it is ordered, that pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, 47 USC 309(e), and § 1.227(b)(4) and 0.331 of the Commissions rules, 47 CFR 1.227(b)(4) and 0.331, the above captioned applications are designated for hearing at a time and place to be specified in a subsequent Order on the following comparative issues:

a. To determine the facts with respect to the facilities, personnel, rates, practices, interconnection with land line facilities and services of each applicant, including the geographical area proposed to be served by each.

b. To determine the nature and amount of traffic to be handled by each of the proposed stations and from what sources such traffic will be derived.

c. To determine each applicant's proposed methods of operating local service public coast stations, and

d. To determine, in light of the evidence adduced on the issues in a, b and c above, and in light of existing service available, which application should be granted in the public interest, convenience and necessity.

4. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants Niagara and Coastal Marine, must file with the Commission, in person or by attorney and within 20 days of the mailing of this Order, a written appearance in triplicate stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with § 1.221(c) of the Commission's rules, 47 CFR 1.221(c).

Federal Communications Commission.

**Robert S. Foosaner,**

*Chief, Private Radio Bureau.*

[FR Doc. 85-19274 Filed 8-12-85; 8:45 am]

BILLING CODE 6712-01-M

## Tureaud Broadcasting, et al.; Hearing Designation Order

In re Application of: MM Docket No. 85-235; Melvin Watkins, et al. d/b/a Tureaud Broadcasting; File No. BPCT-84121KK; Susan K. Panisch, File No. BPCT-850211KF; Non-Profit Television Concepts, File No. BPCT-850214KN; New Era Broadcasting, File No. BPCT-850215KP; James R. Young and Dr. Bessie Noble d/b/a Flomaton Communications, File No. BPCT-850215LX; For Construction Permit for New Television Station Syracuse, New York.

Adopted: July 29, 1985.

Released: August 9, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial televison station on Channel 56, Syracuse, New York.[1]

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Tureaud Broadcasting states that it is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Tureaud Broadcasting's application identifies only the general partner and does not indicate that there are any limited partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable.[2] However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules if the applicant can certify that the limited partners will not be involved in any material respect in the business or operation of the station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48-50 of the June 24 decision on reconsideration. Further, the Commission directed that FCC Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Tureaud Broadcasting can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interests policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Tureaud Broadcasting will be required either to state that its limited partners have no other media interests subject to the cross-interests policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interests.

5. Susan K. Panisch proposes to operate from a site located within 250 miles of the Canadian Border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of the application of Ms. Panisch, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

6. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. New Era Broadcasting has indicated that it believes itself to be financially qualified. However, it does

[1] New Era Broadcasting filed an unsigned amendment to its application on April 17, 1985. The applicant indicated that the amendment had, in fact, been signed but that the executed original had not yet arrived at the offices of the applicant's counsel. The signed amendment was filed the next day, April 18, 1985. In views of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. We will, therefore, consider the amendment as timely filed. *See Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976). Accordingly, the amendment will be accepted *nunc pro tunc*.

[2] On January 22, 1985, David H. Solinske filed a "petition to deny" Tureaud's application. The petition was, by letter dated June 26, 1985, dismissed as a defective petition to deny and, considered as an informal objection, it was denied.

not yet possess the required documents. Accordingly, the applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

7. Section V–C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. New Era Broadcasting has not done so. New Era Broadcasting, therefore, will be required to submit an amendment showing the required information, to the presiding Administrative Law Judge within 20 days after this Order is released.

8. New Era Broadcasting stated, in its environmental narrative statement, that it believes that its proposed site is available to it, but it has not yet completed arrangements which would constitute reasonable assurance that the site is available. Under those circumstances an issue will be required to determine whether the applicant has reasonable assurance that its proposed site will be available.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designataed for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues: (1) To determine, with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine with respect to New Era Broadcasting, whether the applicant has reasonable assurance that its proposed transmitter site will be available.

(3) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is futher ordered, that, Tyreaud Broadcasting shall submit the certification statement and/or information required by paragraph 4, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, that, in the event of a grant of the application of Susan K. Panisch, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

13. It is further ordered, that, within 20 days after this Order is released, New Era Broadcasting shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

14. It is further ordered, that New Era Broadcasting shall submit an amendment stating the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, that the amendment filed by New Era Broadcasting on April 18, 1985, is accepted *nunc pro tunc*.

16. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

17. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

18. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85–19275 Filed 8–12–85; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–740–DR]**

### Major Disaster and Related Determinations; Wyoming

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Wyoming (FEMA–740–DR), dated August 7, 1985, and related determinations.

**DATED:** August 7, 1985.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of August 7, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Wyoming resulting from severe storms, hail and flooding beginning on August 1, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Wyoming.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You are authorized to provide necessary Public Assistance in the affected areas, if requested and needed. Consistent with the requirement that Federal assistance by supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance,

shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Wyoming to have been affected adversely by this declared major disaster:

Laramie County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Samuel W. Speck,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 85-19188 Filed 8-12-85; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL HOME LOAN BANK BOARD

### Butterfield Savings & Loan Association, Santa Ana, CA; Appointment of Receiver

Notice is hereby given that pursunat to the authority contained in section 5 (d) (6) (A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464 (d) (6) (A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Butterfield Savings and Loan Association, Santa Ana, California, on August 7, 1985.

Dated: August 8, 1985.

**Nadine Y. Penn,**

*Acting Secretary.*

[FR Doc. 85-19218 Filed 8-12-85; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010797.

Title: Miami Terminal Agreement.

Parties:

Dade County, Florida

Fort Dallas Docks, Inc.

Synopsis: Agreement No. 224-010797 provides for the lease of land by Dade County to Fort Dallas Docks, Inc., in the Port of Miami for the construction and development of a terminal facility to provide dockage, staging, discharging, loading, storage and related activities to vessels and equipment engaged in the importing and/or exporting of goods through the port. The term of the lease will be for twenty years with the option to extend the lease for four additional five year periods. Fort Dallas Docks, Inc., will pay rent for the facility to Dade County as provided for in the agreement, and they will pay tariff charges as scheduled by the Port of Miami Terminal Tariff No. 10.

By Order of the Federal Maritime Commission.

Dated: August 8, 1985.

**Mary F. Whitmore,**

*Assistant to the Secretary.*

[FR Doc. 85-19239 Filed 8-12-85; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Freedom Valley Bancshares, Inc., et al.

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 the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 4, 1985.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Freedom Valley Bancshares, Ltd.*, West Chester, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Valley Bank, West Chester, Pennsylvania.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Bancshares of West Virginia, Inc.*, Huntington, West Virginia; to merge with Centurion Bancorp., Inc., Charleston, West Virginia.

**C. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Georgia*, Ausgusta, Georgia; to acquire 100 percent of the voting shares of Georgia State Bank, Martinez, Georgia.

2. *University State Bank Corporation*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of University State Bank, Tampa, Florida.

**D. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Banks, Inc.*, Middleton, Wisconsin; to acquire 80 percent of the voting shares of Farmers & Merchants Bank, Richland Center, Wisconsin.

2. *First Bancorp*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank and Trust Company, Speedway, Indiana.

**E. Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First United Bancshares, Inc.*, Horse Cave, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Park City State Bank, Park City, Kentucky.

**F. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Crown Bancshares, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring 100 percent of the

voting shares of First United Bank of Bellevue, Bellevue, Nebraska.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Klein Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Klein Bank-Cypresswood, N.A., Houston, Texas, a *de novo* bank.

2. *Sun Belt Bancshares Corporation*, Conroe, Texas; to become a bank holding company by acquiring 51 percent of the voting shares of National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, August 7, 1985.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 85-19161 Filed 8-12-85; 8:45 am]

BILLING CODE 6210-01-M

### Acquisition of Company Engaged in Permissible Nonbanking Activities; Southwest First Community, Inc.

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 practicies." 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 September 4, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Southwest First Community, Inc.*, Beeville, Texas; to acquire South First Community Life Insurance Co., Beeville, Texas, thereby acting as underwriter with respet to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, August 7, 1985.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 85-19162 Filed 8-12-85; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Agency Information Collection; Trade Regulation, Consumer Protection, Health Care Facilities, Nursing Homes

**AGENCY:** Federal Trade Commission.

**ACTION:** Application to OMB under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) for review of a voluntary survey on nursing home providers..

**SUMMARY:** The FTC is requesting OMB review under 5 CFR part 1320 of a voluntary mail survey of nursing home providers. Together with information obtained from nursing home consumers through survey conducted in early 1985, (OMB Approval No. 3084-0074), the information will be used to assist in developing a sound basis for determining whether there is a need for additional Commission action in this area.

**DATES:** Comments on this request for OMB review must be submitted on or before September 12, 1985.

**ADDRESS:** Send comments to Mr. Don Arbuckle, Office of Information Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. Copies of the applications may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Henry R. Whitlock, New York Regional Office, Federal Trade Commission, 26 Federal Plaza, 22nd Fl., New York, New York 10078, (212) 264-1250.

**John H. Carley,**

*General Counsel.*

[FR Doc. 85-19163 Filed 8-12-85; 8:45 am]

BILLING CODE 6750-01-M

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

| Transaction | Waiting period terminated effective |
|---|---|
| (1) 85-0784—The Elder-Beerman Stores Corp.'s proposed acquisition of assets of R. H. Macy & Co., Inc. | July 16, 1985. |
| (2) 85-0750—The Stop & Shop Companies, Inc.'s proposed acquisition of assets of Montgomery Ward, (Mobil Corporation, UPE). | Do. |
| (3) 85-0810—Consolidated Fibres Inc.'s proposed acquisition of voting securities of Plastofilm Industries, Inc., (George Wiss, UPE). | Do. |
| (4) 85-0830—Greenman Bros. Inc.'s proposed acquisition of voting securities of Circus World Toy Stores, Inc., (Rite Aid Corporation, UPE). | Do. |
| (5) 85-0799—Munford, Inc.'s proposed acquisition of voting securities of United Refrigerated Services, Inc.. | July 17, 1985. |
| (6) 85-0769—Tenneco, Inc.'s proposed acquisition of voting securities of Celeron Corporation, Tuscaloosa Pipeline Company and LIG Chemco, (The Goodyear Tire & Rubber Company, UPc). | July 18, 1985. |
| (7) 85-0816—Chrysler Corporation's proposed acquisition of voting securities of Gulfstream Aerospace Corporation, (Allen E. Paulson, UPE). | Do. |
| (8) 85-0817—Bow Valley Industries Ltd.'s proposed acquisition of voting securities of Prodeco Oil & Gas Co., Ltd. | Do. |

| Transaction | Waiting period terminated effective |
|---|---|
| (9) 85-0762—The Pillsbury Company's proposed acquisition of assets of Reckitt & Coleman PLC. | July 19, 1985. |
| (10) 85-0788—The Rio Tinto-Zinc's Corporation PLC proposed acquisition of voting securities of Pennsylvania Glass Sand Corporation, (ITT Corporation, UPE). | Do. |
| (11) 85-0806—ConAgra, Inc.'s proposed acquisition of voting securities of Seitz Foods, Inc., (J. Douglas Esson, UPE). | Do. |
| (12) 85-0852—R. B. Pamplin's proposed acquisition of voting securities of Riegel Textile Corporation. | Do. |
| (13) 85-0853—R. B. Pamplin's proposed acquisition of voting securities of Riegel Textile Corporation. | Do. |
| (14) 85-0878—Siebe PLC's proposed acquisition of voting securities of CompAir Limited, (Imperial Continental Gas Association, UPE). | Do. |
| (15) 85-0586—Federal-Mogul Corporation's proposed acquisition of voting securities of Mather Company. | July 23, 1985. |
| (16) 85-0812—Reed International P.L.C.'s proposed acquisition of assets of R. R. Bowker Division, (Xerox Corporation, UPE). | Do. |
| (17) 85-0814—Cargill, Inc.'s proposed acquisition of voting securities of The Beacon Milling Company, (The Beacon Employee Stock Ownership Trust, UPE). | Do. |
| (18) 85-0833—Staley Continental, Inc.'s proposed acquisition of assets of Smelkinson Brothers Corporation. | Do. |
| (19) 85-0836—The E. F. Hutton Group, Inc.'s proposed acquisition of voting securities of H. D. Holding Company Inc., a corporate joint venture. | Do. |
| (20) 85-0837—The E. F. Hutton Group, Inc.'s proposed acquisition of voting securities of Duckwall-ALCO Stores, Inc. | Do. |
| (21) 85-0838—Wyman-Gordon Company's proposed acquisition of voting securities of International Titanium Inc. of Washington. | Do. |
| (22) 85-0839—Eagle Manufacturing Corporation's, (William H. Thayer, UPE) proposed acquisition of assets of The Trailer Division of The Budd Company, (Thyssen Aktiengeseltschaft, UPE). | Do. |
| (23) 85-0840—Brown-Forman, Inc.'s proposed acquisition of assets of California Cooler, Inc. | Do. |
| (24) 85-0841—Brown-Forman, Inc.'s proposed acquisition of assets of Island Wine Cooler Company. | Do. |
| (25) 85-0850—The Kroger Company's proposed acquisition of voting securities of Farmland Industries, Inc., Turkey Hill Dairy, Inc. and Turkey Hill Rentals, Inc., (Charles F. Frey, UPE). | Do. |
| (26) 85-0851—The Kroger Company's proposed acquisition of voting securities of Farmland Industries, Inc., Turkey Hill Dairy, Inc. and Turkey Hill Rentals, Inc., (Emerson C. Frey, UPE). | Do. |
| (27) 85-0857—Tandy Corporation's proposed acquisition of assets of American Home Video Corporation, (Jack Eckerd Corporation, UPE). | Do. |
| (28) 85-0879—Scott & Fetzer Employee Stock Ownership Plan's proposed acquisition of voting securities of Scott & Fetzer Company. | Do. |
| (29) 85-0882—Laurentian Capital Corporation's proposed acquisition of voting securities of Founders Financial Corporation. | Do. |
| (30) 85-0849—Pacific Lighting Corporation's proposed acquisition of assets of DeltaUs Corporation. | July 24, 1985. |
| (31) 85-0778—LyphoMed, Inc.'s proposed acquisition of assets of The Dexter Corporation. | Do. |
| (32) 85-0910—Calvin Klein Company's proposed acquisition of voting securities of Calvin Klein Industries, Inc. | July 26, 1985. |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 85-19164 Filed 8-12-85; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 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:

### Pulmonary-Allergy Drugs Advisory Committee

*Date, time, and place.* September 4, 5, and 6, 8 a.m., National Institutes of Health, Jack Masur Auditorium, Clinical Center, Bldg. 10, 9000 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, September 4, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; September 5 and 6, 8 a.m. to 5 p.m.; Conrad Ledet, Center for Drugs and Biologics (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500.

*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 pulmonary disease and in diseases with allergic and/or immunologic mechanisms.

*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.* This meeting will coincide with, and the committee will participate in a workshop entitled "Update on Theophylline," sponsored jointly by FDA and the American Academy of Allergy and Immunology. The workshop will include a complete review on theophylline, the most widely used drug for the management of asthma in the United States. Investigators from both North America and Europe will be covering topics on fundamental considerations, bioavailability, pharmacokinetics, pharmacodynamics, extrapulmonary effects, and toxicity of methylxanthines.

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 may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. These procedures (21 CFR 10.206) 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 21 CFR 10.205, 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.

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 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: August 7, 1985.

**Mervin H. Shumate,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85–19154 Filed 8–12–85; 8:45 am]

BILLING CODE 4160–01–M

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[Docket No. 82D–0359]

## Animal Drugs, Feeds, and Related Products; Bioequivalence Studies for New Animal Drugs; Availability of Guideline

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guideline prepared by the Center for Veterinary Medicine (CVM) entitled "Bioequivalence Study Guideline." The guideline reflects consideration of those comments received in response to publication of a notice of availability of the draft guideline.

**ADDRESS:** The guideline, the comments on the draft guideline, the agency's response to the comments, and related materials are available for public examination at, additional written comments may be submitted to, and single copies of the guideline are available from, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Lehmann, Center for Veterinary Medicine (HFV–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3134.

**SUPPLEMENTARY INFORMATION:** The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) and 21 CFR 514.111 describe the criteria required of the sponsor of an NADA to show that the new animal drug is safe and effective and therefore may be approved. In certain instances, NADA's and supplemental NADA'S need not include safety or effectiveness data as described in §514.111, but may be approved on the basis of bioequivalency studies. The "Bioequivalence Study Guideline" may be used where bioequivalency data are acceptable in lieu of other safety and effectiveness data to support approval of an NADA.

In the **Federal Register** of January 18, 1983 (48 FR 2207), FDA published a notice of availability of a draft guideline. Comments were received from Elanco Products Co. and the Animal Health Institute. The comments were evaluated and, based on evaluation of the comments, the guideline was revised as needed. The comments and CVM's evaluation of the comments have been filed with the Dockets Management Branch.

This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. If an applicant believes that alternative procedcedure also apply, a guideline does not preclude the applicant from pursuing those alternative procedures. Under such circumstances, however, the agency encourages applicants to discuss the alternative procedures in advance with CVM to prevent the expenditure of money and effort for work that may later be found to be unacceptable.

The guideline is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above).

Interested persons may, at any time, submit additional written comments on the guideline to the Dockets Management Branch. Such comments will be considered in determining if further revisions of the guideline are required. Respondents should submit two copies, except that an individual may submit a single copy, identified with Docket No. 82D–0359. Comments and all related materials may be seen in the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

Dated: August 7, 1985.

**Mervin H. Shumate,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85–19153 Filed 8–12–85; 8:45 am]

BILLING CODE 4160–01–M

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## Home-Use in Vitro Devices; Public Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration's (FDA) Center for Devices and Radiological Health (CDRH) announces a forthcoming public meeting of the chairpersons, the consumer representatives, and the industry representatives of the Immunology Devices Panel, the Microbiology Devices Panel, the Hematology and Pathology Devices Panel, and the Clinical Chemistry and Clinical Toxicology Devices Panel. The purpose of the meeting is to solicit the views of these individuals and of other interested persons regarding the safety and effectiveness of home-use in vitro devices.

**DATES:** Written notices of participation or comments to be considered at the meeting should be received by August 30, 1985. Comments on matters discussed at the meeting should be submitted by October 15, 1985. The meeting will begin at 9 a.m. on September 9, 1985.

**ADDRESS:** The meeting will be held at the auditorium of the Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** All written notices of participation and comments should be sent to:

Jerome A. Donlon,

or

Thomas M. Tsakeris, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7234.

**SUPPLEMENTARY INFORMATION:** "In vitro diagnostic products" as defined in 21 CFR 809.3(a) are those reagents, instruments, and systems intended for use in the diagnosis of disease or other conditions, including a determination of

the state of health, in order to cure, mitigate, treat, or prevent disease or its sequelae. These products are intended for use in the collection, preparation, and examination of specimens taken from the human body. In vitro diagnostic products are devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)), and may also be biological products subject to section 351 of the Public Health Service Act (42 U.S.C. 262).

Traditionally, in vitro devices have been used by hospitals, laboratories, and physicians' offices, which forward results to the treating physician. In recent years, however, there has been increasing interest in home-use in vitro devices, e.g., over-the-counter (OTC) in vitro devices.

Because of the growing interest in home-use in vitro devices, CDRH expects to receive an increasing number of product submissions for these devices. CDRH is currently developing uniform evaluation criteria for home-use in vitro devices to help ensure that these devices are regulated in a consistent fashion and that consumers are provided with reliable, adequately labeled products. To this end CDRH, over the past few months, has solicited views from various industry, consumer, and health professional organizations to help identify the issues to be resolved by CDRH in developing evaluation criteria for home-use in vitro devices.

In conjunction with this effort, CDRH is holding a public meeting of advisory committee representatives mentioned in the summary of this notice to solicit their views as well as to hear views offered by any interested persons. Panel participants will be sent a letter listing important questions and issues related to the safe and effective use of home-use in vitro devices. The questions and issues will be based on those that have been identified thus far from responses from consumer, industry, and health professional organizations. CDRH is asking the panel participants to respond initially in writing to the questions and issues in the letter. Single copies of the letter to the panel members and their written responses may be obtained from either of the contact persons listed above.

Although the primary purpose of this meeting is to obtain the advice of the panel participants, CDRH is also interested in learning the views of members of the public. Accordingly, the public meetings will include a brief period for public participation of interested persons who wish to present information, data, and comments on the subject matter to be discussed. Persons who wish to participate are requested to submit a notice of participation to one of the contact persons listed above on or before August 30, 1985. To assure timely handling, any outer envelope should be clearly marked "Home-Use In Vitro Devices Meeting." The notice of participation should contain the interested person's name, address, telephone number, any business affiliation, a brief summary of the presentation, and the approximate time requested for the presentation. CDRH requests that presentations be limited to 10 minutes and that groups having similar interests consolidate their comments and present them through a single representative. CDRH will allocate the time available for the meeting among the persons who file notices of participation. If time permits, CDRH may allow interested persons attending the meeting who did not submit a written notice of participation to make an oral presentation at the conclusion of the meeting.

After reviewing the notices of participation and accompanying information, CDRH will schedule each appearance and notify each participant by telephone of the time allotted to the person and of the approximate time the person's oral presentation is scheduled to begin. The meeting schedule will be available at the meeting.

Persons who do not wish to make an oral presentation but who do wish to provide written information, data, and comments for consideration at the meeting should submit such materials to one of the contact persons by August 30, 1985. In addition to the opportunity for interested persons to submit written or oral comments for consideration at the meeting, interested persons may submit written comments on the matters discussed at the public meeting. These comments should be submitted by October 15, 1985.

Following the meeting, CDRH will prepare an appropriate document on home-use in vitro devices that will be made available to the public for additional comment. This document will focus on key points to consider in establishing the safe and effective use of these devices. This document will take into account the comments received by CDRH by October 15, 1985.

Dated: August 7, 1985.

**Mervin H. Shumate,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85-19152 Filed 8-12-85; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

### Medicaid Program; Hearing: Reconsideration of the Disapproval of Portions of two Minnesota State Plan Amendments

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

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on September 24, 1985 in Chicago, Illinois to reconsider our decision to disapprove portions of Minnesota State Plan Amendments 83-30 and 83-35

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the Docket Clerk August 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider our decision to disapprove portions of two Minnesota State Plan Amendments.

Section 116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Minnesota's proposals which provide for a number of financial (income and resource) methodologies to be applied under the Minnesota Medicaid programs violates section 1902(a)(10(A) and (C), 1902(f), 1902(a)(17) of the Social Security

Act and implementing Federal regulations.

The Medicaid statute at section 1902(a)(10)(A) and (C) of the Social Security Act (the Act) requires State to apply the same financial methodologies as are applied in the cash assistance programs (for example, SSI or AFDC) in determining eligibility for Medicaid in their medically needy programs. Under SPAs 83–30 and 83–35 Minnesota proposes to apply a number of income and resource methodologies which are more liberal than the related cash assistance programs. Thus, HCFA has determined these amendments violate section 1902(a)(10)(C) of the Act and were disapproved on that basis.

Section 1902(f) of the Act does permit States, such as Minnesota, to apply financial methodologies which are more restrictive than the methodologies of the cash assistance programs but no more restrictive than those contained in the State's January 1, 1972 Medicaid State plan. Under section 1902(f) of the Act a State may not apply methodologies which are more liberal than the cash assistance programs. Under SPAs 83–30 and 83–35 Minnesota proposes to apply a number of income and resource methodologies which are more restrictive than those contained in its January 1, 1972 plan. Thus, these amendments were disapproved on that basis.

Additionally, section 1902(a)(17) of the Act as implemented in regulations at 42 CFR 435.831 and 435.832 requires States to use a two-step process in determining first, medically needy eligibility and second, post-eligibility application of income to the cost of care for institutionalized individuals. These steps are separate and different. Under SPA 83–30 Minnesota proposes to apply a single step for determining both eligibility and post-eligibility treatment of income for institutionalized individuals. Thus, HCFA has determined SPA 83–30 violates regulations at 42 CFR 435.831 and 435.832 and was disapproved on that basis. Furthermore, section 1902(a)(10)(C)(i)(III) of the Act requires that Medicaid eligibility for the medically needy must be determined by the use of a single income standard which can vary, as provided by section 1902(a)(17), only with respect to differences in shelter costs between rural and urban areas. Therefore, the single standard cannot vary based on living arrangements, i.e., on institutionalization versus residing in the community. The Minnesota proposal effectively imposes a medically needy income eligibility standard for institutionalized individuals which is different from the medically needy income level used to determine eligibility of individuals residing in the community. The eligibility standard proposed for institutionalized individuals is derived from the State's institutional payment rate.

The notice to Minnesota announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendments reads as follows:

Ms. Patricia Sonnenberg,
*Special Assistant, Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155*

Dear Ms. Sonnenberg: This is to advise you that your request for reconsideration of the decision to disapprove portions of Minnesota State Plan Amendments 83–30 and 83–35 was received on July 9, 1985. You have requested a reconsideration of whether these plan amendments, which provide for a number of financial (income and resource) methodologies conform to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on September 24, 1985 in the 8th Floor Conference Room, 175 W. Jackson Blvd., Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary among the hearing participants, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 8, 1985.

**Carolyne K. Davis,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 85–19160 Filed 8–12–85; 8:45 am]

BILLING CODE 4120–01–M

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[BERC–347–NR]

## Medicare Program; Criteria for Medicare Coverage of Inpatient Hospital Rehabilitation Services

*Correction*

In FR Doc. 85–18145, beginning on page 31040, in the issue of Wednesday, July 31, 1985, make the following correction:

On page 31042, first column, the fourth line should have read: "practical improvement can be expected in a reasonable period of time. It is not necessary".

BILLING CODE 1505–01–M

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## National Institutes of Health

## National Institute of Child Health and Human Development; National Advisory Child Health and Human Development Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 23–24, 1985, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on September 23 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on September 23 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Acting Director, NICHD, an overview of Genetics Research and a presentation by the Genetics and Teratology Branch, Center for Research for Mothers and Children. The meeting will be open on September 24 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 23 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 24 from 9:00 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The 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. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20205, Area Code (301) 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Reserch for Mothers and Children, National Institutes of Health)

Dated: August 2, 1985.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 85-19165 Filed 8-12-85; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Dental Research; National Advisory Dental Research Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on September 10-11, 1985, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to recess on September 10 for general discussion and program presentations. 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 of the Council will be closed to the public on September 11 from 9:00 a.m. to 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.

Dr. Marie U. Nylen, Executive Secretary National Advisory Dental Research Council, and Associate Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20205, (telephone 301 496-7723) will furnish roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Support 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: August 2, 1985.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 85-19169 Filed 8-12-85; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Environmental Health Sciences; National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 23-24, 1985, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 23 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 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 September 23, from approximately 1:00 p.m. to adjournment on September 24, 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. Wilford L. Nusser, Associate Director for Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish 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: August 2, 1985.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 85-19174 Filed 8-12-85; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of General Medical Sciences; National Advisory General Medical Sciences Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on October 10-11, 1985, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on October 10, 1985, from 8:30 a.m. to 11:00 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. 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 October 10 from 11:30 a.m. to 6:00 p.m., and on October 11, 1985, from 8:30 a.m. 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, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496-7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20205, Telephone: 301, 496-7891 will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13-821, Physiology and Biomedical Engineering; 13-859, Pharmacology-Toxicology Research; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; and 13-880, Minority Access to Research Careers [MARC])

Dated: August 2, 1985.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 85-19175 Filed 8-12-85; 8:45 am]

BILLING CODE 4140-01-M

## Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for September through October 1985, and the individuals from whom summaries of

meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter 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, 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.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

| Study section | September–October 1985 meetings | Time | Location |
|---|---|---|---|
| Behavioral and Neurosciences-1, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352 | Sept. 9–10 | 8:30 | Holiday Inn, Georgetown, DC. |
| Behavioral and Neurosciences-3, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352 | Sept. 23 | 8:30 | Room 9, Bldg. 31C, Bethesda, MD. |
| Behavioral and Neurosciences-4, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352 | Sept. 30 | 9:00 | Do. |
| Biomedical Sciences-1, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 26–27 | 8:30 | Room 9, Bldg. 31C, Bethesda, MD. |
| Biomedical Sciences-2, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 19–20 | 8:30 | Holiday Inn, Bethesda, MD. |
| Biomedical Sciences-3, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 17–18 | 8:30 | Holiday Inn, Georgetown, DC. |
| Biomedical Sciences-4, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 10–11 | 8:30 | Do. |
| Biomedical Sciences-5, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 12–13 | 8:30 | Do. |
| Biomedical Sciences-6, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | Sept. 30–Oct. 2 | 8:30 | Room 6, Bldg. 31C, Bethesda, MD. |
| Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510 | Sept. 12–13 | 8:30 | Holiday Inn, Georgetown, DC. |
| Clinical Sciences-2, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510 | Sept. 9–10 | 8:30 | Wellington Hotel, Washington, DC. |
| Clinical Sciences-3, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510 | Sept. 19–20 | 8:30 | Holiday Inn, Georgetown, DC. |
| Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477 | Sept. 5–6 | 8:30 | Highland Hotel, Washington, DC. |

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 2, 1985.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 85–19214 Filed 8–12–85; 8:45 am]

BILLING CODE 4140–01

## National Institute on Aging; Meeting of National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on September 19–20, 1985, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 19, from 9:00 a.m. until noon for a status report by the Director, National Institute on Aging, and the annual reviews for the Behavioral Sciences Research and Biomedical Research and Clinical Medicine Programs. It will be open to the public on Friday, September 20, from 9:00 a.m. until adjournment for a report on the ad hoc Committee on Program; a presentation of priority areas by the Director, NIA; a report on the Census Bureau; and a report on the Grand Peoples Company. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 19 from 1:00 p.m. to recess 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.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June C. McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland, 20205 (301/496–5898), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 2, 1985.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 85–19211 Filed 8–12–85; 8:45 am]

BILLING CODE 4140–01–M

## National Library of Medicine; Meetings of the Board of Regents, the Extramural Programs Subcommittee, and the Lister Hill Center Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 17–18, 1985, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Lister Hill Center and the Extramural Programs Subcommittees of the Board of Regents on the preceding day September 16, from 2:00 to 5:00 p.m., in the 7th-floor Conference Room, and from 3:00 to 5:00 p.m. in the 5th-floor Conference Room of the Lister Hill Center Building, respectively. The meeting of the Board will be open to the public from 9:00 a.m. to 5:00 p.m. on September 17 and from 8:30 a.m. to 11:30 a.m. on September 18 for administrative reports and program discussions. The entire meeting of the Lister Hill Center Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 522b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on September 16 will be closed to the public, and the regular Board meeting on September 18 will be closed from approximately 11:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion 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.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, Telephone Number: 301:496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879–Medical Library Assistance, National Institutes of Health)

Dated: August 2, 1985.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 85–19213 Filed 8–12–85; 8:45 a.m.]

BILLING CODE 4140–01–M

## Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), September 19–20, 1985, Wilson Hall, James A. Shannon Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, at approximately 9:00 a.m.

This meeting will be open to the public on September 19 from 9:00 a.m. until 10:15 a.m. to discuss administrative details such as previous meeting minutes and the budget report. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 522b(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 September 19 from 10:15 a.m. until adjournment on September 20 for the review, discussion, and evaluation of individual grant applications. The applications and 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.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: August 2, 1985.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 85–19215 Filed 8–12–85; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Performance Review Board Appointments

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Performance Review Board Appointments.

**SUMMARY:** This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4)).

**EFFECTIVE DATE:** August 13, 1985.

**FOR FURTHER INFORMATION CONTACT:** Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street NW., Washington, D.C. 20240, Telephone Number: 343–6761.

**Department of the Interior**

**Performance Review Boards (PRB's)**

*Departmental PRB*

Ann D. McLaughlin, Chairperson
William Klostermeyer (Career)
David Brown (Noncareer)
Arnold Petty (Career)
F. Eugene Hester (Career)
Lyle Reed (Career)

*Office of the Secretary PRB*

Joseph Doddridge (Career), Chairperson
Charlotte Spann (Career)
Kristine Marcy (Career)
Oscar Mueller (Career)
Albert Camacho (Career)

*Assistant Secretary—Indian Affairs PRB*

Stanley Speaks (Career, Field), Chairperson
William Ragsdale (Career, Field)
Earl Barlow (Career, Field)
Nancy Garrett (Career)

*Solicitor PRB*

Keith Eastin (Noncareer), Chairperson
Christopher Cannon (Noncareer)
W. Pierce Elliott (Career)
David Watts (Career, Field)
Ruth G. VanCleve (Career)

*Assistant Secretary for Fish and Wildlife and Parks PRB*

P. Daniel Smith (Noncareer), Chairperson
Jerry Rogers (Career)
Howard Larsen (Career, Field)
Robert Baker (Career, Field)
Ronald Lambertson (Career)

*Assistant Secretary—Water and Science PRB*

Harold Furman (Noncareer), Chairperson
Richard Atwater (Noncareer)
James E. Cook (Career)
Thomas Buchanan (Career)
Robert Hamilton (Career)
Donald Kesterke (Career)
Philip Meikle (Career)

*Assistant Secretary—Land and Minerals Management PRB*

J. Steven Griles (Noncareer), Chairperson
Thomas Gernhofer (Career)
Carson Culp (Career)
Robert Lawton (Career)
Neil Morck (Career, Field)

Dated: August 8, 1985.

**Gerald R. Riso,**

*Principal Deputy Assistant Secretary—Policy, Budget and Administration.*

[FR Doc. 85–19209 Filed 8–12–85; 8:45 am]

BILLING CODE 4310–10–M

## Bureau of Land Management

**[AA–8103–2]**

### Alaska Native Claims Selection; Doyon, Ltd.

*Correction*

In FR Doc. 85–18122 appearing on page 31044 in the issue of Wednesday July 31, 1985, make the following correction: In the first column, in the first paragraph, the last line should read "26, 1985."

BILLING Code 1505–01–M

**[M–43877]**

### Montana; Order Providing for Opening of Public Lands

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Order Providing for Opening of Public Lands in Fergus County, Montana.

**SUMMARY:** This Order will open the lands reconveyed in an exchange under the Act of October 21, 1976, to the operation of the public land laws. No mineral estate was transferred or acquired in the exchange.

**DATE:** At 9 a.m. on September 20, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Croteau, Chief, Lands Adjudication Section, BLM, P.O. Box 36800, Billings, Montana 59107, phone (406) 657–6082.

**SUPPLEMENTARY INFORMATION:** The surface estate only in the following described lands was reconveyed to the United States:

Principal Meridian, Montana

T. 23 N., R. 22 E.,
Sec. 19, lot 6;
Sec. 20, lot 6;
Sec. 21, lots 5, 6, 7 and 8;
Sec. 28, lot 1, NW¼NE¼ and NE¼NW¼;
Sec. 29, lots 2, 3, 4 and 6.
T. 22 N., R. 23 E.,
Sec. 6, lot 2.
T. 23 N., R. 23 E.,
Sec. 31, lots 4 and 5.
Aggregating 384.91 acres.

John A. Kwiatkowski,
*Acting State Director.*
August 2, 1985.

[FR Doc. 85–19190 Filed 8–12–85; 8:45 am]
BILLING CODE 4310-DN-M

## Platte River Resource Area, Casper District, WY; Availability of the Record of Decision (ROD) for the Platte River Resource Management Plan (RMP)

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public notice that the Wyoming State Director has approved in a record of decision the RMP for the Platte River Resource Area.

**SUMMARY:** The RMP presents a management plan that will be implemented on about 1.4 million acres of public land in the Platte River Resource Area. The ROD adopts the proposed plan that was presented in the final EIS. The approved plan will guide management in the Resource area for the next 10 years or more.

Location of documents: The ROD and associated draft and final EISs are available to the public on request at the address noted below. Jim Melton, Area Manager, Platte River Resource Area, Bureau of Land Management, 111 South Wolcott, Casper, WY 82601. Phone: (307) 261–5191.

Public Participation: The public has been intensively involved with the preparation of this RMP. All comments submitted by the public on the draft RMP and EIS (preferred plan) were addressed in the final RMP and EIS (proposed plan). In several instances, public comments were incorporated into the RMP for clarity.

One protest was received during the 30-day protest period. A decision for that portest has been issued by the Director of the BLM. No change was made in the RMP as a result of the protest.

**SUPPLEMENTARY INFORMATION:** The four alternatives in the EIS included the continuation of present management, low level, moderate level, and high level management. The consequences of implementing each alternative was presented. A preferred management plan was presented in the draft that best addressed each of the issues.

A proposed plan was presented in the final EIS and was the environmentally preferred alternative. The RMP includes all practicable mitigation. After implementation of the plan, other site-specific mitigation resulting from analyses of various proposals may be required.

Dated: August 5, 1985.

Hillary A. Oden,
*State Director.*

[FR Doc. 85–19191 Filed 8–12–85; 8:45 am]
BILLING CODE 4310-22-M

[INT DRMP/EIS 85-37]

## Availability of the Draft Resource Management Plan/Environmental Impact Statement for the Elko Resource Area Nevada

August 6, 1985.

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability of and public hearings on the draft resource management plan/environmental impact statement for the Elko Resource Area, Elko District, Nevada.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Elko District BLM, has prepared a combined Resource Management Plan/Environmental Impact Statement for the Elko Resource Area, Elko District, Nevada.

**SUPPLEMENTARY INFORMATION:** The Elko Resource Management Plan/Environmental Impact Statement is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards of monitoring and evaluating the plan's effectiveness, and the need for more detailed management plans. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 3.1 million acres of public land within portions of Lander, Eureka and Elko counties in Nevada. Four alternatives were considered along with the Preferred Alternative. The Preferred Alternative includes a proposal to recommend 36,460 acres in two wilderness study areas as preliminarily suitable for wilderness designation, and 396,989 animal unit months available for livestock grazing. The affected environment is described and the environmental consequences occurring from each alternative are discussed.

**FOR FURTHER INFORMATION CONTRACT:** Rodney Harris, District Manager, ATTN: RMP/EIS Coordinator, Bureau of Land Management 3900 E. Idaho St., Elko, NV 89801, (702) 738–4071.

Copies of the draft document are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, Washington, D.C. 20240
Bureau of Land Management, Nevada State Office, 300 Booth Street, Reno, Nevada 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102 (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445, (702) 623–3676
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701, (702) 882–1631
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820, (702) 635–5181
Elko County Library, 720 Court Street, Elko, Nevada 89801
Government Publications Dept., University of Nevada, Reno, Getchell Library, Reno, Nevada 89557

University of Nevada, Las Vega, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
Eureka County Library, P.O. Box 21, Eureka, Nevada 89316
Lander County Library, Battle Mountain, Nevada 89820
White Pine County Library, Campton Street, Ely, Nevada 89301
Nevada State Library, Library Building, 401 N. Carson Street, Carson City, Nevada 89710.

A copy of the Draft RMP/EIS will be sent to all individuals, agencies and groups who have expressed interest in the Elko Resource Area planning process, and a limited number of copies are available upon request from the District Manager at the above address.

**DATES:** Written comments concerning issues pertinent to the Elko Resource Area RMP/EIS will be accepted until November 15, 1985. Public hearings have been scheduled for October 2, 1985, 7:30 p.m., at the Elko Convention Center, 700 Festival Way in Elko, Nevada and October 3, 1984, 7:30 p.m. at the Holiday Inn, 1000 E. Sixth Street in Reno, Nevada. Testimony concerning the issues will be accepted at these hearings. Interested individuals, representatives of organizations and public officials wishing to testify are requested to contact the District Manager for advance registration by 4:15 September 27, 1985.

**Edward F. Spang,**
*State Director, Nevada.*

[FR Doc. 85-19202 Filed 8-12-85; 8:45 am]
BILLING CODE 4130-85-M

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[A-18909]

## Arizona; Exchange of Public and Private Lands

August 5, 1985.

Notification is hereby given of the consummation of an exchange of lands between the United States and Robert E. and Pamela Johnson. The Bureau of Land Management has transferred the following described land out of Federal ownership on July 25, 1985, by Patent No. 02-85-0058, pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

**Gila and Salt River Meridian**

T. 19 N., R. 21 W.,
Sec. 31, Lot 6.
Containing 19.94 acres in Mohave County.

In exchange the following described lands were reconveyed to the United States:

T. 25 N., R. 17 W.,
Sec. 31, Lots 3 and 4, E½SW¼, SE¼.
Containing 320.15 acres in Mohave County.

The exchange was based on approximately equal values.

The lands reconveyed to the United States will be open to entry under the general land laws. The mineral estate is retained by the Santa Fe Railroad Company.

This information is provided to all interested parties of the consummation of a land title exchange action.

**John T. Mezes,**
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 85-19220 Filed 8-12-85; 8:45 am]
BILLING CODE 4310-32-M

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[W-83103]

## Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

August 5, 1985.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-83103 for lands in Fremont County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-83103 effecitve April 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**
*Chief, Leasing Section.*

[FR Doc. 85-19221 Filed 8-12-85; 8:45 am]
BILLING CODE 4310-22-M

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## National Park Service

## Upper Delaware National Scenic and Recreational River; Meeting

**AGENCY:** Upper Delaware Citizens Advisory Council, Interior, National Park Service.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** August 23, 1985, 7:00 p.m.

**ADDRESS:** Town of Tusten, Narrowsburg, New York.

**FOR FURTHER INFORMATION CONTACT:** John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135.

**SUPPLEMENTARY INFORMATION:** The Advisory Council was established under section 704(f) of the National Park and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1-3/4 miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 5, 1985.

**James W. Coleman, Jr.,**
*Regional Director, Mid-Atlantic Region.*

[FR Doc. 85-19247 Filed 8-12-85; 8:45 am]
BILLING CODE 4310-70-M

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## Intention To Extend Concession Contract; Lake Meade Ferry Service, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession

contract with Lake Mead Perry Service, Inc., authorizing it to continue to provide sightseeing tourboat facilities and services for the public at Lake Mead National Recreational Area for a period of one (1) year from October 1, 1985, through September 30, 1986, or until a new contractual document is executed, whichever occurs first.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Part 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. The National Park Service has determined that 60 days is sufficient time to prepare and submit offers by the deadline because no additional requirements above and beyond those stated in the current concession contract are called for pursuant to this extension.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: July 23, 1985.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 85-19246 Filed 8-12-85; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Arizona et al.; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 3, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 28, 1985.

**Carol D. Shull,**

*Chief of Registration, National Register.*

### ARIZONA

**Maricopa County**

Phoenix, *6th Avenue Hotel-Windsor (Phoenix Commercial MRA)*, 546 W. Adams
Phoenix, *Anchor Manufacturing Co. (Phoenix Commercial MRA)*, 551 S. Central
Phoenix, *Arizona Citrus Growers Association Warehouse (Phoenix Commercial MRA)*, 601 E. Jackson
Phoenix, *Arizona Compress & Warehouse Co. Warehouse (Phoenix Commercial MRA)*, 215 S. 13th St.
Phoenix, *Arizona Orange Association Packing House (Phoenix Commercial MRA)*, 520 W. Jackson
Phoenix, *Arvizu's El Fresnal Grocery Store (Phoenix Commercial MRA)*, 310 E. Buchanon
Phoenix, *Baird, F. S., Machine Shop (Phoenix Commercial MRA)*, 623 E. Adams
Phoenix, *Bayless, J. B., Store No. 7 (Phoenix Commercial MRA)*, 825 N. 7th St.
Phoenix, *Browns's Pharmacy (Phoenix Commercial MRA)*, 1000 E. Pierce
Phoenix, *Central Wholesale Terminal (Phoenix Commercial MRA)*, 315 E. Madison & 227 S. 3rd St.
Phoenix, *Chambers Transfer & Storage Co.—Central Warehouse (Phoenix Commercial MRA)*, 15-39 E. Jackson.
Phoenix, *Chambers Transfer & Storage Co. (Phoenix Commercial MRA)*, 309 S. 4th Ave.
Phoenix, *Coca Cola Bottling Works (Phoenix Commercial MRA)*, 547 W. Jefferson
Phoenix, *Copeland & Tracht Service Station (Phoenix Commercial MRA)*, 1702 W. Van Buren
Phoenix, *Ellingson Building (Phoenix Commercial MRA)*, 19 E. Washington
Phoenix, *Fry Building-Baxter Block (Phoenix Commercial MRA)*, 146 E. Washinton
Phoenix, *Gerardo's Building (Phoenix Commercial MRA)*, 421 S. 3rd St.
Phoenix, *Hanny's (Phoenix Commercial MRA)*, 44 N. 1st St.
Phoenix, *Heard Building (Phoenix Commercial MRA)*, 112 N. Central
Phoenix, *High Class Food Company (Phoenix Commercial MRA)*, 1410 E. Washington
Phoenix, *Hotel St. James (Phoenix Commercial MRA)*, 21 E. Madison
Phoenix, *Hurley Building (Phoenix Commercial MRA)*, 536, 544-548 W. McDowell & 1601 N. 7th Ave.
Phoenix, *IOOF Hall (Phoenix Commercial MRA)*, 245 W. Adams
Phoenix, *King's Rest Motor Court (Phoenix Commercial MRA)*, 801 S. 17th Ave.
Phoenix, *Knights of Pythias Building (Phoenix Commercial MRA)*, 829 N. 1st Ave
Phoenix, *Lightning Delivery Co. Warehouse (Phoenix Commercial MRA)*, 425 E. Jackson
Phoenix, *Lois Grunow Memorial Clinic (Phoenix Commercial MRA)*, 926 E. McDowell
Phoenix, *Medical Arts Building (Phoenix Commercial MRA)*, SW corner 7th St.-McDowell
Phoenix, *Ong Yut Geong Wholesale Market (Phoenix Commercial MRA)*, 502 S. 2nd St.
Phoenix, *Orpheum Theater (Phoenix Commercial MRA)*, 209 W. Adams
Phoenix, *Pay'n Takit #13 (Phoenix Commercial MRA)*, 1402 E. Van Buren
Phoenix, *Pay'n Takit #5 (Phoenix Commercial MRA)*, 1012 N. 7th Ave.
Phoenix, *Pay'n Takit Markit #26 (Phoenix Commercial MRA)*, 928 E. Pierce
Phoenix, *Phoenix Seed & Feed Company (Phoenix Commercial MRA)*, 411 S. 2nd St.
Phoenix, *Rose Tourist Camp (Phoenix Commercial MRA)*, 1555 W. Van Buren
Phoenix, *Shell Oil Co. (Phoenix Commercial MRA)*, 425 S. 16th Ave.
Phoenix, *Steinegger Lodging House-Alamo Hotel-St. Francis Hotel-Golden West Hotel (Phoenix Commercial MRA)*, 27 E. Monroe
Phoenix, *Storage Warehouse (Phoenix Commercial MRA)*, 429 W. Jackson
Phoenix, *Sun Mercantile Building (Phoenix Commercial MRA)*, 232 S. Third St.
Phoenix, *Title and Trust Building (Phoenix Commercial MRA)*, 112 N. 1st Ave.
Phoenix, *Union Station (Phoenix Commercial MRA)*, 4th Ave. & R.R. Tracks
Phoenix, *Wakelin, E. S., Grocery Company Warehouse (Phoenix Commercial MRA)*, 440 W. Jackson
Phoenix, *Walker, J. W., Building-Central Arizona Light & Power (Phoenix Commercial MRA)*, 10 N. 3rd Ave. & 300 W. Washington
Phoenix, *Western Wholesale Drug Co. Warehouse (Phoenix Commercial MRA)*, 101 E. Jackson
Phoenix, *Whitney, J. T., Funeral Chapel (Phoenix Commercial MRA)*, 330 N. 2nd Ave.
Phoenix, *Winters Building-Craig Building (Phoenix Commercial MRA)*, 39 W. Adams
Phoenix, *Yaun Ah Gim Groceries (Phoenix Commercial MRA)*, 1002 S. 4th Ave.

### CALIFORNIA

**Alameda County**

Berkeley, *Chamber of Commerce Building*, 2140-2144 Shattuck Ave & 2071-2089 Center St.

**Contra Costa County**

Walnut Creek, *Shadelands Ranch House*, 2660 Ygnacio Valley Rd.

**Los Angeles County**

Los Angeles, *Engine Co. No. 27*, 1355 N. Cahuenga Blvd.

**San Francisco County**

San Francisco, *Wilford, Albert, Houses*, 2121 & 2127 Vallejo St.

### COLORADO

**Denver County**

Denver, *Agnes-Phipps Memorial Sanitorium*, Bldg. #251 & 276 Roslyn Circle on Lowry AFB

CONNECTICUT

Harford County

Hartford, *Prospect Avenue Historic District*, Roughly bounded by Albany Ave., N. Branch Park River Elizabeth & Fern Sts., Prospect & Asylum Aves. & Sycamore Rd.
Suffield, *Farmington Canal-New Haven and Northampton Canal*, Roughly from Suffield in Hartford Cty. to New Haven in New Haven Cty.

Middlesex County

Middletown, *Connecticut General Hospital for the Insane*, Silver St. E. of Eastern Dr.

New Haven County

Northford, *Fourth District School*, Old Post Rd.

Windham County

Central Village, *Plainfield Woolen Company Mill*, Main St.
Danielson, *Quinebaug Mill–Quebec Square Historic District*, Roughly bounded by Quinebaug River, Quebec Square, Elm & S. Main Sts.

ILLINOIS

Cook County

Chicago, *Municipal Courts Building*, 116 S. Michigan Ave.
Chicago, *Swedish American Telephone Company Building*, 5235–5257 N. Ravenswood Evanston, *Perkins, Dwight, House*, 2319 Lincoln St.

Effingham County

Effingham, *Effingham County Courthouse*, 110 E. Jefferson St.

LaSalle County

LaSalle, *LaSalle City Building*, 745 Second St.

Madison County

Collinsville, *Miners Institute Building*, 204 W. Main

McDonough County

Adair vicinity, *Welling-Everly Horse Barn*, Off US 136

Rock Island County

Rock Island, *Lincoln School*, 7th Ave. and 22nd St.

Vermilion County

Hoopeston, *Hoopes-Cunningham Mansion*, 424, E. Penn St.

MINNESOTA

Carlton County

*Lindholm Oil Company Service Station*
Carlton, *Carlton County Courthouse*; 3rd St. and Walnut Ave.
Cloquet, *Cloquet-Northern Office Building*, Avenue C & Arch St.
Cloquet, *Park Place Historic District*, 1, 512, 520, and 528 Park Pl.
Cloquet, *Shaw Memorial Library*, 406 Cloquet Ave.

Mille Lacs County

Milaca, *Milaca Municipal Hall*, 145 Central Ave. S.
Onamia, *Onamia Municipal Hall*, Main and Birch Sts.
Princeton, *Dunn, Robert C., House*, 708 S. 4th St.
Princetion, *Gile, Ephriam C., House*, 311 8th Ave. S.
Wahkon, *ELLEN RUTH (launch)*, Main St. between Lake Shore Blvd. and Fifth St.

MISSISSIPPI

Adams County

Natchez vicinity, *Glen Aubin*, Off US 61

Alcorn County

Corinth, *Corinth Post Office*, 515 Fillmore St.

Noxubee County

Macon, *Maudwin*, 101 Washington St.

Simpson County

Mendenhall, *Simpson County Courthouse*, Courthouse Square

NEW YORK

Clinton County

Plattsburgh, *United States Oval Historic District (Plattsburgh City MRA)*, *US 9*

Nassau County

Flower Hill, *Denton, George W., House*, West Shore Rd.

Onondaga County

Jamesville, *Ives, Dr. John, House*, 6575 E. Seneca Turnpike

Westchester County

Yonkers, *Bell Place—Locust Hill Avenue Historic District*, Roughly bounded by Cromwell Pl., Locust Hill Ave., Baldwin Pl. & N. Broadway

NORTH DAKOTA

Benson County

York vicinity, *Pierson Farm*, 3.5 miles S. of York off US. 2

Traill County

Hillsboro vicinity, *Ellingson Farm District*, 1 mile N. & 2.5 miles W. of Hillsboro

NORTHERN MARIANA ISLANDS

Roth

Songsong, Mochong

TEXAS

Brewster County

*Burro Mesa Archeological District (41BS187, 41BS220, 41BS221, 41BS630)*

Nueces County

*Tucker Site (41NU46)*

VERMONT

Windsor County

Weston, *Weston Village Historic District*, Main, Park & School Sts., Lawrence Hill, Landgrove & Trout Club Rds., Mill Lane & Chester Mountain Rd.

WASHINGTON

Grays Harbor County

Hoquiam, *McTaggart, Lachlin, House*, 224 L St.

Yakima County

Zillah vicinity, *Teapot Dome Service Station*, Old State HW 12

The 15-day commenting period for the following property is to waived in order to assist the buildings preservation through the tax certification.

SOUTH CAROLINA

Charleston County

Charleston, *Charleston Old and Historic District (Boundary Increase)*, 25 Warren—114 St. Phillip Sts. & 25½ Warren St.

[FR Doc. 85–19245 Filed 8–12–85; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–228]**

### Chelatchie Prairie Railroad, Inc.—Abandonment—in Clark County, WA; Findings

The Commission has found that the public convenience and necessity permit Chelatchie Prairie Railroad, Inc., to abandon its entire 29.5 mile line of railroad between Rye (milepost 0.00) and Chelatchie (milepost 25.50) in Clark County, WA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication and the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "RAIL SECTION, AB–OFA." An offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

**James H. Bayne,**

*Secretary.*

[FR Doc. 85–19290 Filed 8–12–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30705]

## The Milwaukee Road, Inc.—Trackage Rights Exemption Consolidated Rail Corporation; Exemption

The Milwaukee Road, Inc., has entered into an agreement for overhead trackage rights over Consolidated Rail Corporation (CR) track between milepost 86.28 at Beehunter, IN, to milepost 92.40 at Sanborn, IN, thence westerly a distance of approximately 4.44 miles on CR's Old Hawthorne Mine Track Lead to the Hawthorne mine, a total distance of approximately 10.56 miles. This trackage rights agreement will be effective on August 1, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

*Secretary.*

[FR Doc. 85-19180 Filed 8-12-85; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-12 (Sub-88X)]

## Southern Pacific Transportation Company—Discontinuance Exemption—in Shasta County, CA

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts the discontinuance of service by the Southern Pacific Transportation Company over 4.58 miles of line owned by the United States Bureau of Reclamation (the Matheson Branch), extending from milepost 258.62 to milepost 263.2, in Shasta County, CA, subject to standard labor protective conditions.

**DATES:** This exemption will be effective on September 12, 1985. Petitions to stay must be filed by August 23, 1985, and petitions for reconsideration must be filed by September 3, 1985.

**ADDRESSES:** Send pleadings referring to Docket No. AB-12 (Sub-No. 88X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

**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. InfoSystem, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 1, 1985.

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

James E. Payne,

*Secretary.*

[FR Doc. 85-19179 Filed 8-12-985 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-12 (Sub-89X)]

## Southern Pacific Transportation Co.; Abandonment Exemption—In Alameda County, CA

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et. seq.*, the abandonment by the Southern Pacific Transportation Company of 5.74 miles of its Radum Branch Between milepost 62.10 near Dougherty and milepost 67.84 near Radum in Alameda County, CA, subject to standard labor protective conditions.

**DATES:** This exemption will be effective on September 12, 1985. Petitions to stay must be filed by August 23, 1985, and petitions for reconsideration must be filed by September 3, 1985.

**ADDRESSES:** Send pleadings referring to Docket No. AB-12 (Sub-No. 89X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

**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 Bldg., Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in this proceeding.

James H. Bayne,

*Secretary.*

[FR Doc. 85-19225 Filed 8-12-85; 8:45 am]

BILLING CODE 7035-01-M

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# DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

[Docket No. 84-20]

## Daniel Levine, t/a Gladstone Pharmacy; Revocation of Registration

On April 30, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Daniel Levine, t/a Gladstone Pharmacy of 8012 Ventnor Avenue, Margate, New Jersey 08402 (Respondent), proposing to revoke the pharmacy's DEA Certificate of Registration AG6382270 and to deny its pending application for renewal of such registration. The proposed action was based on the controlled substance felony conviction of Daniel Levine, owner of Respondent pharmacy. By letter dated May 30, 1984, Respondent requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Salem, New Jersey on November 14 and 15, 1984. Administrative Law Judge Francis L. Young presided. On April 3, 1985, Judge Young issued his opinion, recommended findings of fact, conclusions of law, ruling and decision, to which the Respondent filed exceptions pursuant to 21 CFR 1316.66. On May 15, 1985, Judge Young transmitted the record of these proceedings, including Respondent's exceptions to the Administrator.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that the Atlantic City Stress Clinic, also known as Atlantic Medical Associates, located in Atlantic City, N.J., came under police investigation in the fall of 1981. The principal physician there was Dr. Arnold Greenblatt. The investigation revealed that during the roughly seven months of the stress clinic's operation, Dr. Greenblatt wrote 1,198 methaqualone prescriptions for 242 patients. These prescriptions called for the dispensing of approximately 35,850 dosage units of that drug. Mr. Levine at Gladstone Pharmacy filled

approximately 718 of those prescriptions which amounted to 21,450 dosage units of methaqualone. This represented about 60 percent of all of the methaqualone prescriptions written by Dr. Greenblatt.

The investigation further revealed that persons bringing Dr. Greenblatt's methaqualone prescriptions to be filled at Respondent pharmacy were charged a higher price for a thirty-tablet prescription than they would have been charged had they gone to another pharmacy. An undercover investigator questioned Mr. Levine about the price differential. Mr. Levine responded that other pharmacies might charge lower prices either because they obtained their drugs directly from the manufacturer or received a discount from a wholesaler. In fact, Gladstone Pharmacy was the only pharmacy in the Atlantic City area which purchased methaqualone products at a discount. Occasionally, Mr. Levine filled methaqualone prescriptions written by physicians other than Dr. Greenblatt for lower prices than he charged for those written by Dr. Greenblatt.

As a result of the investigation, Mr. Levine and Dr. Greenblatt were tried on a 16-count indictment charging them with knowingly and intentionally dispensing a Schedule II controlled substance, methaqualone, other than in the usual course of professional practice and not for a legitimate medical purpose. On December 19, 1983, in the United States District Court for the District of New Jersey, Daniel Levine was convicted of one count of unlawfully dispensing methaqualone. This was a felony offense under 21 U.S.C. 841(a)(1), 21 U.S.C. 1306.04 and 18 U.S.C. 2. DEA has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. *Big-T Pharmacy, Inc.*, Docket No. 80–34, 47 FR 51830 (1982); *K & B Successors, Inc.*, Docket No. 82–15, 49 FR 34588 (1984); *B. Ruppe Drugstore, Inc.*, Docket No. 84–16, 50 FR 23203 (1985). Therefore, there is a lawful basis for the revocation of Respondent's registrations and for the denial of Respondent's pending application for renewal. 21 U.S.C. 824(a)(2). See: *AG Pharmacy, Inc.*, Docket No. 79–12, 45 FR 6868 (1980); *Serling Drug Co.*, Docket No. 74–12, 40 FR 11918 (1975); *Rafael C. Cilento, M.D.*, Docket No. 79–2, 44 FR 30466 (1979).

In this proceeding, the principal disagreement between the parties is over intent, the state of mind of Mr. Levine when he filled the prescriptions written by Dr. Greenblatt. The Government contends that Mr. Levine knowingly and willfully violated the law. Mr. Levine argues that the worst that might be said of him is that, in hindsight, he exercised poor judgment.

The Administrative Law Judge found that after filling Greenblatt methaqualone prescriptions for several months, Mr. Levine stopped doing so for a short period in early 1982. At that time, Mr. Levine contacted an Assistant State Attorney General in the New Jersey Department of Law and Public Safety, and the Chief of the Drug Control Program, New Jersey Department of Health. He also contacted the Secretary and Executive Officer of the Pharmaceutical Association. He asked these persons whether or not it was proper for him to fill Greenblatt's methaqualone prescriptions. Mr. Levine received similar advice from the parties he contacted. Mr. Levine was told that he had a responsibility to determine whether a prescription had been written for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. He was told that if he was satisfied that the prescription was legitimate, he should fill it. If, however, he determined that the prescription was not so written, he should not honor it.

He was further cautioned, "that pharmacists must look at all of the circumstances: Whether the person was a regular patient; did it appear that the person was using the prescription in the traditional way; is the person a member of your community; do their families deal with you; or, are they strangers from somewhere else who might be coming in to obtain drugs for other than legitimate purposes." After these conversations, Mr. Levine resumed filling Greenblatt methaqualone prescriptions and continued doing so until he and Dr. Greenblatt were arrested.

The Government contends that the inquiries made by Levine were nothing but a ruse, calculated to simulate good faith. The Government further contends that Mr. Levine knew that the Greenblatt prescriptions were being issued unlawfully and that Mr. Levine, knowing this, and in concert with Greenblatt and his clinic filled the prescriptions knowing that it was improper and illegal to do so under the circumstances.

Mr. Levine contended that his inquiries were sincere. He further alleged that after considering the advice he received, he made a good faith exercise of his professional judgment. At the hearing in this matter, testimony was presented that Mr. Levine is highly regarded by his professional colleagues, and by the community in which he lives. The Executive Officer and Secretary of the Pharmaceutical Association testified at the hearing that, in his opinion, the inquiry made by Mr. Levine not only conformed "to acceptable pharmaceutical standards," but "seems to be over and above what most people would do," and indicated that Mr. Levine "was being careful."

The Chief of the New Jersey State Health Department's Drug Control Program testified that he had examined the patient profile cards maintained by Mr. Levine on all of the persons for whom Mr. Levine filled Greenblatt methaqualone prescriptions. He stated at the hearing that in his opinion, pharamacists filling those prescriptions based upon the information on the profile cards, should have known that the prescriptions were written for other than legitimate medical purposes.

The Respondent stressed that Mr. Levine would not fill the Greenblatt prescriptions for anyone who was not on a list provided by Dr. Greenblatt's office. This, Respondent argues, was to protect against forged prescriptions. Respondent also noted that Mr. Levine would not fill methaqualone prescriptions for anyone who came into his drugstore looking like a drug abuser.

The Administrative Law Judge concluded that there were two facts that strongly supported the Government's contention that Mr. Levine knowingly participated in a conspiracy with Dr. Greenblatt to illegally divert methaqualone. First, Mr. Levine *was convicted* after a jury trial of unlawfully dispensing methaqualone on one occasion. This conviction clearly was based on a dispensing of methaqualone by Mr. Levine pursuant to a Greenblatt prescription. Second, one of the undercover investigators testified that she had a Greenblatt methaqualone prescription filled at Respondent pharmacy. The fictitious address that she had used on the prescription had been changed between the time she surrendered it at the pharmacy and the time it was subsequently retrieved from the pharmacy's files by the police during their investigation. Judge Young stated in his opinion that the only conclusion that can be drawn is that someone at Respondent pharmacy changed the address. The only likely reason for doing this would be so that the prescription would bear an address that

the pharmacy personnel knew to be genuine. Thus, it would be in accord with Mr. Levine's purported policy of filling prescriptions only for customers known to be living in the immediate area of his pharmacy. Judge Young concluded that the changing of the address is evidence of a corrupt state of mind and a willing participation in a scheme to dispense methaqualone for other than legitimate purposes.

The Administrative Law Judge concluded that the Government's contention was correct. Mr. Levine was part of a calculated effort to divert methaqualone into the illicit market.

After reviewing the record of this proceeding, the Administrator finds that there are additional reasons for choosing the Government's view of the facts over Mr. Levine's version. It appears that in February 1982, members of the press became aware that the state police were involved in an investigation of Dr. Greenblatt's clinic and reporters began making inquiries. It was at this time that Mr. Levine temporarily stopped filling the Greenblatt methaqualone prescriptions and began making the various inquiries mentioned by the Administrative Law Judge. One of the people to whom Mr. Levine spoke, the executive officer of the pharmaceutical association, told Levine that law enforcement officers frequently look at the price charged for a prescription, presumably in relationship to the price of other prescriptions or similar prescriptions in other pharmacies, to aid in determining whether prescriptions were being filled in good faith. When he resumed filling Greenblatt prescriptions, Mr. Levine reduced his price by approximately ten dollars per prescription. The receptionist at Dr. Greenblatt's office who was responsible for giving Mr. Levine a daily list of patients who were to have their prescriptions filled stated that she had been instructed to speak only to Mr. Levine and not to his father who also worked as a pharmacist at the Respondent pharmacy. If the purpose of the list was to prevent the filling of forged prescriptions, as Mr. Levine alleges it was, why should it not be given to the elder pharmacist? Clearly, Mr. Levine did not care to make his father aware of his relationship with Dr. Greenblatt's operation. Additionally, although Dr. Greenblatt almost always prescribed a regimen of methaqualone, Doxepin [a noncontrolled antidepressant], and Stress-tab vitamins, the vast majority of Mr. Levine's customers had only methaqualone prescriptions filled, a fact that should have put Mr. Levine on notice that these people were far more interested in methaqualone than they were in Greenblatt's "stress" regimen. Based on all of the facts and circumstances in the record, the Administrator concludes that Mr. Levine knowingly filled hundreds of methaqualone prescriptions which he knew were written other than in the legitimate course of professional practice and treatment. His various procedures were, as the Government contended, nothing but an attempt to disguise his real motives with a cloak of legitimacy.

Judge Young recommended that the registration of Gladstone Pharmacy should be revoked and the pending application for renewal of the registration should be denied. After reviewing the entire record, and except as supplemented above, the Administrator adopts the recommended findings of fact, conclusions of law and ruling of the Administrative Law Judge.

The role of the Administrator of the Drug Enforcement Administration is not to further punish a person convicted of a controlled substance-related felony. Instead, the Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. Mr. Levine has shown that he cannot be trusted. He was willing to ignore his professional responsibilities as a pharmacist. Mr. Levine's control over Respondent pharmacy is too extensive to justify the continued registration of Gladstone Pharmacy.

Therefore, having concluded that there is a lawful basis for the revocation of Respondent's registration and for the denial of its application for renewal, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked and the application denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AG6382270, previously issued to Gladstone Pharmacy, be, and it hereby is, revoked. The Administrator further orders that the application of Gladstone Pharmacy for renewal of its DEA Certificate of Registration, be and it hereby is, denied, effective September 12, 1985.

Dated: August 8, 1985.

**John C. Lawn,**

*Administrator.*

[FR Doc. 85-19219 Filed 8-12-85; 8:45 am]

BILLING CODE 4410-09-M

## Immigration and Naturalization Service

### Reimbursable Service—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for each preclearance installation are determined as set forth below and will be effective with the pay period beginning August 18, 1985.

| Installation | Biweekly excess cost |
|---|---|
| Montreal, Canada | $10,079.78 |
| Toronto, Canada | 16,712.12 |
| Kindley Field, Bermuda | 2,176.52 |
| Freeport, Bahama Islands | 6,182.96 |
| Nassau, Bahama Islands | 7,323.12 |
| Calgary, Canada | 2,816.31 |
| Edmonton, Canada | 3,563.90 |
| Vancouver, Canada | 7,672.42 |
| Victoria, Canada | 1,722.23 |
| Winnipeg, Canada | 1,636.70 |

These amounts will be in effect and billed biweekly until the first full pay period after the notice of the fourth quarter, fiscal year 1985, reimbursable biweekly excess costs are published in the **Federal Register**.

Dated: August 7, 1985.

**Malcolm E. Arnold,**

*Comptroller.*

[FR Doc. 85-19235 Filed 8-12-85; 8:45 am]

BILLING CODE 4410-10-M

## Office of Juvenile Justice and Delinquency Prevention

### Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

The third quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on September 11, 1985. The meeting will take place in the Thirteenth Floor Conference Room at the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., from 9:30 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20431, (202) 724-7655.

Dated: August 8, 1985.

Approved.

James M. Wootton,

*Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 85-19250 Filed 8-12-85; 8:45 am]

BILLING CODE 4410-06-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Nonrubber Footwear; Industry Study

On July 1, 1985, the U.S. International Trade Commission (ITC) determined that increased imports of nonrubber footwear are a substantial cause of serious injury or the threat thereof to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (50 FR 30245)

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on nonrubber footwear. The report found as follows:

1. Average employment of production and production-related workers producing nonrubber footwear declined steadily during 1981–1984. Permanent employment levels are expected to continue declining during 1985–1986. Industrywide temporary layoffs are also expected.

2. The Department of Labor (DOL) has received and processed 733 petitions involving workers in the nonrubber footwear industry since April 3, 1975, the effective date of the worker adjustment assistance program, including 159 processed during the January 1983–June 1985 period. Four-hundred-and-sixty-five petitions were certified covering 78,812 industry workers, and 268 petitions were denied, terminated or withdrawn. An additional 20 petitions covering nonrubber footwear workers were in process as of the date of preparation of this report.

Between April 3, 1975, and March 31, 1985, DOL has paid $71,862,675 in trade readjustment allowances to 62,238 workers formerly employed in facilities producing nonrubber footwear. Workers whose petitions were certified during 1983–1985 have received $1,861,091.

During the April 3, 1975, to March 31, 1985, period job search allowances of $4,160 were paid to 57 industry workers, relocation allowances of $41,894 were paid to 48 industry workers, and $1,293,985 was spent on training programs involving 5,646 industry workers.

3. Most of the production and production-related workers' occupations involved in nonrubber footwear operations are considered semiskilled to skilled.

4. Unemployment rates for 179 of 309 areas with facilities producing nonrubber footwear were above the national unemployment rate of 7.5 percent (unadjusted) for March 1985. Reemployment prospects for most present and potential separated workers in areas with establishments responding to the DOL survey appear to be poor-to-fair.

5. A total of $38.1 million is available in Fiscal Year 1985 to provide training, job search and relocation allowances and related services, and an estimated $45.0 million is available to provide trade readjustment allowances (TAA) to all eligible workers of U.S. industries including eligible nonrubber footwear workers adversely affected by import competition under the trade adjustment assistance program. TRA funding for Fiscal Year 1986 is expected to be about $5.0 million, while no funds are budgeted for training, job search and relocation allowances for Fiscal Year 1986. All worker trade adjustment assistance (TRA) program benefits and allowances will expire on September 30, 1985, unless the legislative authority is extended.

Dislocated workers from the nonrubber footwear industry may benefit from $222.5 million which has been set aside for Program Year 1985 (July 1, 1985-June 30, 1986) for the administration and delivery of dislocated worker benefits and services under Title III of the Job Training Partnership Act (JTPA). Additional nonrubber footwear workers could be eligible for other JTPA programs including Title II–A disadvantaged worker programs.

Copies of the Department's report containing nonconfidential information developed in the course of the six-month investigation may be purchased by contacting Larry Ludwig, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street NW., Room 6020, Washington, D.C. 20213 (phone 202-376-6196)

Signed at Washington, D.C., this 2nd day of August 1985.

Robert T. Jones,

*Acting Deputy Assistant Secretary of Labor.*

[FR Doc. 85-19261 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-30-M

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Flexible Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 29, 1985—August 2, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–15,994; The Flxible Corp., Loundonville, OH*

*TA–W–15,938; Wire Components, Inc., Memphis, TN*

*TA–W–15,908; Dominion Automotive Industries, Inc., Sevierville, TN*

*TA–W–15,926; Acme Boot Co., Inc., Clarksville, TN*

*TA–W–15,927; Acme Boot Co., Inc., Waverly, TN*

*TA–W–15,928; Acme Boot Co., Inc., Ashland, TN*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-15,982; J.C. Penney Co., Inc., Raymond, WA*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA-W-15,963; Emerald Mines Corp., Waynesburg, PA*

Aggregate U.S. imports of metallurgical coal are negligible.

*TA-W-15,977; Centennial Mills, Wheat Flour Mill, Spokane WA*

Aggregate U.S. imports of wheat flour were negligible from 1980 through 1984.

*TA-W-15,848; Bethlehem Steel Corp., Burns Harbor Plant, Chesterton, IN*

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

**Affirmative Determinations**

*TA-W-15,933; Lawrence Shoe, Lewiston, ME*

A certification was issued covering all workers of the firm separated on or after December 25, 1984 and before February 25, 1985.

*TA-W-15,790; American Safety Equipment Corp., Palmyra, MO*

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

*TA-W-15,953; Soft Images, Inc., Kington, NY*

A certification was issued covering all workers of the firm separated on or after April 9, 1984.

*TA-W-15, 872; Abex Corp., Engineered Products Div., Medina, NY*

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

*TA-W-15,033; Formfit Rogers, Lafayette, Gallatin and Nashville, TN*

A certification was issued covering all workers of the firm separated on or after May 13, 1984.

*TA-W-15,863; Formfit Rogers, McMinnville, TN*

A certification was issued covering all workers of the firm separated on or after March 25, 1984.

*TA-W-15,896; Morton Salt Div., Morton Thiokol, Inc., Marysville, MI*

A certification was issued covering all workers of the firm separated on or after March 25, 1985 and before January 31, 1985.

*TA-W-15,968; Princeton Shirt Co., Hopelawn, NJ*

A certification was issued covering all workers of the firm separated on or after April 1, 1984 and before January 31, 1984.

*TA-W-15,789; American Accessories, Inc., Dandridge, TN*

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

*TA-W-15,847; Weyerhaeuser Co., Springfield Sawmill, Springfield, OR*

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

*TA-W-16,000; Truitt Brothers, Inc., Belfast, ME*

A certification was issued covering all workers of the firm separated on or after April 30, 1984.

*TA-W-15,964; Koppers Co., Organic Materials Group, North Tonawanda, NY*

A certification was issued covering all workers of the firm separated on or after December 1, 1984 and before May 1, 1985.

*TA-W-15,976; Brook Manufacturing Co., Inc., Old Forge, PA*

A certification was issued covering all workers of the firm separated on or after December 1, 1984 and before April 15, 1985.

*TA-W-15,978; Centennial Mills, Gluten Plant, Spokane, WA*

A certification was issued covering all workers of the firm separated on or after March 1, 1985 and before May 1, 1985.

*TA-W-15,991; Brookevale Manufacturing Co., Inc., Belle Vernon, PA*

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before April 29, 1985.

*TA-W-15,979; Cotter Corp., Thornburg Mine, Moab, UT*

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before May 31, 1985.

*TA-W-15,940; Arrow Co., Distribution Center, Elysburg, PA*

A certification was issued covering all workers of the firm separated on or after April 12, 1984.

*TA-W-15,895; LTV Steel Co., Atco, NJ*

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

*TA-W-15,946; Levi Strauss & Co., Star City, AR*

A certification was issued covering all workers of the firm separated on or after April 9, 1984 and before December 13, 1984.

*TA-W-15,772; United Technologies Corp., Diesel Systems, Springfield, MA*

A certification was issued covering all workers engaged in the production of fuel injection system nozzles separated on October 1, 1984.

*TA-W-15,949; Everson Central Shop, Everson, PA*

A certification was issued covering all workers of the firm separated on or after September 1, 1984 and before April 19, 1985.

*TA-W-15,950; Filbert Central Shop, Filbert, PA*

A certification was issued covering all workers of the firm separated on or after September 1, 1984 and before April 19, 1985.

*TA-W-15,974; Aeolian American Corp., East Rochester, NY*

A certification was issued covering all workers of the firm separated on or after February 22, 1985 and before July 31, 1985.

*TA-W-15,810 and TA-W-15,810A; Aeolian Pianos, Inc., Piano Action & Key Division and Piano Manufacturing Plant, Memphis, TN*

A certification was issued covering all workers of the firm separated on or after October 1, 1984 and before July 31, 1985.

I hereby certify that the aforementioned determinations were issued during the period July 29, 1985–August 2, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Streets NW., Washington, DC during normal business hours and will be mailed to persons who write to the above address.

Dated: August 6, 1985.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 85-19260 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-30-M

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## Mine Safety and Health Administration

**[Docket No. M-85-65-C]**

### Black Joe Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Black Joe Coal Company, General Delivery, Cranks, Kentucky 40820 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 15-12090), located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable; and

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 12, 1985. Copies of the petition are available for inspection at that address.

Dated: August 6, 1985.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 85-19252 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-85-61-C]**

## Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.1108 (flame-resistant conveyor belts) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all conveyor belts used underground meet the requirements as established by the Secretary for flame-resistant conveyor belts.

2. Petitioner's fire-resistant conveyor belt broke down.

3. As a temporary (6-10 weeks) alternate method, petitioner proposes to install a Bando Band Grade B 48-inch conveyor belt manufactured by Mitsubishi. This belt has not been approved as flame-resistant.

4. As additional precautions, the petitioner will:

(a) Post an employee at the slope bottom when the belt is in operation to guard against possible hazards.

(b) Install a $CO^2$ monitoring system to detect traces of combustion.

(c) Inspect the conveyor belt twice during a work shift; and

(d) Instruct any employees authorized to perform slope duties with the necessary precautions to guard against possible hazards.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 12, 1985. Copies of the petition are available for inspection at that address.

Dated: August 6, 1985.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 85-19253 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-85-36-C]**

## Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.312 (air passing through abandoned, inaccessible, or robbed area) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that no air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine.

2. Petitioner will develop panel entries to the inby end and then will mine rooms on the intake and return sides while retreating to minimize the adverse effect on the panel entries and support systems as a result of squeezing in the panel rooms.

3. As an alternate method, petitioner proposes to install and operate a remote methane monitoring system near the inby end of panel entries. In support of this request, petitioner states that:

a. One sensor will be located in the neutral area not more than 500 feet from the end of the panel, the other in the inby most crosscut at the end of the panel;

b. If sensors detect more than 0.25% methane, visual and audible alarms will be activated which will cause notification of appropriate personnel;

c. If the remote monitoring system ceases to function properly, or is deenergized for routine maintenance or power outages, the immediate area around the sensors will be inspected during preshift examinations until the monitoring system is restored to normal operation;

d. Records of tests, calibrations and monitor readings will be kept on the surface and available for MSHA inspection; and

e. No pillar extraction will occur in panels with rooms mined on retreat.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 12, 1985. Copies of the petition are available for inspection at that address.

Dated: August 6, 1985

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 85-19254 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-85-51-C]**

## VP-5 Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

VP-5 Mining Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-5 Mine (I.D. No. 44-03795) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return, in the main return, and in at least one entry of each intake and return aircourse in its entirety.

2. Roof falls from a fire and subsequent sealing of the mine have blocked all four entries of the No. 3 development panel. To clear the No. 3 entries would require moving fallen rocks and bolting unsupported roof which would expose miners to hazardous conditions, resulting in a diminution of safety.

3. As an alternate method, petitioner proposes to drive two entries (intake air separated with permanent stoppings) in the longwall block paralleling the existing blocked entries. Return air would pass through the blocked entries and areas inby the falls which cannot be examined.

4. In support of this alternate method, petitioner states that the "smoke free" intake will be continuous to the shaft bottom. Battery charging will be in a location so that venting of air will be directed to the return, and carbon monoxide along the belt will be continuously monitored.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 12, 1985. Copies of the petition are available for inspection at that address.

Dated: August 6, 1985.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 85-19255 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-85-54-C]**

## Youghiogheny and Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Youghiogheny and Ohio Coal Company, P.O. Box 1000, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.1403-8(b) and (c) (track haulage roads) to its Nelms No. 2 Mine (I.D. No. 33-00968) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage roads have a continuous clearance on one side of at least 24 inches and clearance on the tight side of at least 12 inches from the farthest projection of normal traffic.

2. Petitioner states that high horizontal roof pressures exist in the mine, requiring additional roof support such as cribs, crossbars and additional posts to be installed at various locations along the track haulage entry to support areas of the immediate roof with vertical cracks five to eight feet in height. Compliance with the standard would necessitate removal of these additional roof supports, thus posing safety hazards to the miners. Due to the poor roof conditions at these various locations, the clearance must be kept as narrow as possible to maintain good roof control.

3. As an alternate method, petitioner proposes to have clearance of less than 24 inches on one side and clearance of less than 12 inches on the tight side at these close clearance locations. Petitioner will post reflective signs on both sides of the tight area for a distance of 25 feet. Additional safety lectures on "close clearance" locations will be provided during annual refresher training.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 12, 1985. Copies of the petition are available for inspection at that address.

Dated: August 6, 1985.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 85-19256 Filed 8-12-85; 8:45 am]

BILLING CODE 4510-43-M

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## Office of Pension and Welfare Benefit Programs

**[Application No. D-4013 et al.]**

## Proposed Exemptions; The Equitable Life Assurance Society et al.

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three

copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**The Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York**

[Application No. D–4013]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase by Equitable of certain private placement notes of the Phillips Petroleum Company (the Notes) from Burdge, Daniels & Company, Inc. (Burdge Daniels). The Notes had previously been purchased by Burdge Daniels from Manufacturers Hanover Trust Company (the Bank) which was acting in its capacity as a fiduciary of the Bell System Trust (the Trust). At the time of the purchase, Equitable was a party in interest with respect to the Bell System Pension Plan and the Bell System Management Pension Plan (the Bell Plans), the assets of which are held by the Trust. The proposed exemption, if granted, will be limited solely to Equitable.

Effective Date: The effective date of the proposed exemption, if granted, will be July 21, 1981.

*Summary of Facts and Representations*

1. Equitable is a mutual life insurance company which held more than $37 billion in assets at the end of 1981. The Bell Plans had approximately 1,050,000 participants and $35.8 billion in assets as of December 31, 1981. Burdge Daniels is an investment banking firm that is unrelated to Equitable and to the best knowledge of Equitable, is unrelated to the Trust or the Bank, an investment manager for the Trust. The Bank acted on the Trust's behalf with regard to the sale of the Notes described herein.

2. Equitable's assets include many privately placed corporate notes, purchased in the secondary private placement market, which at the end of 1981, had a total par value of $263,152,000. Privately placed corporate notes are called "private placements" because typically they evidence loans made to the borrower by one or a small group of sophisticated institutional investors, rather than debt oblitations offered publicly to an unrestricted group of potential investors. Such notes ordinarily are governed by loan agreements tailored to the unique interests, demands and circumstances of the parties involved. The loans usually are term rather than demand loans and, as a result, the lender ordinarily cannot obtain early repayment from the borrower. Generally, if a lender wishes to dispose of a privately placed corporate note before the loan matures, the lender may do so only by selling it to another institutional type investor, resulting in the development of a secondary market for such notes. It is represented that in recent years, such "secondary" sales have become increasingly common. The principal participants in this secondary market are many of the same banks, insurance companies and others that regularly invest in such notes, and brokerage and investment banking firms that specialize in arranging secondary private placement transactions.

3. On June 30, 1981, Burdge Daniels offered to sell Equitable certain private placement notes of Phillips Petroleum Company dated August 3, 1966 and due July 1, 1991 (the Phillips Notes) in the principal amount of $3,388,000 at a price of $70.409 per $100 of principal amount, plus accrued interest. The Notes, which were in the principal amount of $2,449,000 and were held by the Bank acting in a fiduciary capacity on behalf of the Trust, were included in the package of Phillips Notes offered by Burdge Daniels. The Phillips Notes carry an interest rate of 5⅜ percent per annum and require annual payments of principal and semi-annual payments of interest. On or about July 2, 1981, Equitable tentatively accepted the Burdge Daniels' offer. Equitable's commitment to purchase the Phillips Notes was conditioned on its determination that the documentation necessary for the transaction was satisfactory, upon Equitable's completion, to its satisfaction, of an ERISA party in interest check and upon approval by Equitable's Investment Committee. Based on Equitable's conditional commitment to purchase the Phillips Notes, on July 6, 1981, Burdge Daniels purchased the Phillips Notes from the Bank. On July 10, 1981, Burdge Daniels sold U.S. Treasury notes short against the Phillips Notes in order to hedge its position.

4. After conditionally accepting the Burdge Daniels' offer, Equitable asked Burdge Daniels for information regarding the identity of the party from whom Burdge Daniels had purchased the Notes. Burdge Daniels informed Equitable that it purchased all of the Phillips Notes from the Bank. Upon Equitable's further request, Burdge Daniels also informed Equitable that in selling the Notes, the Bank had been acting as a fiduciary for an unnamed employee benefit plan of New York Telephone Company, an American Telephone and Telegraph Company (AT&T) subsidiary, the identity of which the Bank wished to hold confidential, in accordance with industry custom.

5. Equitable's Law Department then conducted an internal check to determine whether Equitable was a party in interest with respect to any employee benefit plan maintained by the New York Telephone Company. This check indicated that there were no New

York Telephone Company employee benefits plans partipating in any Equitable accounts, but that Equitable was a party in interest with respect to the Bell System Savings Plan for Salaried Employees, in which the New York Telephone Company was a participating employer.

6. On July 21, 1981, Equitable purchased the Phillips Notes for its general account from Burdge Daniels at the above-mentioned price, after having satisfied itself that the transaction was not a party in interest transaction. In addition, Equitable requested and obtained a written statement from Burdge Daniels that the Notes, "have been purchased by us from Manufacturers Hanover Trust Company which has represented to us that in selling said Notes to us it has acted as fiduciary of an employee benefit plan of New York Telephone Company which is not the Bell System Savings Plan for Salaried Employees."

7. However, on September 11, 1981, in connection with a compliance check for an unrelated proposed acquisition of notes for the general account, Equitable's Law Department learned about the formation of the Bell plans. Specifically, Equitable's Law Department learned that in October 1980, many of the separate pension plans of the affiliated telephone companies of AT&T had been reorganized and combined into one management plan and one non-management plan, each covering employees of AT&T and many of AT&T's associates, subsidiaries, and affiliates, including the New York Telephone Company. These new plans were the Bell Plans.

8. Prior to the October 1980 consolidation, Equitable was an investment manager for plans of several AT&T subsidiaries, but not the New York Telephone Company. When the consolidation occurred, Equitable continued to have investment management responsibilities with respect to the assets of the Bell Plans attributable to those predecessor plans for which it has been an investment manager. Therefore, as a result of the consolidation, Equitable had now become a party in interest with respect to the Bell Plans.

After learning of the consolidation of the Bell Plans, Equitable's Law Department conducted a review of the post-October, 1980 transactions involving the predecessor plans to the Bell Plans. Equitable's review identified the purchase of the Notes as involving assets of the Bell Plans rather than as originally believed, the individual assets of a plan sponsored by New York Telephone Company.

9. Equitable represents that, notwithstanding the change in legal relationships that occurred in October 1980, the operating relationships between Equitable and the predecessor plans of AT&T subsidiaries for which it managed investments remained essentially unchanged. As of July 1981, the administration, recordkeeping, and monitoring responsibilities for the Bell Plans' investment managers continued to remain with the subsidiaries. Accordingly, Equitable continued to deal only with administrators of these operating companies, and Equitable's records continued to reflect the names of the operating companies.

10. The applicant is concerned that the Department may deem Equitable's purchase of the Notes to be a direct or indirect sale by the Bell Plans through the Trust to Equitable in violation of section 406(a) of the Act. The applicant has therefore requested an exemption for Equitable's purchase of the Notes. Since the exemption proposed herein was requested solely by Equitable, and since the Department has no information concerning the Bank's actions with regard to the sale of the Notes to Burdge Daniels other than the date on which they were sold, the Department has determined that the exemptive relief proposed herein shall be limited solely to Equitable.

11. The applicant represents that the transaction described herein satisfies the statutory criteria of section 408(a) of the Act due to the following:

(a) Equitable neither had nor exercised any authority, control or responsibility as a fiduciary under section 3(21)(A) of the Act with regard to the Bell Plans in connection with the sale of the Notes;

(b) Despite a diligent search on its part, Equitable was unware that the transaction involved a plan with respect to which it was a party in interest; and

(c) All facets of the transaction were negotiated at arm's-length between unrelated parties.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**The Equitable Life Assurance Society of the United States (Equitable), Located in New York, New York and Equitable Realty Assets Corporation (Equitable Realty) Located in Atlanta, Georgia**

[Application No. D-5558]

**Proposed Exemption**

The Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

*I. Transactions*

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective July 12, 1984, to the following transactions involving serial mortgage-backed bonds (the Bonds) and the pledged mortgages (the Pledged Mortgages) and other collateral (the Collateral) securing such Bonds:

(1) The extension of credit between an employee benefit plan and Equitable or its affiliate arising from the holding of Bonds by the plan in connection with the initial issuance of the Bonds where Equitable or any of its affiliates is a party in interest with respect to the plan, provided that the plan pays no more than fair market value for the Bonds, and provided further that the rights and interests evidenced by the Bonds are not subordinated to the rights and interests evidenced by other Bonds in the same series of Bonds;

(2) The extension of credit between an employee benefit plan and Equitable or its affiliate arising from the continued holding of Bonds by the plan where such Bonds are acquired from a person who is independent of Equitable and its affiliates;

(3) The direct or indirect purchase, exchange or transfer of Bonds by any wholly-owned subsidiary of Equitable from an employee benefit plan where such subsidiary or any affiliate thereof is a party in interest with respect to the plan, provided that—

(i) The subject transactions are carried out in accordance with the terms of a binding agreement between the Equitable subsidiary and the banking institution acting as trustee under the trust indenture,

(ii) The subject agreement is available to investors before they acquire any of the Bonds, and

(iii) The plan receives at least fair market value for the Bonds.

(4) The redemption of any of the Bonds by any wholly-owned subsidiary of Equitable from an employee benefit plan where such subsidiary or any affiliate thereof is a party in interest with respect to the plan, provided that—

(i) The subject transaction is carried out in accordance with the terms of a binding agreement between the Equitable subsidiary and the banking institution acting as trustee,

(ii) The subject agreement is available to investors before they acquire any of the Bonds, and

(iii) Except as provided in item (iv) below, the amount paid for the Bonds equals the "Redemption Price" of such Bonds as defined in Section III below, and

(iv) In the event the minimum debt service requirements for the payment of the Bonds cannot be met, all of the Bonds will be redeemed on a totally pro rata basis with no preference or priority to any Bondholder;

(5) The direct or indirect purchase, sale, exchange or transfer of Bonds between Equitable or any of its affiliates and an employee benefit plan where Equitable or any of its affiliates is a party in interest with respect to the plan, provided that—

(i) The funds used in such transactions do not involve any of the Collateral,

(ii) The subject transaction is negotiated on an arm's-length basis, and

(iii) The fiduciary acting on behalf of the plan is independent of Equitable and its affiliates.

B. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or sanctions would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act), solely because of the ownership of any of the Bonds.

*II. General Conditions*

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) For each series of Bonds, Equitable or its subsidiary maintains a system for insuring or otherwise protecting the Pledged Mortgages and the other Collateral securing such Bonds and for protecting Bondholders against reductions in principal and interest payments due to defaults in loan payments or property damage. This system must provide such protection up to an amount not less than the greater of one percent of the aggregate principal balance of all of the Collateral, or the principal balance of the largest Pledged Mortgage.

(2) The trustee under the indenture is not an affiliate of Equitable or its subsidiaries, provided, however, that the trustee shall not be considered to be an affiliate solely because the trustee has succeeded to the rights and responsiblities of Equitable pursuant to the terms of the servicing agreement providing for such succession upon the occurrence of one or more events of default by Equitable; and

(3) The sum of all payments made to and retained by Equitable in connection with the Bonds and the Collateral and all funds inuring to the benefit of Equitable as a result of the servicing of the Pledged Mortgages and other Collateral represents not more than reasonable compensation for the services provided by Equitable.

*III. Definitions*

A. For purposes of this exemption, the term "Bonds" means mortgaged-backed bonds issued by any wholly-owned subsidiary of Equitable pursuant to the Series A offering or any subsequent offering having the same material terms.

B. For purposes of this exemption, the term "Pledged Mortgage" means any interest-bearing obligation secured by either first or second mortgages or deeds of trust on residential property, including condominium units. The Pledged Mortgages include the original mortgages pledged to the trustee or other mortgages or deeds of trust delivered to the trustee at any time prior to the cancellation of the Bonds.

C. For purposes of the exemption, the term "Collateral" means (a) the Pledged Mortgages and (b) eligible investments including (i) obligations issued or guaranteed by the United States or any agency or instrumentality of the United States whose obligations are backed by the full faith and credit of the United States, (ii) obligations of other federal agencies or instrumentalities which are acceptable at the time of the investment to Standard & Poor's and Moody's as collateral for obligations having ratings equal to the initial ratings of the Bonds, excluding mortgage-backed securities on which timely payment is not guaranteed, (iii) (A) deposits in other obligations of any bank (including the bank acting as trustee) whose debt obligations (or whose parent bank holding company's debt obligations) have credit ratings from both Standard & Poor's and Moody's equal to the initial ratings on the Bonds (if such deposits or obligations mature in one year or less, such bank or bank holding company need only have the highest commercial paper ratings from both such rating agencies and a long-term debt rating of Aa3 from Moody's), or (B) deposits in any other bank or savings institution so long as such deposits are fully insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation, (iv) repurchase obligations with respect to federal government or agency securities entered into with any bank described in clause (iii) (A) above, (v) interest-bearing or discount corporate securities having credit ratings from Standard & Poor's and Moody's equal to the initial ratings on the Bonds, (vi) commercial paper having the highest rating obtainable from Standard & Poor's and Moody's, provided that the issuer thereof also has a long-term debt rating of at least Aa3 from Moody's, and (vii) a guaranteed investment contract issued by an insurance company or other corporation acceptable to both Standared and Poor's and Moody's. No mortgage-backed security meeting the above standards will be an "eligible investment", however, if it bears interest at a rate in excess of 10 percent per annum.[1]

D. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(E) For purposes of this exemption, the term "Redemption Price" means—

(i) in the case of any zero-coupon Bond, 100 percent of the then "Accreted Value" of such Bond ("Accreted Value" is an amount equal to the sum of (i) the initial public offering price of the Bond, as shown on the cover of the prospectus, plus (ii) interest on such amount, computed semi-annually to the date of the determination, at an annual rate equal to the yield to maturity of such

[1] The applicants represent that the ten percent interest rate cap applicable to mortgage-backed eligible investments is intended to ensure that the eligible investments have the same investment characteristics as the Pledged Mortgages. The interest rate cap, by precluding the holding of high interest rate mortgage loan investments, is also intended to reduce the likelihoold of prepayments on the eligible investments. The ten percent interest cap will not limit the yield on such investments. The yield on such investments will consist of interest and market discount and will reflect the market yield on such investments at the time they are acquired.

Bonds, as shown on the cover of the prospectus); and

(ii) in the case of any installment Bonds, 100 percent of the remaining principal amount thereof plus accrued interest to the date of redemption.

Effective date: If the proposed exemption is granted, it will be effective July 12, 1984.

**Summary of Facts and Representations**

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States, having total assets of approximately $44 billion as of December 30, 1983. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management, and other services for thousands of employee benefit plans subject to the Act.

2. Equitable Realty was incorporated on November 30, 1983, in the State of Delaware. Equitable Realty is a wholly-owned, limited purpose investment subsidiary of Equitable organized to engage exclusively in the ownership and management of assets authorized as investments for Equitable. Equitable Realty will serve as the issuer of the Bonds, but no recourse will be available against Equitable Realty or any of its other assets or against Equitable if the entire amount of the Bonds is not paid when due. Equitable Realty will not receive any fees or other compensation in connection with the issuance or sale of the Bonds.

3. On July 12, 1984, Equitable Realty issued the first series of the Bonds. The offering was for approximately $161.5 million aggregate principal amount of Series A mortgage-backed Bonds. The Bonds were issued in fully registered form in initial denominations of $1,000 and integral multiples thereof. The net proceeds from the offering were approximately $146.4 million. Most of the proceeds will be distributed to Equitable for general business purposes, and a small portion of the proceeds will be retained by Equitable Realty. Equitable receives most of the proceeds from the sale of the Bonds because it has transferred the Pledged Mortgages which are the principal collateral for the Bonds to Equitable Realty. Additional series of Bonds may be issued in the future under similar terms. Two types of Bonds have been offered pursuant to the Series A offering. Bonds maturing in 1996 have been offered at substantial discounts from the face-amount of the Bonds (Zero Coupon Bonds). These Zero Coupon Bonds do not bear interest and no payments of principal will be made until the maturity date (the Payment Date) of the Bonds. In addition, Bonds maturing in the years 1989 and 1994 (the Installment Bonds) provide for the payment of principal and interest on semi-annual Payment Dates commencing January 1, 1985 for the Installment Bonds due in 1989 and commencing January 1, 1990 for the Installment Bonds due in 1994.

4. The Bonds have been offered to investors pursuant to a public offering which is the subject of a registration statement which was filed with the Securities and Exchange Commission. The terms of the offering were also reviewed by the New York State Departyment of Insurance. The public offering was managed by Salomon Brothers Inc. subject to the terms and conditions of a firm commitment underwriting agreement. Under this agreement, the Bonds have been sold to selected underwriters, who, in turn, re-sell the Bonds to investors, including, in all likelihood, employee benefit plans. Although the Bonds are not to be listed on any national securities exchange, a secondary market may develop for the Bonds in the over-the-counter markets.

5. The Bonds have been issued pursuant to a trust indenture dated January 1, 1984, between Equitable Realty, as issuer of the Bonds, and the Chase Manhattan Bank, N.A. (the Trustee). Under the indenture agreement, Equitable Realty will pledge approximately $227 million of Pledged Mortgages to the Trustee by executing and delivering to the Trustee or its agent recorded assignments of the Mortgages or deeds of trust naming the Trustee as assignee. Equitable Realty will be obligated to record any assignments unless it delivers to the Trustee an unqualified opinion of counsel to the effect that the failutre to record will not affect the Trustee's security interest in the related mortgages or deeds of trust. Equitable will provide several warranties and representations with respect to each Pledged Mortgage. If any of these warranties were incorrect as of the time it was made, Equitable must cure the defect within a 90 day period or purchase at par the Pledged Mortgage affected by the defect (or replace it with an eligible substitute mortgage loan).

6. The Pledged Mortgages will consist of a pool of approximately 19,000 conventional first mortgage loans secured by single family homes or condominium units. The Pledged Mortgages were originated from 1957 to 1977 and have a weighted average maturity of approximately nine years. As of May 31, 1984, the aggregate remaining principal balance of the original pool of Pledged Mortgages was $226,705,233. The Pledged Mortgages will have current loan-to-value ratios ranging from less than 20 percent to 80 percent. More than 86 percent of the aggregate remaining principal balance of the original pool of Pledged Mortgages represent loans with a 60 percent or less loan-to-value ratio. No mortgage loan contained in the original pool of Pledged Mortgages will be more than 30 days delinquent.

7. The Pledged Mortgages were made pursuant to underwriting standards and procedures designed to ensure the repayment of loans and to provide adequate security in the event any loan is not repaid. Equitable's standard procedures for making mortgage loans involved the completion of a detailed loan application, an analysis of the applicant's credit history, and an appraisal by a qualified staff or independent appraiser. Mortgages are required to maintain individual hazard insurance with respect to the mortgaged premises. Equitable will also maintain a mortgagee and fiduciary policy for the benefit of Equitable Realty and the Trustee to cover losses on the mortgagee's interest in any Pledged Mortgage resulting from the lack or insufficiency of individual hazard insurance maintained by the mortgagor. If an event of default with respect to a Pledged Mortgage occurs, Equitable will foreclose on the Mortgage that continues in default, unless satisfactory arrangements can be made for the collection of the underlying delinquent payments. In connection with any such foreclosure, Equitable will follow such practices and procedures as are normal and customary in the servicing of residential mortgage loans.

8. While the Pledged Mortgages will initially comprise the principal Collateral securing the payment of the Bonds, as payments of principal and interest on the Pledged Mortgages are received, such payments will constitute a progressively increasing part of the collateral. It is also possible that some mortgage loans will be prepaid. As these amounts are collected, they will be reinvested in certain eligible investments, eligible substitute mortgage loans, or in certain eligible debt securities having maturities consistent with the debt service requirements on the Bonds, until needed to make payments of principal and interest on the Bonds. In addition, Equitable Realty will deposit with the Trustee cash equal to approximately one month's scheduled collections due with respect to the Pledged Mortgages. These collections will be approximately $3 million and,

thus, will provide substantial additional protection for the payment of Bonds. This additional cash, which represents more than 1.8 percent of the approximately $161.5 million aggregate principal amount of the Bonds, will also be invested in eligible investments.

9. Equitable, as servicer of the Pledged Mortgages, will be responsible for the making of collections, monitoring delinquencies, accounting, making tax and other payments, initiating foreclosure proceedings if needed, and providing certain periodic statements and reports to Equitable Realty and the Trustee regarding collections on the Pledged Mortgages and other financial information.[2]

10. In collecting principal and interest payments on the Pledged Mortgages, Equitable will establish a Mortgage Loan Payment Record under which it will record all payments on the Pledged Mortgages as they are received from the mortgagors. Equitable will be required to remit all such payments to the Trustee within five business days after a monthly cut-off date.

11. In connection with the monthly transfer of collections from Equitable to the Trustee, Equitable Realty will establish a collection account with the Trustee to which such collections will be deposited. Unless the amounts collected are to be used to fund the next scheduled Bond payment, such amounts will be transferred to a reserve fund account to be held and invested until needed to make future Bond payments. Similarly, any amounts collected which represent full or partial prepayments of principal with respect to the Pledged Mortgages will be set aside in the reserve fund account, unless such amounts are needed to fund the next scheduled Bond payment. Amounts held by the Trustee in the collection account and reserve fund account will be invested by the Trustee at the direction of Equitable Realty.

12. Equitable will prepare and deliver to Equitable Realty a monthly report covering current mortgage payments and repayments of principal received with respect to the Pledged Mortgages. This report will also include information with respect to any Pledged Mortgages which are delinquent four or more months or in default. In addition, Equitable will retain an independent certified public accounting firm to examine the documents and records pertaining to the Pledged Mortgages and other financial information relating to Equitable and to furnish Equitable Realty and the Trustee an annual statement relating to its examination. Equitable Realty will use this information to prepare a monthly cash Flow Report for the Trustee which will be used to determine whether the collections of the Pledged Mortgages, the eligible investments, and the earnings thereon are sufficient to make the scheduled payments on the Bonds. In particular, the Cash Flow Report will establish whether sufficient cash flow is available from the collections and eligible investments to provide the "Required Coverage" for each Bond Payment Date. Required Coverage is defined with respect to each Bond Payment Date as an amount equal to 105 percent of the aggregate amount of principal and interest due on any particular Payment Date plus an additional reserve amount. Because Required Coverage with respect to the Bonds must be provided until all of the Bonds are paid and cancelled, the Bonds will be effectively over-collateralized by more than five percent.

13. In connection with monthly Cash Flow Report, if the report shows that the Required Coverage requirements are met for each Payment Date of the Bonds, Equitable Realty will be entitled to obtain a release from the lien of the trust indenture for the amount of collateral in excess of the amount needed to satisfy such requirements. In selecting the types of collateral to be released, the indenture agreement provides that Equitable Realty, to the fullest extent practicable under the circumstances, must make such selections in the following order of priority: (a) Cash; (b) eligible investments; (c) Pledged Mortgages originated less than ten years prior to the date of the Cash Flow Report; and (d) all other Pledged Mortgages. The applicants represent that it is unlikely, however, that a release of Collateral would involve any of the Pledged Mortgages.

14. On the Payment Dates for the Bonds, Equitable will direct the Trustee (or paying agent) to make the required Bond payments to the Bondholders from the Trustee's collection account. The Trustee will also be responsible for the registration, authentication, and delivery of the Bonds in the event of a transfer or exchange of any of the Bonds and the execution of new Bonds by Equitable Realty. Upon the payment of all of the Bonds in Series A (or any other series of Bonds) and the cancellation of the Bonds by the Trustee, the Trustee will acknowledge the satisfaction and discharge of the idenure to Equitable Realty. If any funds held by the Trustee for the payment of any of the Bonds remain unclaimed for six years, such amounts will be paid by the Trustee to Equitable Realty and the Bondholders of such Bonds would thereafter be required to look to Equitable Realty for payment of these amounts as unsecured general creditors.

15. Equitable Realty expects that all scheduled payments with respect to the Bonds will be made on the applicable Payment Dates for the Bonds. However, under certain circumstances, some or all of the Bonds may not be paid when due. These circumstances could involve one or a combination of factors relating to the amounts prepaid on the Pledged Mortgages, foreclosure loss experience, high delinquency rates, or low available reinvestment rates. The existence of these factors could result in a cash flow deficiency which, in turn, may involve either (a) a call for redemption of any of the Bonds; or (b) an event of default with respect to the Bonds. The monthly Cash Flow Report will establish whether the payments with respect to the Pledged Mortgages and the eligible investments will meet the Required Coverage test. If the Report shows a deficiency with respect to any Payment Date of the Bonds, Equitable Realty will be required to adjust the composition of the Collateral so that the Required Coverage test will be satisfied. Such adjustments may also involve the purchase of outstanding Bonds in the marketplace.

16. If, after making adjustments to the composition of the Collateral, a cash flow deficiency still exists and the Required Coverage test cannot be met, Equitable Realty may direct the Trustee to redeem some of the Bonds in order to try to achieve the Required Coverage for each Payment Date of the Bonds. In addition, Installment Bonds due in 1994 may be redeemed on any Payment Date beginning January 1, 1992 at the option of Equitable Realty. The Trustee will redeem Bonds in the smallest amount practicable which will result in the Required Coverage test being met. In the event that a partial redemption is made, the particular Bonds to be redeemed will be selected by the Trustee from all of the then outstanding Bonds (not owned by Equitable Realty). In such cases, Bonds will be redeemed under such method as the Trustee shall deem fair and appropriate under the circumstances. If after having made such adjustments and redemptions, the scheduled cash flow for future Bond Payment Dates still does not equal at least the Required Coverage for each of the Payment Dates for the Bonds, all outstanding Bonds must be redeemed at their applicable Redemption Prices. If

[2] Any relief from the prohibited transaction restrictions, if required, in connection with the servicing of the Pledged Mortgages, is beyond the scope of the proposed exemption.

Equitable Realty determines that the Redemption Price cannot be paid with respect to all outstanding Bonds, it will redeem or purchase Bonds only through certain procedures set forth in the indenture agreement. These procedures generally provide that (a) a portion of the Bonds will be redeemed in such a way as to increase cash flow for at least one Payment Date to equal 100 percent of the debt service requirement on that date without reducing the cash flow coverage for any other Payment Date for the Bonds; or (b) a portion of the Bonds will be redeemed in such amount so that sufficient cash flow will be available to meet 100 percent of the debt service requirements on the remaining outstanding Bonds. If the debt service requirements cannot be met under this procedure, then all of the bonds will be redeemed on a pro rata basis with no priority or preference of any kind. In such a case, the value received by each Bondholder may be equal to or less than the Redemption Price for the Bonds.

17. It is also possible that the bonds may become due and payable as a result of an event or default with respect to the Bonds. An event of default with respect to the Bonds may occur in connection with the failure of Equitable Realty to make interest or principal payments on the Bonds when due as would be the case in the event of a severe cash flow deficiency. An event of default may also occur under certain other circumstances relating to disposition of the collateral, the invalidity of the trust indenture, a breach of representation or warranty by Equitable Realty, or certain events of bankruptcy or insolvency of Equitable Realty. In cases where an event of default occurs and is continuing, the Trustee or Bondholders representing at least 25 percent of the then aggregate outstanding amount of the Bonds may declare the Bonds due and payable. Upon such declaration, the Bonds that have not yet matured will immediately become due and payable. Such declaration may be rescinded by Bondholders representing at least 50 percent of the then aggregate outstanding amount of the Bonds.

18. The applicants have requested an exemption to permit the holding of Bonds by employee benefit plans and subsequent transactions relating to the purchase, sale or redemption of any of the Bonds between Equitable Realty or other Equitable affiliates and plans. Equitable and its affiliates have existing relationships with many plans by virtue of providing investment management or other services to such plans. In these cases, Equitable and its affiliates might be deemed to be parties in interest with respect to such plans. Thus, the holding of Bonds by any of these plans or the repurchase or redemption of any of the Bonds by Equitable Realty or another Equitable subsidiary might be deemed to constitute a violation under section 406(a) of the Act. The applicants represent that because the Bonds will be sold by Salomon Brothers (or another lead underwriter in future transactions) and the other underwriters pursuant to a firm commitment underwriting, the initial issuance and sale of any of the Bonds to plans would not appear to involve a prohibited sale or exchange between a plan and Equitable Realty (or a similar Equitable subsidiary) under section 406(a)(1)(A) of the Act. The applicants further represent that to the extent the issuance and sale of the Bonds might involve a prohibited sale or exchange between a plan and an underwriter who is a party in interest, such a transaction would appear to be covered by Prohibited Transaction Exemption 75–1 (40 FR 50845, October 31, 1975), if the conditions of that exemption are met.[3]

19. The applicants represent that no plan maintained by Equitable or any of its affiliates will acquire any of the Bonds. In addition, none of Equitable's separate accounts or investment advisory accounts in which employee benefit plans invest will acquire any of the Bonds. The applicants further represent that in connection with the acquisition of the Bonds both pursuant to the initial issuance of the Bonds and in secondary market transactions, the decision to acquire any of the Bonds will be made by a plan fiduciary totally unrelated to Equitable and its affiliates. Neither Equitable nor any of its affiliates will exercise any authority, discretion or control over the decision of any plan to purchase Bonds.[4]

20. The applicants represent that the requested exemption would permit plans to make investments that further such plans' investment objectives and funding needs, but which would be otherwise unavailable due to the possible application of the prohibited transaction rules. The requested exemption requires that adequate protections, such as Required Coverage requirements, and one month's additional collections, be maintained to assure that principal and interest payments to Bondholders will be made on a timely basis. The decision of a plan to acquire any of the Bonds will be made by a plan sponsor or other plan fiduciary (other than Equitable or any of its affiliates). In order to assist plan sponsors and other plan fiduciaries in making such decisions detailed written information regarding the Bond offering will be made available to investors as required by the Securities and Exchange Commission. Thus, the decision to acquire any of the Bonds will be made by a fiduciary who is independent of Equitable based on full disclosure of all material information regarding the investment. The Chase Manhattan Bank, N.A. or a similar banking institution will serve as a trustee under an indenture agreement with respect to the Bonds and, thus, will ensure that the rights and interests of the Bondholders are fully protected.

21. The applicants represent that the terms and conditions of the proposed exemption are designed to provide ample protection to all employee benefit plans and other investors in the Bonds. Under the subject proposed exemption, a system must be maintained for protecting the Pledged Mortgages (and underlying properties) and other Collateral and for ensuring that all principal and interest payments with respect to the Bonds are made without reduction due to default in loan payments or property damage. This system must provide that the amount of such protection will equal at least one percent of all Collateral or the principal balance of the largest covered Pledged Mortgage. This condition is designed to ensure that each plan Bondholder will receive all principal and interest payments on a timely basis. The second general condition of the subject proposed exemption provides that the trustee may not be an affiliate of Equitable or Equitable Realty (or any similar Equitable subsidiary). The third general condition provides that the sum of the fees or other funds inuring to the benefit of Equitable and its subsidiary must not represent more than reasonable compensation. The three general conditions are all substantially similar to those contained in Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983), which involved the acquisition and holding of certain

[3] In this proposed exemption, the Department expresses no opinion as to whether the initial issuance and sale of the Bonds to plans constitute prohibited transactions.

[4] To the extent that, in the ordinary course of business, Equitable or its affiliates provide "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Bonds, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984). The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries.

mortgage-backed pass-through certificates of mortgage pools. The applicants represent that the subject transactions will satisfy all these conditions.

22. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The Bonds will be acquired by plans as part of a public offering, and the plans' Bonds will bear the same terms as those acquired by unrelated parties; (2) any decision to enter into the subject transactions will be made by fiduciaries of the plans who are independent of Equitable and its affiliates; (3) plan fiduciaries making a decision to acquire Bonds will have available detailed written information relating to the Bonds as required under the disclosure provisions of the federal securities laws; and (4) the conditions of the proposed subject exemption are designed to provide adequate protections to all parties, including employee benefit plans, which invest in the Bonds.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other in party interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each applicaiton accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this eighth day of August, 1985.

**Elliot I. Daniel,**

*Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.*

[FR Doc. 85-19249 Filed 8-12-85; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 30-22063, ASLBP No. 85-512-02 ML]**

### Precision Materials Corp. (Mine Hill, New Jersey Irradiator Facility); Memorandum and Order, Notice of Informal Hearing and Opportunity To Become a Party

August 8, 1985.

**I. Introduction**

Please take notice that, on July 24, 1985, the Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order, the undersigned was designated presiding officer for this matter on August 1, 1985.

The Commission instituted this proceeding in response to a petition for a hearing filed by The Township of Mine Hill, New Jersey (The Township). The hearing will concern Precision Materials Corporation's (Precision Materials) proposal to employ a Cobalt-60 irradiator to irradiate a variety of cosmetic, pharmaceutical, and medical products and components. Precision Materials' application for a license for the irradiator facility was granted by NRC's Director of Nuclear Material Safety and Safeguards on March 29, 1985.

**II. How To Participate**

The Commission's Order directed the presiding officer to provide an opportunity to petition to be heard by interested persons. The Order authorized the presiding officer: (1) To request, at his discretion, written submissions and documents; (2) to set schedules; (3) to entertain statements from those who do not desire to become parties or cannot satisfy the requirements for party status, and (4) to hear oral presentations if necessary.

The Commission directed that those who wish to become parties (other than the NRC Staff and Precision Materials) must set forth with particularity and in writing:

1. Their interest in the proceeding;

2. How their interest may be affected by the results of the proceeding, including a statement of the reasons why they should be made parties that makes particular reference to:

a. Their right under the Atomic Energy Act to be made a party;

b. The nature and extent of their property, financial, or other interest in the proceeding; and

c. The possible effect of any order that may be entered in the proceeding on their interest; and

3. The specific aspect or aspects of the subject matter of the proceeding on which they wish to be heard.

4. Petitions shall also state specifically the nature of the relief sought with respect to each complaint.

Each of the foregoing points shall be addressed in separate paragraphs concisely stated. All filings shall be submitted under oath or affirmation.

In submitting the information called for in items 3 and 4 above, petitioners are to describe specifically any deficiencies in the application or license, cite particular sections or portions of the application or license which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application or license is deficient. Petitioners must also submit all data and material in its possession which supports or illustrates each of the deficiencies complained of. Data and material from generally available publications may be cited rather than furnished. Petitioner must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license, without stating why such extreme relief is appropriate, will not satisfy the requirement to state the relief sought.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 CFR 2.714(d). See the Commission's Order and *Rockwell International Corp.*

(Energy Systems Group Special Nuclear Materials License No. SNM–21), LBP–83–65, 18 NRC 774 (1983). The *Rockwell* case relied on *Nuclear Engineering* (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB–473, 7 NRC 737 (1978), and stated at page 3 that:

> . . . The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

If the presiding officer finds that the hearing petitions or any intervention petition should be denied *in toto* for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of that decision.

On or before September 12, 1985 the Township, and anyone else, including governmental entities, who wish to become a party shall file the information called for above. On or before September 26, 1985 the NRC Staff, if it wishes to participate as a party, shall so notify the undersigned in writing.

### III. Where To File

The information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. Such filings shall also be served on Precision Materials and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by September 12, 1985.

### IV. Duty of the Licensee

In order to permit petitioners to comply with the 30–day deadline to submit the information required, Precision Materials must ensure that the application, the license, and all correspondence pertaining to its license are immediately on receipt of this Notice and Order: (1) Made available to petitioners for inspection and copying, and (2) Forwarded to the Presiding Officer. This material shall be made available at a convenient location in the vicinity of the Precision Materials facility and at such other locations as may be indicated by requests. The material shall be available for inspection and copying during business hours and during reasonable periods during evenings and weekends. This material, together with the material submitted by petitioners, and any other material called for by the presiding officer, will form the Hearing File on which the presiding officer will base his decision.

### V. Presiding Officer's Initial Ruling

Upon receipt of petitioner's submission, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioners' right to become a party to this proceeding. The presiding officer will also review each petitioners' complaints and supporting material. In making this review, the presiding officer may rule, in the alternative, that the petitioners' complaints: (1) Are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on petitioners initial submission.

### VI. Informal Hearing

To the extent the presiding officer finds petitioners' complaints admissible, he either may order additional submissions from each party, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the Precisison Materials facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however, suggest questions to the presiding officer to be posed by him. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

### VII. Limited Appearances

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before September 12, 1985. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as such a limited appearance statement. Limited appearance statements are not part of the hearing file.

### VIII. Schedule for Decision

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' submissions, with a goal of 120 days if additional submissions are required following receipt of initial petitions. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

### Order

For all the foregoing reasons and upon consideration of the entire record in this mater, it is, this 7th day of August, 1985

Ordered:

1. That on or before September 12, 1985, any person wishing to participate in this informal hearing shall file a petition to participate as described in the foregoing memorandum;

2. That on or before September 25, 1985, the NRC Staff shall notify the presiding officer if it wishes to participate as a party to this proceeding; and

3. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.

Dated at Bethesda, Maryland this 8th day of August, 1985.

**Dr. Jerry R. Kline,**

*Administrative Judge.*

[FR Doc. 85–19257 Filed 8–12–85; 8:45 am]

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**[Docket No. 40–8027; ASLBP No. 85–513–03–ML]**

## Sequoyah Fuels Corp. (Sequoyah Facility); Memorandum and Order, Notice of Informal Hearing and Opportunity To Become a Party

August 8, 1985.

### I. Introduction

Please take notice that, on July 24, 1985, the Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order, the undersigned was designated presiding officer for this matter on August 1, 1985.

The Commission instituted this proceeding in response to petitions for a hearing filed by the Native Americans for a Clean Environment Client Council (NACECC), the Cherokee Nation

(Cherokee) [1] and Citizens' Action for a Safe Environment (CASE). The hearing will concern Sequoyah Fuels Corporation's (SFC) application to add facilities at its existing plant in Gore, Oklahoma, that would convert depleted uranium hexafluride to depleted uranium tetrafluoride.

**II. How To Participate**

The Commission's Order directed the presiding officer to request from NACECC, Cherokee, and CASE, filings detailing their standing to participate and their complaints concerning the license amendment. The Order also directed the presiding officer to provide a similar opportunity to petition to be heard by other interested persons. The Order authorized the presiding officer: (1) To request, at his discretion, written submissions and documents; (2) to set schedules; (3) to entertain statements from those who do not desire to become parties or cannot satisfy the requirements for party status, and (4) to hear oral presentations if necessary.

The Commission directed that those who wish to become parties (other than the NRC Staff and SFC) must set forth with particularity and in writing:

1. Their interest in the proceeding;

2. How their interest may be affected by the results of the proceeding, including a statement of the reasons why they should be made parties that makes particular reference to:

a. Their right under the Atomic Energy Act to be made a party;

b. The nature and extent of their property, financial, or other interest in the proceeding; and

c. The possible effect of any order that may be entered in the proceeding on their interest; and

3. The specific aspect or aspects of the subject matter of the proceeding on which they wish to be heard.

4. Petitions shall also state specifically the nature of the relief sought with respect to each complaint.

Each of the foregoing points shall be addressed in separate paragraphs concisely stated. All filings shall be submitted under oath or affirmation.

In submitting the information called for in items 3 and 4 above, petitioners are to describe specifically any deficiencies in the application, cite particular sections or portions of the application which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application is deficient. Petitioners must also submit all data and material in their possession which supports or illustrates each of the deficiencies complained of. Data and material from generally available publications may be cited rather than furnished. Petitioners must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license or its amendment without stating why such extreme relief is appropriate will not satisfy the requirement to state the relief sought.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 CFR 2.714(d). See the Commission's Order and *Rockwell International Corp.* (Energy Systems Group Special Nuclear Materials License No. SNM–21), LBP–83–65, 18 NRC 774 (1983). The *Rockwell* case relied on *Nuclear Engineering* (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB–473, 7 NRC 736 (1978), and stated at page 3 that:

> . . . The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

If the presiding officer finds that the hearing petitions or any intervention petition should be denied *in toto* for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of the decision.

On or before September 12, 1985, NACECC, Cherokee, CASE, and anyone else, incuding governmental entities, who wishes to become a party shall file the information called for above. On or before September 26, 1985, the NRC Staff, if it wishes to participate as a party, shall so notify the petitioners, SFC, and the presiding officer in writing.

**III. Where To File**

The information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. Such filings shall also be served on SFC and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by September 12, 1985.

**IV. Duty of the Applicant**

In order to permit petitioners to comply with the 30-day deadline to submit the information required, SFC must ensure that the application, the license sought to be amended, and all correspondence pertaining to its application, are immediately upon receipt of this Notice and Order: (1) Made available to petitioners for inspection and copying, and (2) forwarded to the Presiding Officer. This material shall be made available at a convenient location in the vicinity of the SEC facility and at such other locations as may be indicated by requests. The material shall be available for inspection and copying during business hours and during reasonable periods evenings and weekends. This material, together with the material submitted by petitioners, and any other material called for by the presiding officer, will form the Hearing File on which the presiding officer will base his decision.

**V. Presiding Officer's Initial Ruling**

Upon receipt of petitioner's submissions, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioner's rights to become a party to this proceeding. The presiding officer will also review petitioners' complaints and supporting material. In making this review, the presiding officer may rule that the petitioners' complaints: (1) Are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on petitioners initial submission.

**VI. Informal Hearing**

To the extent the presiding officer finds petitioners complaints admissible, he either may order additional submissions from the parties, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the SFC facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however suggest qduestions to the presiding officer to be

[1] The Commission's Order inadvertently failed to mention Cherokee.

posed by him. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

**VII. Limited Appearances**

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before September 12, 1985. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as such a limited appearance statement. Limited appearance statements are not part of the Hearing File.

**VIII. Schedule for Decision**

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' submissions, with a goal of 120 days if additional submissions are required following receipt of initial petitions. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

**Order**

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 7th day of August, 1985.

Ordered:

1. That on or before September 12, 1985, the Native Americans for a Clean Environment Client Council, the Cherokee Nation, and Citizens' Action for a Safe Environment shall file a petition to participate as described in the foregoing memorandum;

2. That any other person wishing to participate shall file a similar petition by the same data;

3. That on or before September 26, 1985, the NRC Staff shall notify the presiding officer if it wishes to participate as a party to this proceeding; and

4. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.

Bethesda, Maryland, August 8, 1985.

John H. Frye III,

*Administrative Judge.*

[FR Doc. 85-19258 Filed 8-12-85; 8:45 am]

BILLING CODE 7590-01-M

## POSTAL RATE COMMISSION

**[Docket No. A85-21; Order No. 620]**

### Yorkville, CA (Clare R. Wheeler, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: August 7, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85-21.

Name of affected post office: Yorkville, California 95494.

Name(s) of petitioner(s): Clare R. Wheeler.

Type of determination: Closing.

Date of filing of appeal papers: August 5, 1985.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

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 within 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 memorandum previously filed.

*The Commission orders:*

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

(B) The record in this appeal shall be filed by August 20, 1985.

By the Commission.

**Charles L. Clapp,**

*Secretary.*

**Appendix—Docket No. A85-21, Yorkville, California 95494**

August 5, 1985—Filing of Petition

August 7, 1985—Notice and Order of Filing of Appeal

August 30, 1985—Last day for filing petitions to intervene (*see* 39 CFR 3001.111(b)].

September 9, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

September 30, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

October 15, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

October 22, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116].

December 3, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 85-19158 Filed 8-12-85; 8:45 am]

BILLING CODE 7715-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-22290; File No. SR-PSDTC-85-05]**

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Pacific Securities Depository Trust Co.

On July 23, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this Notice to solicit comment on the rule change.

The proposed rule change amends PSDTC's fee schedule with respect to the safekeeping of municipal bonds in bearer form. The principal change establishes a maximum par value of $750,000 per deposit or withdrawal of bearer securities. Deposits or withdrawals which have a par value in excess of $750,000 will be subject to a separate charge for each $750,000 of par value or portion thereof. PSDTC also will levy a $0.5 certificate charge for each deposit and withdrawal of bearer securities.

PSDTC states that the proposed rate changes for deposits and withdrawals of bearer securities will more accurately reflect PSDTC's costs for providing these services. In addition, PSDTC maintains that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act because it provides for the equitable allocation of reasonable dues, fees and other charges.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if its appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this Notice is published in the **Federal Register**. Please refer to File No. SR-PSDTC-85-05, and file six copies of your comments with the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room and at the principal offices of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

August 5, 1985.

[FR Doc. 85-19208 Filed 8-12-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-23786; 70-7093]**

## Central and South West Corp.; CSW Energy, Inc.; Proposed Financing of Subsidiary To Participate in and To Provide Energy Management Systems and Services

August 6, 1985.

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned subsidiary company, CSW Energy, Inc. ("Energy"), 2500 San Jacinto Tower, Dallas, Texas 75222, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Energy was formed by CSW to invest in cogeneration projects and to undertake studies for potential energy related projects. It is now proposed that Energy form a joint venture ("Venture") with Time Energy Management System Southwest, Inc., a subsidiary of Time Energy Systems, Inc., a Texas corporation which is not an associate company of CSW. The parties will each be 50% owners of the Venture which shall continue for a peroid of ten years and be automatically extended for terms of three years thereafter unless either venturer gives notice at least ninety days in advance that it intends to terminate its participation in the Venture. The purpose and character of the business of the Venture is to invest in, participate in, develop, and market energy management systems and services and energy conservation equipment within the territory of the Electric Reliability Counsel of Texas and the Southwest Power Pool. Pursuant to the Joint Venture Agreement ("Agreement"), each venturer shall be responsible for 50% of all capital and expense requirements of the Venture limited, however, to $30,000,000 per venturer over the first five years of the Agreement. The overall management and control of the business of the Venture shall be vested in a management committee composed of three designated members from each of the venturers. All goods and sevices provided by a venturer to the Venture shall be at cost. While it is not contemplated that the Venture will provide services to CSW or any of its associate companies, in the event that such services are provided, they will be provided at cost.

To allow Energy to fund its share of Venture's operation, CSW proposes to make capital contributions or to purchase additional common stock of Energy and/or to make non-interest bearing loans to Energy or Venture. These investments together with all loans and all recourse liabilities of Venture payable by CSW or Energy will not exceed $30,000,000 without additional authorization. Energy expects that such financial commitment will be sufficient to organize Venture and to fund its initial operations.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-19204 Filed 8-12-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-23785; 70-7132]**

## Columbus and Southern Ohio Electric Co.; Notice of Proposal to Indemnify Service

August 6, 1985.

Columbus and Southern Ohio Electric Company ("C&SOE"), a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to sections 12(b) and (f) of the Public Utility Holding Company Act of 1935 and Rule 45 thereunder.

C&SOE proposes to enter into an agreement providing for indemnification by C&SOE, The Cincinnati Gas & Electric Company ("CG&E") and The Dayton Power and Light Company ("DP&L") (CG&E and DP&L are unaffiliated with the AEP System) (collectively "Owners") of all liability in any way attributable to the use possession or reproduction by American Electric Power Service Corporation ("AEPSC"), a wholly-owned service subsidiary of AEP, of any drawings, specifications, plans, or other data (collectively "Drawings") relating to the Wm. H. Zimmer Nuclear Power Station ("Zimmer Station"). The Drawings were delivered to AEPSC by Owners of the Zimmer Station for use by AEPSC in the conversion of the uncompleted Zimmer Station into a coal-fired generating station (the "Conversion"). The need for such indeminification arises out of a lawsuit filed in May, 1985 by Sargent & Lundy Engineers ("S&L") against the Owners and AEPSC, seeking, among other things, preliminary and permanent injunctions to prevent the alleged use, misappropriation, and copying of the drawings, and statutory damages in an amount of not less than $250 or greater than $50,000 per copyright infringement, plus attorneys' fees.

The S&L complaint alleges that it owns all of the Drawings produced for the Zimmer Station. The Owners' position is that they have complete ownership rights in the Drawings under the S&L Zimmer Contract. It is acknowledged, however, that AEPSC does not have such ownership rights. AEPSC has received the Drawings solely as agent for the Owners, to carry out the duties as project manager of the Conversion. S&L alleges liability by AEPSC for use and copying of the Drawings, but in order for AEPSC to go forward with work on the Conversion, it must make use of the Drawings. AEPSC has thus deemed it advisable to seek an explicit right of indemnification from the

Owners for protection from liability and costs that could arise from claims.

C&SOE requests authorization to indemnify AEPSC, (along with CG&E and DP&L). Each will indemnify on a several basis, in proportion to its undivided ownership interest in the Zimmer Station. Therefore the maximum amount of indemnification by CSOE would be limited to 25.4% of any liability, and C&SOE will charge no fee for acting as an indemniter.

The application-declaration and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to became effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-19205 Filed 8-12-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-23784; 70-7069]**

## New Orleans Public Service Inc.; Middle South Utilities, Inc.; Proposal To Issue and Sell First Mortgage Bonds and Preferred Stock; Exception from Competitive Bidding

August 5, 1985.

New Orleans Public Services Inc. ("NOPSI"), and its parent, Middle South Utilities, Inc. ("MSU"), a registered holding company, have filed post-effective amendments in this matter, pursuant to sections 6(b), 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43 and 50(a)(5) thereunder.

NOPSI, in post-effective amendments, has stated that in view of a decision of the Louisiana Fourth Circuit Court of Appeal and NOPSI's need to obtain additional funds from external sources in order to meet its 1985 requirements for cash, it filed with the Council of New Orleans ("Council"), on June 5, 1985, an application for approval of the issuance of up to $100 million of securities. In response to NOPSI's application, on July 17, 1985, Council approved the issuance of up to $60 million of securities in any combination, to be determined by NOPSI, of first mortgage bonds ("Bonds"), preferred stock ("Preferred"), common stock ("Common") and unsecured debentures, subject to the condition, among others, that NOPSI would not, directly or indirectly, use any part of the proceeds from the sale of these securities to pay any obligations arising out of, incurred in connection with, or otherwise related to, the construction of or generation of power from the Grand Gulf Steam Electric Generating Station ("Grand Gulf") of Middle South Energy, Inc., a special purpose subsidiary of MSU. Council's approval was further conditioned by a requirement that the annual dividend rate on any Preferred to be issued by NOPSI not exceed by more than 200 basis points the annual interest rate on any such Bonds to be issued. NOPSI asked for immediate authority to issue and sell up to $25 million of its Common to MSU, as originally proposed, and for purposes previously approved, including the payment of short-term debt and taxes, and the repayment of interest-free advances from MSU. The Commission found this portion of the proposal, including the use of proceeds, to be in compliance with section 7(d) standards.[1]

NOPSI's financial resources continue to be severely limited and its liquidity and financial condition impaired. On March 4, 1985, the Louisiana Public Service Commission ("LPSC"), denied in its entirety NOPSI's April 1984 request for a retail rate increase to reflect, among other things, the in-service status of Unit 1 of Grand Gulf, and related costs for NOPSI. On May 17, 1985, NOPSI filed a request with the Council for a retail rate increase to reflect the NOPSI's costs associated with commercial operation of Unit 1 of Grand Gulf. There can be no assurance that retail rate relief will be granted on an adequate basis. The timing of rate relief is becoming increasingly important since Unit 1 of Grand Gulf went into commercial operation on July 1, 1985. In addition, NOPSI's deteriorating financial position has led to the downgrading of its first mortgage bonds and preferred stock by a national securities rating agency to speculative grade.

[1] HCAR No. 23783, August 2, 1985.

NOPSI now requests by further post-effective amendment the authority to issue and sell in the aggregate $35 million, in any combination, Bonds and Preferred. NOPSI states that it is essential that it consummate, under favorable terms and conditions, and as swiftly as possible, sales of Bonds and Preferred in order to obtain funds from sources external to the Middle South Utilities System ("System") and alleviate NOPSI's deteriorating cash position.

NOPSI is attempting to sell Bonds and Preferred Stock in a market that is characterized by well-known investor concern over the financial position of companies associated with nuclear plants under construction. While NOPSI is not constructing a nuclear plant, this concern applies to NOPSI in light of its obligations to pay for a portion of the costs of Unit 1 of Grand Gulf. This concern is also of particular significance, at this time, to the System of which NOPSI is a member, since the System, unlike any other electric utility system in the United States, is bringing into commercial operation in the summer of 1985 two new large and expensive nuclear units, Waterford No. 3 of Louisiana Power & Light Company and Unit 1 of Grand Gulf.

As a result of NOPSI's and the System's position, NOPSI believes that the Bonds and the Preferred will be difficult to market to the public, and as a result, unless sales of Bonds and Preferred are exempt from the competitive bidding procedures, these sales may not be consummated with favorable terms and conditions in a short time frame, which is essential for NOPSI. One further factor affects the timing of sales of Bonds and Preferred Stock and renders particularly significant the need for flexibility in the possible methods of offering of such securities. The sale of the Preferred cannot be consummated until after the sale of Bonds owing to the condition placed by the Council on the annual dividend rate of the Preferred not being greater than 200 basis points over the annual interest rate on any of the Bonds. Flexibility is required to time and price the sales of Bonds and Preferred to satisfy this condition.

NOPSI requests, pursuant to paragraph (a)(5) of Rule 50 under the Act that the Commission issue an order in this proceeding exempting the proposed issuance and sale of up to $25,000,000 of Bonds and up to 120,000 shares of Preferred from competitive bidding requirements, and enter into negotiations to issue and sell such securities via negotiated public offerings

and/or private placements with institutional investors. The Commission finds that NOPSI may do so.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 29, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of Service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-19206 Filed 8-12-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-14656; (File No. 812-6121)]**

## Tax-Free Cash Reserve, Inc., et al.; Application for Order Permitting Combination Portfolios and Separate Classes of Shares Representing Interests in the Same Portfolio

August 2, 1985.

Notice is hereby given that Tax-Free Cash Reserve, Inc. ("Tax-Free"), Liquid Investments Co. ("Liquid"), Short-Term Investments Co. ("Short-Term") and AIM Advisors, Inc. ("AIM"), each at Eleven Greenway Plaza, Suite 1919, Houston, TX 77046, and Alex. Brown Cash Reserve Fund, Inc. ("Alex Brown") and Alex. Brown & Sons Incorporated ("Alex & Sons"), each at 135 East Baltimore Street, Baltimore, MD 21202, filed an application on May 23, 1985, and amendments thereto on July 30, and August 1, 1985, on behalf of themselves and all future similar investment companies and portfolios thereof ("Future Funds") which may be sponsored, advised, administered or distributed by AIM or Alex & Sons or their affiliates, for a Commission order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting them and any Future Funds from the provisions of Sections 18(f)(1), 18(g) and 18(i) of the Act to the extent necessary to permit the proposed issuance and sale of separate classes of shares representing interests in existing and future portfolios (and the allocation of voting rights thereto and the payment of dividends thereon) and the combination of Tax-Free's two existing portfolios. (Tax-Free, Liquid, Short-Term and Alex Brown are sometimes referred to as "Funds" or, together with AIM and Alex & Sons, as "Applicants".) 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 and the rules thereunder for the text of the applicable provisions.

The application states that each Fund is registered under the Act as an open-end, diversified, management investment company, and has a currently effective registration statement under the Securities Act of 1933. At present, Tax-Free, Short-Term and Alex Brown have two series of shares, and Liquid one series, representing interests in a corresponding investment portfolio. One Tax-Free series ("General Series") is sold to individuals; its other series ("Institutional Series") is sold to institutions. Alex Brown has two series, both of which are each sold to individuals and institutions. The Funds' remaining series are sold to institutions. (The Funds' existing and future investment portfolios are sometimes referred to as "Portfolios," and the existing classes of shares representing interests in the Funds' existing Portfolios, together with each initial class of shares that is created by a Fund in connection with any future Portfolio, are sometimes referred to as "Existing Shares.")

Applicants represent that all expenses attributable to the operations of a Portfolio (such as transfer agent expenses, printing costs for prospectuses and report sent to the shareholders and registration fees) are allocated to that Portfolio. Expenses that are not directing attributable to the operations of a specific Portfolio are allocated between Portfolios of a Fund based upon the relative net assets of each Portfolio. Expenses allocated to a Portfolio are borne pro-rata by its shareholders. The General Series and Alex Brown have adopted distribution plans pursuant to Rule 12b-1 ("12b-1 Plans") under the Act and pay Alex & Sons for the distribution services it provides. The Institutional Series has adopted a shareholder service plan ("Shareholder Service Plan", and together with 12b-1 Plans, "Plans") and pays AIM, a subsidiary of AIM Management, Inc., for the distribution services it provides.

Applicants believe that as a result of increased competition for the shortterm investments of institutional investors it is imperative that the Funds be able to offer services which are adapted to the investment needs of a particular investor. In order to broaden their services, and expand their marketing alternatives, the Funds propose to create new classes of shares ("New Shares") with the characteristics described below. In addition, Tax-Free proposes to combine its two portfolios, which have indentical investment objectives.

Applicants represent that except for class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares would indentically match one of the classes of Existing Shares. Thus, the shares would only differ in that certain classes of shares would be offered in connection with: (i) a 12b-1 Plan adopted by the Fund involved pursuant to Rule 12b-1; (ii) a Shareholder Service Plan adopted by the Fund involved pursuant to all requirements of Rule 12b-1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (iii) no plan. (The matching Existing Shares and New Shares in future Portfolios would likewise differ.) Further, Applicants state that the adoption and implementation of a Plan by a Fund would be made independent of, and would not be conditioned upon, the adoption or implementation of Plan by any other Fund. In addition, each Plan would relate only to the shares of a particular Fund.

As described in the application, under each Plan involving an institution that holds shares for the benefit of its customers ("Customers"), a Fund would enter into servicing agreements ("Servicing Agreements"), with that institution concerning the provision of support services to Customers who from time to time beneficially own shares which are offered in connection with the Plan. In addition, Servicing Agreements under a 12b-1 Plan would contemplate the provision of distribution assistance by an institution in connection with the distribution of shares offered in connection with the Plan. Applicants state that the provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to the Funds by their service contractors (*e.g.*, investment adviser, administrator, distributor, custodian and transfer agent).

According to the application, under each type of Plan a Fund would pay participating institutions for their services or distribution assistance ("Service Payments") in accordance with the terms of the Plan and the relevant Servicing Agreement. Service Payments would not exceed .75% (on an annualized basis) under a 12b–1 Servicing Agreement, or .50% (on an annualized basis) under a Shareholder Servicing Agreement, of the average daily net asset value of those shares beneficially owned by Customers for which such institution provides services and assistance under the Servicing Agreement. Further, because a Servicing Agreement necessarily contemplates the provision of services and assistance by an institution to its Customers, the Funds would not knowingly enter into a Servicing Agreement with an institution in those situations where the institution invests as principal. Applicants state that under state law and pursuant to recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assets of its fiduciary accounts may be restricted. However, Applicants state they do not propose to prohibit the investment of Customer accounts in shares offered in connection with a Plan because in certain instances a bank could properly receive Service Payments. Applicants represent that to the extent such investments are permitted, they will include in the respective prospectus relevant disclosure about the Comptroller's letters.

Applicants represent that each New and existing Share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (i) Each class of New Shares and Existing Shares would have different class designations; (ii) each class of shares offered in connection with a Plan would bear the expense of the Service Payments that were made under the Servicing Agreement that had been entered into with respect to that class; (iii) each class of shares would bear the expenses ("Class Expenses") of an Applicant's operations which are directly attributable to such class; and (iv) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements, relating to such class or classes (for example, the adoption, amendment or termination of a Plan).

Applicants state that the net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all Portfolio securities and other assets belonging to the Portfolio, subtracting the liabilities charged to the Portfolio and dividing the result by the number of such outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and expenses incurred by a Fund (*e.g.* fees of directors, trustees, auditors and legal counsel) not attributable to a particular class, would be borne on a pro rata basis by the shares of a Fund. Expenses incurred by a Portfolio (*e.g.*, adviser fees) would be charged to the Portfolio and borne pro rata by the shares of such Portfolio. Class Expenses (*e.g.* registration, printing and mailing expenses and transfer agency fees) would be charged to that class. Applicants state that expenses may be attributed differently if their method of imposition changes. Thus, if a Class Expense can no longer be attributed to a class, it will be charged to a series or a Fund's; conversely, if a general expense becomes attributable to a class, it will become a Class Expense. Service Payments that are made under a Plan that has been adopted in connection with a class of shares would be apportioned by class.

Because of the Service Payments, if any, and Class Expenses that would be borne by a class of shares, the net income of (and dividends payable to) any one class may be different than the net income of the matched class of shares that has different Service Payments and Class Expenses. Dividends paid to each class of shares in a Portfolio would, however, be declared on the same days and at the same times, and paid monthly and, except as noted with respect to the expense of Service Payments and Class Expenses, would be determined in the same manner and paid in the same amounts.

Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent that the proposed issuance and sale of classes of New Shares representing interests in the Funds' existing and future Portfolios and in any Future Funds (including the allocation of voting rights thereto and the payment of dividends thereon) and the combination of the General Series and the Institutional Series might be deemed to (i) result in a "senior security" within the meaning of Section 18(g) of the Act and be prohibited by Section 18(f)(1) of the Act; and (ii) violate the requirement in Section 18(i) of the Act that every share of stock issued by a registered investment company shall have equal voting rights with every other outstanding voting stock.

Applicants assert that the issuance and sale of New Shares will better enable the Funds to meet present competitive demands by facilitating the distribution of Fund shares and permitting the Funds to expand the scope and depth of their services without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Applicants assert further that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. Additionally, investors purchasing shares offered in connection with a Plan and receiving the services provided thereunder would bear the costs associated with such services, and would also enjoy exclusive shareholder voting rights with respect to matters affecting such Plan but investors purchasing shares that are not covered by a Plan would not bear those expenses or exercise voting rights.

Further, Applicants state that the Institutional Series and General Series have substantially the same investment and operational characteristics except that the Institutional Series is offered exclusively to financial institutions pursuant to a 12b–1 Plan distribution agreement with AIM and the General Series is offered to investors pursuant to a 12b–1 Plan distribution agreement with Alex & Sons. Applicants represent that expenses attributable to either series are allocated to that series and that advisory fees are paid by Tax-Free but are presently borne by the shares on a pro-rata basis in contemplation of the proposed combination. Applicants assert that if the combination is not permitted, because of the "break-points" in the calculation of AIM's fee, there can be no assurance that advisory fees would continue to be assessed in this manner. Accordingly, Applicants assert that the combination would assure continuance of this significant saving for the General Series. Applicants represent, however, that there would be no transfer of benefit or expense from one series to the other, or from one class (should Tax-Free exercise its right to create new classes pursuant to the order requested herein) to the other, as a result of the combination of the two Portfolios. Applicants also represent that the charter of Tax-Free authorizes

the combination of the two series into a single portfolio and that, if the application is granted, the combined portfolio would have two classes of shares, one offered to investors on terms comparable to those of the General Series and the other offered to financial institutions on terms comparable to those of the Institutional Series. Additionally, Applicants state that printing, blue sky, transfer agency and certain other fees and shareholder services would be allocated to the respective classes similarly to the way in which they are now allocated to the respective series and that the two classes of shares would resemble, in all material respects, the Existing Shares and New Shares described above.

Applicants submit that the requested exemptions are appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Funds' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Portfolio since all shares will participate pro rata in all of the Portfolio's income and expenses (with the exception of the proposed Service Payments and Class Expenses).

Applicants agree that the following conditions may be imposed in any Commission order granting the requested relief.

1. The only difference between each class of shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) the payment of dividends and such priority will reflect only the impact of the Service Payments and Class Expenses; and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder) and any other matter affecting only that particular class. In addition, the designation of each class of shares in a Portfolio would be different.

2. The Plans, Servicing Agreements and Service Payments relating to shares will be approved and reviewed by the concerned Fund's governing Board of Directors in accordance with the procedures set forth in Rule 12b–1 and, in addition, the 12b–1 Plans (and, to the extent required, the Servicing Agreements and Service Payments) relating to the shares will be approved by those shareholders of the Funds which are affected in accordance with said rule. In addition, each governing Board of Directors, in approving and reviewing Service Payments, will conclude in good faith based on information available to it that such expenditures are competitive with those offered in the industry.

3. Dividends paid by a Fund with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that Service Payments and Class Expenses will be borne exclusively by the affected class.

4. Each prospectus relating to a class of shares that is offered in connection with a Plan will (a) describe all services rendered by institutions under any Servicing Agreement with respect to such shares and the fees payable thereunder; and (b) state that the beneficial owners of such shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreement entered into by a Fund will contain representations by the institution involved that: (a) The institution will provide to Customers a schedule of any fees charged by it to them relating to the investment of assets in a class of shares subject to the Servicing Agreement; and (b) the compensation paid to the institution under the Servicing Agreement, together with any other compensation the institution receives from Customers for services contemplated by the Servicing Agreement, will not be excessive or unreasonable under the laws and instruments governing the institution's relationships with Customers.

6. The combination of the two portfolios of Tax-Free, and the continued allocation of expenses as described in the application, will not cause a transfer of benefits or expenses from one series to the other, and after the combination there will be no change in the allocation of expenses except as described in the application.

7. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make to institutions pursuant to Plans in reliance on the exemptive order.

Additionally, Applicants represent that all representations described in the application as well as any conditions imposed by any Commission order will also apply to any Future Funds and/or Portfolios.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than August 26, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an 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.

John Wheeler,

*Secretary.*

[FR Doc. 85–19207 Filed 8–12–85; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

[Public Notice CM–8/871]

### Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 3, 1985 at 11:00 a.m. in Room 1605 (IRAC Room) of the Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

This Study Group deals with matters in telecommunications relating to the development of international digital data transmission. The purpose of this meeting is to discuss contributions intended for Rapporteur meetings on Questions 7/VII, 29/VII, 33/VII, 35/VII, and 40/VII. There will also be a discussion of procedure for developing input to Rapporteur meetings on Questions 10/VII, 13/VII, 14/VII and 22/VII.

All participants not holding U.S. Government IDs must announce their intention to attend this meeting to Carmen du-Bouchet at (303) 497–3748 no later than 5:00 p.m. (EDT) on August 28, 1985. Entrance to the Hoover Building is

from Pennsylvania Avenue at 14th Street.

Earl S. Barbely,

*Chairman, U.S. CCITT National Committee.*

August 1, 1985.

[FR Doc. 85-19222 Filed 8-12-85; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket 43244]

### Texas Air-TWA Acquisition Case; Prehearing Conference

Notice is hereby given that pursuant to Department of Transportation Order 85-8-25 instituting the above-titled proceeding a prehearing conference will be held on August 14, 1985, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, D.C., before the undersigned administrative law judge.

The matters to be considered at the prehearing conference will include proposals for alteration of the requests for evidence contained in Appendix A to Order 85-8-25 and proposals for changes in the procedural schedule contained in such Appendix. Parties will also be expected to furnish their positions and any proposed stipulations.

In view of the early date of the conference, exchange of the above materials among the parties in writing in advance of the conference is not feasible. Parties and prospective parties will therefore be expected to arrive at the conference with no less than 40 copies of any such material in writing for distribution to the judge and to the other parties at the beginning of the conference.

Dated at Washington, D.C., August 9, 1985.

William A. Kane, Jr.,

*Administrative Law Judge.*

[FR Doc. 85-19372 Filed 8-12-85; 10:21 am]

BILLING CODE 4910-62-M

[Docket 43224]

### Texas Air-TWA Acquisition Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated Washington, D.C., August 9, 1985.

Elias C. Rodriquez,

*Chief Administrative Law Judge.*

[FR Doc. 85-19373 Filed 8-12-85; 10:21 am]

BILLING CODE 4910-62-M

## Federal Highway Administration

### Environmental Impact Statement: Martin County, FL

**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 in Martin County, Florida.

**FOR FURTHER INFORMATION CONTACT:** R.V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32302, Telephone: (904) 681-7231.

**SUPPLEMENTAL INFORMATION:** The FHWA, in cooperation with the Florida Department of Transportation, will prepare an environmental impact statement (EIS) for a proposal to improve U.S. 1 in Martin County, Florida. The proposed improvement would involve the replacement of the Roosevelt Bridge over the St. Lucie River. The improvement of the highway approaches to the bridge in the City of Stuart is also included in the proposal. The project length is expected to be about three miles.

Alternatives under consideration include (1) taking no action; (2) new high level fixed bridge; (3) new movable bridge; (4) tunnel; and (5) rehabilitation of the existing structures.

Comments from Federal, State, and local agencies will be solicited during the early coordination process. Additionally, a project planning team developing this project will contact Federal, State, and local agencies, as well as interested private organizations and citizens, for their input. Public information meetings will be held during the development of this EIS. In addition, a public hearing will be held during 1986. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. There is not expected to be a formal scoping meeting 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. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 6, 1985.

P.E. Carpenter,

*Division Administrator.*

[FR Doc. 85-19189 Filed 8-12-85; 8:45 am]

BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

### Public Proceedings Regarding Compliance Investigations of Vehicles Imported by Peoples Car Co.

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93-492, 88 Stat. 1470), 15 U.S.C. 1412 (the Act), the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA) has made an initial determination that Beetle passenger cars manufactured by Volkswagen of Mexico and imported by Peoples Car Company of San Diego, California, fail to conform to 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays;* 49 CFR 571.103, Motor Vehicle Safety Standard No. 103, *Windshield Defrosting and Defogging Systems;* 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems;* 49 CFR 571.114, Motor Vehicle Safety Standard No. 114, *Theft Protection;* 49 CFR 571.210, Motor Vehicle Safety Standard No. 210 *Seat Belt Assembly Anchorages;* 49 CFR 571.212, Motor Vehicle Safety Standard No. 212, *Windshield Mounting;* 49 CFR 571.214, Motor Vehicle Safety Standard No. 214, *Side Door Strength;* and 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials.* NHTSA tested a 1983 Beetle imported from Mexico by Peoples Car Company which was represented as having been brought into compliance with all applicable Federal motor vehicle safety standards, but in fact failed to meet Standard No. 103 or Standard No. 214 when tested by NHTSA. Inspection of the vehicle also revealed failures to conform with aspects of Standards Nos. 101, 105, and 114. Data submitted by Peoples Car Company at the time the vehicles were imported, intended to substantiate compliance to Standards Nos. 210, 212, and 302, was deemed inadequate.

NHTSA will hold a public proceeding pursuant to section 152 of the Act at 10:00 a.m. on September 5, 1985, in Room 2230 of the Department of Transportation Headquarters, 400

Seventh Street, SW., Washington, D.C., at which time Peoples Car Company will be afforded an opportunity to present data, views and arguments regarding the initial determination of noncompliance.

Interested persons are invited to participate in the proceeding through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administation, 400 Seventh Street, SW., Room 6113, Washington, D.C. 20590 [telephone (202) 426–2832] before close of business on August 29, 1985.

The agency's investigative file in this matter (CIR 2658) is available for public inspection during regular working hours (7:45 a.m. to 4:15 p.m.) in NHTSA's Technical Reference Library, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on August 2, 1985.

**George L. Parker,**

*Associate Administrator for Enforcement.*

[FR Doc. 85–19195 Filed 8–8–85; 1:25 pm]

BILLING CODE 4910–59–M

## Public Proceeding Regarding Noncompliance Investigation; 1977–85 Wayne School Buses

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93–492, 88 Stat. 1470), 15 U.S.C. 1412, the Associate Administrator for Enforcement of the National Highway Traffic Safety Administration has made an initial determination that all school buses manufactured by Wayne Corporation since April 1, 1977 fail to comply with Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, 49 CFR 571.221. Specifically, the Associate Administrator has found that interior body panel joints between the windows, known as the "window post cap", fail to meet the minimum strength requirements of the standard.

A public proceeding will be held at 10:00 a.m. on September 4, 1985, in Room 2230 of the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, D.C., at which time Wayne Corporation will be afforded an opportunity to present data, views and arguments to establish that the alleged noncompliance in these vehicles does not exist.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202–426–2832) before the close of business on August 28, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on August 2, 1985.

**George L. Parker,**

*Associate Administrator for Enforcement.*

[FR Doc. 85–19194 Filed 8–8–85; 1:25 pm]

BILLING CODE 4910–59–M

# DEPARTMENT OF THE TREASURY

## Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 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 each 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:* 1545–0747
*Form Number:* IRS Form 5498
*Type of Review:* Revision
*Title:* Individual Retirement Arrangement Information

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.

**Joseph F. Maty,**

*Departmental Reports Management Office.*

[FR Doc. 85–19243 Filed 8–12–85; 8:45 am]

BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: August 5, 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 each 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:* 1545–0139
*Form Number:* IRS Form 2106
*Type of Review:* Revision
*Title:* Employee Business Expenses

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.

**Joseph F. Maty,**

*Departmental Reports Management Office.*

[FR Doc. 85–19244 Filed 8–12–85; 8:45 am]

BILLING CODE 4810–25–M

# Sunshine Act Meetings

Federal Register
Vol. 50, No. 156
Tuesday, August 13, 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 MINE SAFETY AND HEALTH REVIEW COMMISSION**

August 8, 1985.

**TIME AND DATE:** 10:00 a.m., Thursday, August 15, 1985.

**PLACE:** Room 600, 1730 K Street, NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Carbon County Coal Co., Docket No. WEST 82-106; on interlocutory review. (Issues include whether the administrative law judge erred in denying the operator's motion to dismiss a civil penalty proceeding involving an alleged violation of 30 CFR 75.316.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5632.

**Helen O. Mockabee,**
*Acting Agenda Clerk.*

[FR Doc. 85-19307 Filed 8-9-85; 3:40 pm]
BILLING CODE 6735-01-M

federal register

Tuesday
August 13, 1985

Part II

# Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 396

Training of Interpreters for Deaf Individuals; Final Rule

**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 396**

**Training of Interpreters for Deaf Individuals**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary issues regulations for the Training of Interpreters for Deaf Individuals Program under section 304(d) of the Rehabilitation Act of 1973, as amended (the Act). This program provides financial support for training programs to increase the supply of skilled manual and oral interpreters and to ensure the maintenance of interpreter skills of personnel currently serving as interpreters for deaf individuals. These final regulations include information about the kinds of projects that may be supported under the interpreter training program, and contain separate selection criteria for evaluating project applications.

**EFFECTIVE DATE:** These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Mr. Albert Rotundo, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3229 Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone, (202) 732–1397.

**SUPPLEMENTARY INFORMATION:** The Training of Interpreters for Deaf Individuals Program was established by the Rehabilitation Act Amendments of 1978 (Pub. L. 95–602). The Secretary has conducted two competitions under this program since Fiscal Year 1980. The first competition was held in 1980. The second competition, in 1982, was conducted under the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 75, for programs, such as the Training of Interpreters for Deaf Individuals Program, that do not have implementing regulations. (See 34 CFR 75.210).

On the basis of program experience, the Secretary has determined that the administration of this program will be significantly improved with the issuance of regulations.

**Summary of Comments and Responses**

The following is a summary of public comments concerning the notice of proposed rulemaking for the Training of Interpreters for Deaf Individuals Program published in the **Federal Register** on May 22, 1985 (50 FR 21186) and the Secretary's responses to those comments. Certain technical revisions have been made to the selection criteria in § 396.30. No substantive changes are intended, and no amendments to the applications are necessary. Comments were received from three commenters on or before the closing date. One commenter was a school administrator another an official of a State department of education and the last a State governor. No changes were made in the regulations based on those public comments.

**General**

*Comment.* One commenter recommended equal funding for both manual and oral interpreter training programs.

*Response.* No change has been made. Funding is based on the needs of deaf individuals and public and private agencies that provide services to deaf individuals in the geographical area to be served by the training project. A formula or percentage for the amount of manual and oral interpreter training required under an individual project would not meet the purposes of the program.

*Comment.* One commenter expressed the need for a "mechanism formalized to allow for the creation, cataloging and distribution of Public Domain and leased videotaped educational materials."

*Response.* No change has been made. The Secretary agrees with this comment. This need, however, can be handled through other administrative action. Arrangements have been made for broad dissemination of reports and other materials produced by project grantees, making them generally available to the public-at-large, and interested public and private organizations and individuals.

*Comment.* One commenter recommended the addition of authority to train instructors and faculty responsibile for the training of interpreters for deaf individuals.

*Response.* No change has been made. Section 304(d)(1) of the Rehabilitation Act, as amended, indicates that the purpose of these grants is to train a sufficient number of interpreters to meet the communication needs of deaf individuals and, to that end, the Secretary may award grants to establish interpreter training programs or to provide financial assistance for ongoing interpreter training programs. Section 396.1(a)(2) of the regulations indicates that among the ways to fulfill this purpose are to ensure the maintenance of the skills of interpreters engaged in programs serving deaf people, and to provide opportunities for interpreters to raise their level of competence. It is possible under this program, therefore, to raise interpreters' levels of competence to the degree that they could qualify as interpreter trainers under this or other interpreter programs.

*Section 396.2*

*Comment.* One commenter requested clarification of the eligibility of State governments to apply for and receive funds under this program.

*Response.* No change has been made. Section 396.2 states that public and private nonprofit agencies and organizations are eligible for assistance under the Training of Interpreters for Deaf Individuals Program. Public nonprofit agencies include units of State governments.

*Section 396.4(b)*

*Comment.* One commenter recommended that the title for the definition, "Interpreter for Deaf Individuals" be changed because it is misleading and implies that interpreters work only for deaf individuals and not within a situation where both deaf and hearing individuals cannot easily communicate with each other.

*Response.* No change has been made. The term, "Interpreter for Deaf Individuals" is statutory and refers to communication between hearing and non-hearing individuals.

*Comment.* One commenter recommended that every State should be served under the program grants.

*Response.* No change has been made. Grants are made on the basis of selection criteria, which include evidence of personnel shortages. Section 304(d)(1) of the Rehabilitation Act, as amended, authorizes the Secretary to award grants for programs in such geographic areas *throughout the United States* as the Secretary considers appropriate to carry out the purpose of the interpreter training program grants. The Secretary considers the geographical distribution of projects, to the extent possible, where necessary to best carry out the purposes of this program.

*Section 396.32(b)*

*Comment.* One commenter recommended that the regulations be

changed to assure the award of grants for new training programs as well as existing programs.

*Response.* No change has been made. Section 304(d)(1) of the Rehabilitation Act of 1973, as amended, mandates that priority shall be given to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services, as indicated in § 396.32(a) of the regulations.

A summary of the final regulations follows:

(a) Subpart A—*General*

Section 396.1 describes the scope and purpose of the program.

Section 396.2 identifies those agencies and organizations eligible for assistance under the program. Eligible entities include any public or private nonprofit agency or organization, including institutions of higher education.

Section 396.3 identifies regulations applicable to this program, including certain provisions of the Education Department General Adminstrative Regulations (EDGAR).

Section 396.4 contains or refers to definitions of terms used in Part 396. A definition of "interpreter for deaf individuals" is included.

(b) Subpart B—*What Kinds of Activities Does the Secretary Assist Under This Program?*

Section 396.10 describes the types of interpreter training that may be supported. Training activities prepare persons to serve as manual and oral interpreters.

(c) Subpart C—*How Does One Apply for a Grant?*

Section 396.20 describes certain assurances and information that each applicant must include in the application.

(d) Subpart D—*How Does the Secretary Make a Grant?*

The selection criteria used to evaluate grant applications are contained in § 396.30.

Section 396.31 states that, in making awards, the Secretary considers the geographical distribution of projects.

Section 396.32 states that, in making awards, the Secretary gives priority to public or private nonprofit agencies or organizations with existing programs that demonstrate their capacity for providing interpreter training services.

**Executive Order 12291**

These final regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

**List of Subject in 34 CFR Part 396**

Education, Grant programs—education, Vocational rehabilitation.

**Citation of Legal Authority**

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(29 U.S.C. 774(d))

(Catalog of Federal Domestic Assistance No. 84.160; Training of Interpreters for Deaf Individuals Program)

Dated: August 8, 1985.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 396 to read as follows:

## PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

**Subpart A—General**

Sec.



**Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?**



**Subpart C—How Does One Apply for a Grant?**



**Subpart D—How Does the Secretary Make a Grant?**



**Authority:** Sec. 304(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, 92 Stat. 2970, (29 U.S.C. 774(d)), unless otherwise noted.

### Subpart A—General

**§ 396.1 What is the Training of Interpreters for Deaf Individuals Programs?**

(a) The Training of Interpreters for Deaf Individuals Program is designed to assist in providing a sufficient number of skilled interpreters to meet the communications needs of deaf individuals by—

(1) Training manual and oral interpreters throughout the country for employment in public and private agencies, schools, and other institutions involved in health, education, welfare, rehabilitation and employment; and

(2) Ensuring the maintenance of the skills of interpreters engaged in programs serving deaf people, and providing opportunities for interpreters to raise their level of competence.

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

**§ 396.2 Who is eligible for assistance under this program?**

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Training of Interpreters for Deaf Individuals Program.

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

**§ 396.3 What regulations apply to this program?**

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(b) The regulations in this Part 396.

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

**§ 396.4 What definitions apply to this program?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Supplies

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

(b) *Definitions that also apply to this part.* The following definitions also apply to this part:

"Interpreter for deaf individuals" is an individual who utilizes sign language skills or oral interpreting skills to facilitate communications between hearing and hearing-impaired individuals.

"Existing program that has demonstrated its capacity for providing interpreter training services" means an established program with—

(1) A record of training interpreters who are serving the deaf community; and

(2) An established curriculum that is suitable for training interpreters.

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§§ 396.5–396.9 [Reserved]

## Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

### § 396.10 What types of projects are authorized under this program?

The Secretary provides assistance for projects that provide training in manual and oral interpreting skills for persons preparing to serve, or already serving, as interpreters for deaf individuals in public and private agencies, schools, and other service-providing facilities.

(Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§§ 396.11–396.19 [Reserved]

## Subpart C—How Does One Apply for a Grant?

### § 396.20 What must be included in an application for a grant?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A demonstraton of the applicant's capacity or potential for providing training for interpreters for deaf individuals; and

(d) Assurances that—

(1) Any interpreter trained or retrained under this program will meet such minimum standards of competency as the Secretary may establish;

(2) To the extent appropriate, the grantee will provide for the training or retraining (including short-term and in-service training) of teachers who are involved in providing instruction to deaf individuals but who are not certified as teachers of deaf individuals; and

(3) Funds for in-service training will be provided only through funds appropriated under Part B of the Education of the Handicapped Act.

(Sec. 304(d)(2) of the Act; 29 U.S.C. 774(d)(2))

§§ 396.21–396.29 [Reserved]

## Subpart D—How Does the Secretary Make a Grant?

### § 396.30 What are the selection criteria used to award a grant?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points. The maximum possible points for each criterion are indicated in parentheses after the heading for the criterion.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To detemine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

**Cross Reference:** 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Technical and programmatic soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary considers—

(i) The proposed project can reasonably be expected to accomplish the purposes of the program, including any priorities established;

(ii) There is a shortage of interpreters in the geographic area to be served by the proposed project;

(iii) The training activities described in the application reflect practices of recognized professional soundness and efficacy or new and innovative activities which may reasonably be expected to result in the training of interpreters who will display a high level of skill;

(iv) There appear to be no substantial obstacles to carrying out the activities described in the application; and

(v) The application demonstrates a logical, coherent and balanced approach to the objectives of the program.

(g) *Specialized capabilities of applicant.* (10 points)

(1) The Secretary reviews each application to determine if the applicant has the capacity for providing training for interpreters for deaf individuals.

(2) The Secretary considers the adequacy of the experience of the applicant organization, in addition to the experience of the staff described under paragraph (b) of this section (Quality of key personnel), in conducting activities which are similar, or have significant relevance, to those proposed in the application.

(h) *Demonstrated relationships with service providers.* (10 points)

(1) The Secretary reviews each application to determine if the proposed interpreter training project was developed in consultation with service providers.

(2) The Secretary considers whether—

(i) The training is appropriate to the needs of deaf individuals and public and private agencies which provide services to deaf individuals in the geographical area to be served by the training project;

(ii) There has been or there will exist a working relationship between the interpreter training project and service providers;

(iii) There are opportunities for the parents of deaf persons and for deaf persons to involve themselves in the training; and

(iv) The training includes a practicum, or field experience, with potential employers of interpreters, if possible.

(Sec. 304(d) of the Act, 29 U.S.C. 774(d))

**§ 396.31 Does the Secretary consider geographical distribution in making grants?**

In addition to the selection criteria listed in § 396.30, the Secretary, in making awards under this part, considers the geographical distribution of projects, to the extent possible, where necessary to best carry out the purposes of this program.

(Section 304(d)(1) of the Act; 29 U.S.C. 774(d)(1))

**§ 396.32 Does the Secretary give priority to certain existing programs in making grants?**

(a) The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(b) The Secretary implements this priority by selecting for funding applications from existing programs with demonstrated capacity over applications of comparable merit that do not reflect these characteristics.

(Sec. 304(d)(1) of the Act; 29 U.S.C. 774(d)(1))

**§§ 396.33–396.39 [Reserved]**

[FR Doc. 85–19193 Filed 8–12–85; 8:45 am]

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Tuesday
August 13, 1985

Part III

# Department of Energy

10 CFR Part 600

Financial Assistance Rules; Proposed Policy and Procedural Requirements for Research Grants; Proposed Rule

## DEPARTMENT OF ENERGY

### 10 CFR Part 600

### Financial Assistance Rules; Proposed Policy and Procedural Requirements for Research Grants

**AGENCY:** Energy Department.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) today proposes a limited revision of Subparts A and B of the Financial Assistance Rules to change certain requirements related to the award and administration of research grants. These changes reflect the Department's recognition of the uniqueness of the research grant instrument and the organizational characteristics of those entities performing research. The effect of these revisions would be to reduce or eliminate the administrative burden on the research grantee; however, when appropriate, revisions have been written to apply to all grantees.

**DATE:** Written comments on the proposed rule must be received by September 12, 1985.

**ADDRESS:** All written comments should be addressed to Thomas Reynolds, Department of Energy, Procurement and Assistance Management Directorate, Office of Policy [MA–421.2] 1000 Independence Ave., SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Reynolds, Business and Financial Policy Branch [MA–421.2], Procurement and Assistance Management Directorate, Washington, DC 20585 [202] 252–9737

Christopher Smith, Office of the Assistant General Counsel for Procurement and Financial Incentives [GC–43], Washington, DC 20585 [202] 252–1526.

**SUPPLEMENTARY INFORMATION:**



### I. Introduction

With this notice, the Department of Energy (DOE) proposes to amend its Financial Assistance Rules, 10 CFR Part 600, by reducing certain requirements presently imposed on the recipients of research grants. This proposal results from DOE's ongoing efforts to improve the administration of its financial assistance programs.

As part of this effort, DOE continuously strives to simplify the requirements related to financial assistance. As a result for example, on April 15, 1985, DOE's Office of Energy Research (OER) published a Program Rule establishing the Special Research Grants Program (see 50 FR 14858). That rule was developed to facilitate the use of grants by OER. It became apparent during that rulemaking process that several provisions of that rule could be extended to recipients of all DOE research grants and not just those subject to that rule. This proposal would extend those provisions to all DOE research grantees.

### II. Proposed Changes to 10 CFR Part 600

Section 600.3 would be revised by the addition of a definition of the word "research" in order to make clear the applicability of other proposed changes.

Section 600.20(c) would be revised to make clear that the apparently absolute prohibition against grantee's incurring preaward costs may be moderated by both a program rule such as the one appearing at 10 CFR Part 605, which establishes OER's Special Research Grant Program, and by use of the permissive authority contained in § 600.103(g) which allows preaward costs when authorized in writing by a contracting officer prior to incurrence.

Proposed § 600.102(b)(1) would provide that all applications for research grants, except those submitted by State, local or Indian tribal governments, shall contain DOE forms ERF 4620.1 and ERF 4620.1A. State, local, and Indian tribal governments will continue to use the forms mandated by OMB Circular A–102. DOE forms ERF 4620.1 and ERF 4620.1A have been specifically designed for the research grant process. They are presently required under the Special Research Grants Program for the same recipient communities. By standardizing its use, DOE will enable a grantee organization to use the same forms when applying for any DOE research grant.

Proposed § 600.103(b)(6) would standardize the prior approval requirements related to equipment acquisition and foreign and domestic travel. The proposed revisions would adopt the provisions of 10 CFR 605.17(a)(1), (3), and (4) for all research grant recipients. The substance of these changes is presently applicable governmentwide to all grants awarded to colleges and universities and nonprofit institutions under OMB Circulars A–21 and A–122. It is believed that this standardization of requirements will assist the recipient communities in avoiding cost disallowances based upon the criteria of reasonableness.

Consistent with the proposed amendment to § 600.20(c) discussed above, § 600.103(g) would be revised to clarify the authorization required for incurrence of preaward costs and to notify grantees of the associated financial risks.

Section 600.106(d), (d)(1), and (d)(2) would be revised to provide broadened circumstances under which grantees may have budget periods extended when no additional funds are requested and to also provide that, in most cases, research grant recipients need not accompany such a request with a budget for the use of any remaining funds.

The proposed revision to § 600.108(b) is based upon the realization that this paragraph as presently written is ambiguous and therefore negatively affects grant administration. Section 600.108(b) as revised makes clear that grantees need advise DOE of "excess funds" only during the last budget period for which support will be requested. In the case of other budget periods the existence of excess obligational authority on the part of the grantee is not viewed with concern, since it can be used to "offset" the need for additional funds in the subsequent budget period. Section 600.108(c) has been revised to increase the number of methods by which grantees may be authorized to expend unobligated balances remaining at the end of a budget period.

DOE considers it desirable to provide research grantees with maximum flexibility in controlling their research projects. Due to the nature of research, during the term of a research project, considerable rebudgeting may be necessary. For the most part, such rebudgeting on a research grant is subject to "item" prior approval requirements found in the applicable cost principles. In view of these considerations DOE finds it inappropriate to apply to research grants the requirement of § 600.114(b)(1)(iv) that the grantee obtain the additional prior approval of DOE for cumulative budget transfers among direct cost categories which exceed or are expected to exceed five percent of the approved budget, whenever the awarding party's share exceeds $100,000. Accordingly, DOE proposes to revise this subparagraph so that this requirement does not apply to research grantees.

Section 600.115 would be revised to specifically recognize the practice, common in research grants, of submitting annual progress reports as part of the renewal or continuation application when authorized by program rule or the terms and conditions of award.

Section 600.119(c)(1) would be revised to provide that, in the case of research grants, the level at which prior approval must be obtained before the grantee enters into any sole source contract or contract where only one bid or proposal has been received would be raised to a uniform $25,000 rather that present lower levels.

### III. Review Under Executive Order 12291

Today's proposal was reviewed under Executive Order 12291 (February 17, 1981). DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

In accordance with requirements of the Executive order, this rulemaking has been reviewed by OMB.

### IV. Review Under the Regulatory Flexibility Act

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive grants and does not create additional economic impacts on small entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### V. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements that would be imposed by this proposed rule have been cleared by OMB for DOE use under OMB clearance number 1910–0400.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), DOE will consider comments on information collection and recordkeeping requirements in this rule that affect the public. Comments should be submitted to:

Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, DC 20503, (202) 395–7313

and to

Mr. Howard H. Raiken, Director, Management Systems Analysis Division (MA–213), U.S. Department of Energy, Washington, DC 20585 (202) 252–9383

### VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

### VII. Intergovernmental Review.

DOE research grants are generally not subject to the intergovernmental review requirements of EO 12372 as implemented by 10 CFR Part 1005. However, certain grant applications may be.

All applications from governmental or non-governmental entities which involve research, development, or demonstration activities when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area, (2) necessitate the preparation of an Environmental Impact Statement under NEPA, or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public are subject to the provisions of the Executive order and 10 CFR Part 1005.

### VIII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, RM 1E–190, Forrestal Building, 1000 Independence Ave., SW, Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by September 12, 1985 will be fully considered prior to publication of a final rule resulting from this proposal. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

### IX. List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyright, Debarment and suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian tribal governments, Individuals, Inventions and patents, Nonprofit organizations, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by amending Part 600 as set forth below.

Issued in Washington, DC, July 31, 1985.

**Berton J. Roth,**

*Director, Procurement and Assistance, Management Directorate.*

## PART 600—[AMENDED]

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 600 is revised to read as follows:

**Authority:** Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308).

2. Section 600.3 is amended by adding in alphabetical sequence a definition of

the word "Research" after the definition of "Renewal Award" and before the definition of "Secretary" to read as follows:

**§ 600.3 Definitions.**

* * * * *

"Research" means any scientific or engineering activity which: (1) Constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need, and which may contribute to producing an adequate supply of suitably trained scientists or enable the grantee to strengthen its research programs; and/or, (3) applies such knowledge toward the production of useful materials, devices and systems or methods, including design, development and improvement of prototypes and new processes to meet established requirements.

* * * * *

3. In § 600.20, paragraph (c) is revised to read as follows:

**§ 600.20 Legal authority and effect of an award.**

* * * * *

(c) DOE funds awarded under a grant or cooperative agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with § 600.103(g) of this Part or by program rule. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

4. In § 600.102, paragraph (b)(1) is revised to read as follows:

**§ 600.102 Grant applications.**

* * * * *

(b) * * *

(1) Applicants for research grants, other than State, local, or Indian tribal governments, will employ DOE budget forms ERF 4620.1 and ERF 4620.1A. All other applicants shall use the budget formats contained in OMB Circular A-102, as duplicated in the DOE Uniform Reporting System for Federal Assistance. (Approved by OMB under OMB control number 1900-0400.)

* * * * *

5. In § 600.103, a new paragraph (b)(6) is added and paragraph (g) is revised as follows:

**§ 600.103 Cost determinations.**

* * * * *

(b) * * *

(6) Notwithstanding the provisions of paragraphs (b)(1) through (b)(5) of this section, the recipient of a research grant shall obtain the prior written approval of the Contracting Officer before taking any of the following actions:

(i) Acquisition of an item of equipment or other capital asset not specifically contained in an approved budget, the cost of which is $500 or more, and in the case of special purpose equipment, $1000 or more.

(ii) Foreign travel for each separate trip, unless funds for each trip are specifically identified by destination and amount and are included in the approved budget. Foreign travel is any travel outside Canada and the United States and its territories and possessions or, for grantees located in another country, travel outside that country. Foreign travel may be approved only if it is directly related to the project objectives.

(iii) Expenditures for domestic travel exceeding the amount contained in an approved budget by 25% or $500, whichever is greater.

* * * * *

(g) *Preaward costs.* Costs incurred before the beginning date of a new or renewal award are allowable ony if authorized by program rule or approved in writing, prior to incurrence, by a DOE Contracting Officer. Such written approval may be in the form of a letter or an award provision of an earlier budget period of a grant. DOE shall not be obligated to reimburse any authorized preaward costs if the anticipated award is not subsequently made.

* * * * *

6. In § 600.106, paragraph (d) is revised to read as follows:

**§ 600.106 Funding.**

* * * * *

(d) DOE may extend any budget period, including the final budget period of a project period, without the need for competition or a detailed application if:

(1) In the case of the last budget period of a project period, the additional time necessary is 18 months or less in total, or for all other budget periods the additional time necessary is 6 months or less in total; and

(2) The grantee submits a written request for such an extension before the expiration date of the project period and includes a budget for the use of any remaining funds or any additional funds requested. In the case of a research grant, the budget need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

* * * * *

7. In § 600.108, paragraphs (b) and (c) are revised to read as follows:

**§ 600.108 Calculation of award.**

* * * * *

(b) *Excess funds.* During the term of the last budget period for which support will be requested, a grantee must notify DOE whenever it becomes apparent to the grantee that the amount of DOE funding authorized is expected to exceed its needs by more than $5,000 or five percent of the DOE award, whichever is greater. DOE may reduce the DOE award by an amount which does not exceed the total amount of excess funds.

(c) *Unobligated balances.* DOE may authorize all or a portion of any unobligated balance remaining at the end of a budget period [see § 600.118] for expenditure by a grantee in the subsequent budget period. Unobligated balances may be used after the end of a budget period only if authorized by DOE in a program rule, in the terms and conditions of the award, or in the total approved budget shown in an amended Notice of Financial Assistance Award.

* * * * *

8. In § 600.114, paragraph (b)(1)(iv) is revised to read as follows:

**§ 600.114 Budget and project revisions.**

* * * * *

(b) * * *

(1) * * *

(iv) Except for research grants, transfers among direct cost categories, or, if applicable, among separately budgeted programs, functions or activities which cumulatively exceed or are expected to exceed five percent of the current total approved budget, whenever the awarding party's share exceeds $100,000.

* * * * *

9. In § 600.115, paragraph (c)(2) is revised to read as follows:

**§ 600.115 Performance reports.**

* * * * *

(c) * * *

(2) Annual performance reports shall be submitted within 90 days after the end of the 12-month period [generally the budget period] covered by the report or with, or as part of, any continuation

or renewal application is so specified in either any pertinent program rules or the terms and conditions of award.

* * * * *

10. In § 600.19, paragraphs (c)(1)(i) and (c)(1)(ii) are revised and a new paragraph (c)(1)(iii) is added to read as follows:

**§ 600.119 Procurement under grants and subgrants.**

* * * * *

(c) * * *

(1) * * *

(i) Except as provided in paragraph (c)(1)(iii) of this section, the value of the contract is expected to exceed $5,000 in the aggregate and the grantee or subgrantee is not a State government, local government, or Indian tribal government.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the value of the contract is expected to exceed $10,000 in the aggregate, and the grantee or subgrantee is a State government, local government, or Indian tribal government.

(iii) In the case of a research grant, the value of the contract is expected to exceed $25,000 in the aggregate, regardless of the grantee's or subgrantee's organizational type.

* * * * *

[FR Doc. 85-19251 Filed 8-12-85; 8:45 am]
BILLING CODE 6450-01-M

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Tuesday, August 13, 1985

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**S. 960/Pub. L. 99-83**

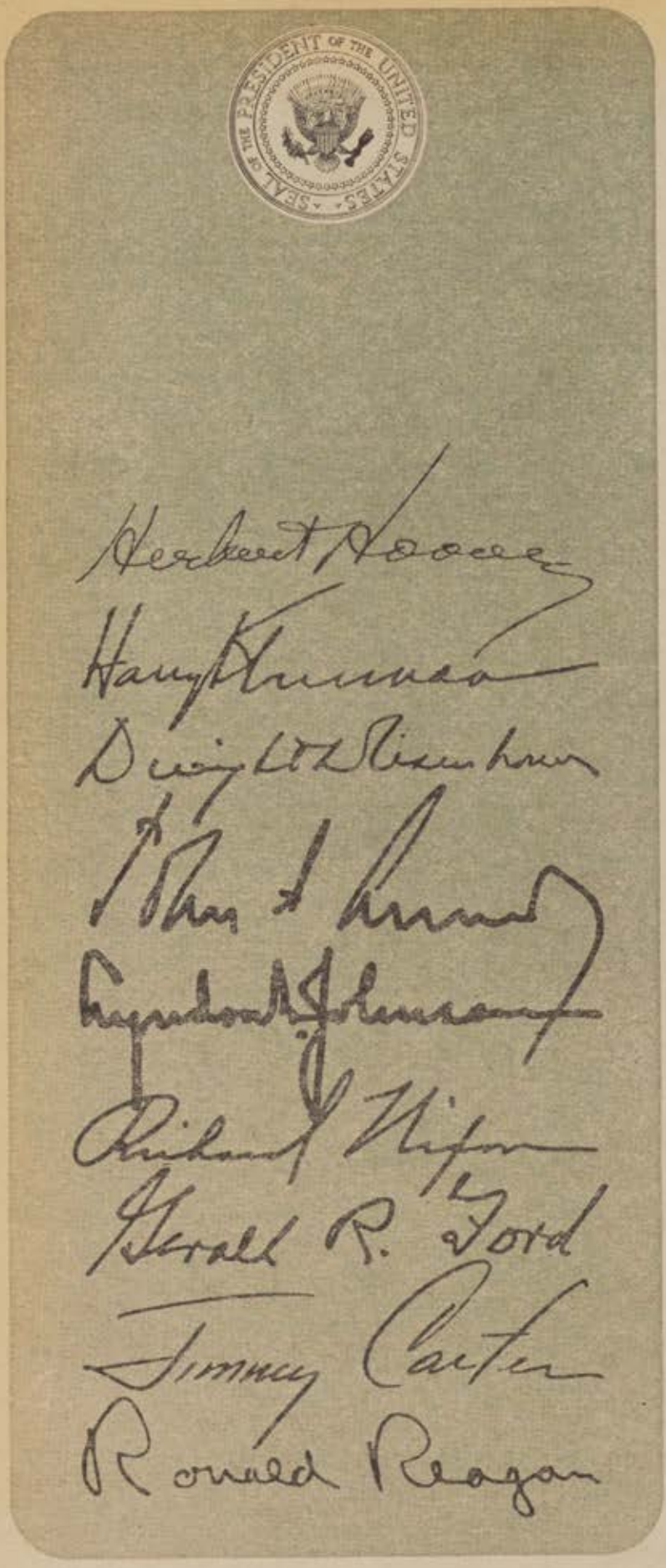
"International Security and Development Cooperation Act of 1985". (Aug. 8, 1985; 99 Stat. 190) Price: $2.00

**S.J. Res. 137/Pub. L. 99-84**

To designate the week of December 15, 1985, through December 21, 1985, as "National Drunk and Drugged Driving Awareness Week". (Aug. 8, 1985; 99 Stat. 284) Price: $1.00

**S.J. Res. 108/Pub. L. 99-85**

Authorizing the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, equipment and services necessary for an improved United States/Soviet Direct Communication Link for crisis control. (Aug. 8, 1985; 99 Stat. 286) Price: $1.00

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